

Guardian Advocacy Information Handbook and Forms

**For Use In The
SIXTH JUDICIAL
CIRCUIT PINELLAS
COUNTY, FLORIDA**

PINELLAS COUNTY GUARDIAN ADVOCATE INFORMATION

COMMENTARY, AND INSTRUCTIONS GENERAL INFORMATION FOR SELF-REPRESENTED PETITIONERS

You should read this General Information thoroughly before taking any other steps to file your case or represent yourself in court. Most of this information is not repeated in the attached forms. This information should provide you with an overview of the court system, its participants, and its processes. This is not intended as a substitute for legal advice from an attorney. Each case has its own particular set of circumstances, and an attorney may advise you of what is best for you in your individual situation.

Guardian Advocates

What is a Guardian Advocate?

Per Florida Statutes 393.012 and 744.3085, a circuit court may appoint a guardian advocate, without an adjudication of incapacity, for a person with developmental disabilities if the person lacks the decision-making ability to do some, but not all, of the tasks necessary to care for his or her person, property, or estate, or if the person has voluntarily petitioned for the appointment of a guardian advocate.

The Petition shall specify some, but NOT ALL, of the below exact areas in which the person lacks the ability to make informed decisions:

- Determine their own Residence
- Consent to Medical Treatment
- Decide their Social Environment
- To Vote
- To Marry
- Have a driver's license
- To travel unaccompanied
- To Apply for government benefits
- To Contract
- To Sue or Defend lawsuits
- Manage Property
- To seek or retain employment

What if the person lacks decision-making for ALL of the above exact areas?

A Petition to Determine Incapacity and Petition to Appoint a Guardian, pursuant to Chapter 744, must be filed and every Petitioner must be represented by an attorney. An examining committee will be appointed to examine the person and make a written recommendation on the person's ability to exercise the rights lists above. Florida law recognizes the Guardian Advocate as a less restrictive alternative to Guardianship and requires the court to pursue less restrictive alternatives when possible.

What constitutes a Developmental Disability?

Per Florida Statute 393.063, A Developmental Disability is a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. (See glossary for definitions)

Why does a Developmentally Disabled person need a Guardian Advocate? Parents, as natural guardians of their children, can make decisions for their disabled child. However, once the person reaches maturity (turns 18), parents are often not permitted to make medical and financial decisions on behalf of their disabled child, unless they are appointed Guardian Advocate by the court.

When can I file to be Guardian Advocate of my Developmentally Disabled child or relative?

When a minor reaches the age of 17 and 6 months or anytime thereafter.

Do I need an attorney to file?

A Guardian Advocate is the only type of guardianship that does not require an attorney per Florida Probate Rule 5.030, unless the Proposed Guardian Advocate seeks to manage income or assets other than being the representative payee for government benefits-

What are the requirements to be a Guardian Advocate?

- A Guardian Advocate must be:
- Age 18 or older
- A resident of Florida, unless they are a spouse, blood relative, legally adopted child or parent of the disabled person or a spouse of the blood relative or legally adopted parent or child of the disabled person (an in-law).
- Has not been convicted of a felony.
- Is capable of discharging the duties of a guardian (is not incapacitated or ill).
- Is not a provider of health care services to the ward.
- For further information and a complete list, please see Florida Statute, sec. 744.309

How long does the process take?

It is difficult to predict what the court's case load may be or other factors. However, the

sooner you file, the sooner the hearing will take place and Letters of Guardian Advocate will be signed. Once all of the forms are filed, please contact the Pinellas Clerk of Court for information on scheduling a hearing.

What does the Guardian Advocate have to do?

If you are the disabled person's parent, not much will change. You will continue to help them get medical care, government benefits, etc. as their Advocate. You will be required to file annual documents updating the court on the status of the disabled person. For more information, please see Florida Statute 393.12.

Background Check Requirements and who may NOT serve as Guardian Advocate:

Florida Statute Section 744.3135 allows the court to require a family or non-professional Guardian Advocate to submit, at their own expense, to an investigation of the Guardian Advocate's criminal history and to background screening prior to being appointed to serve as Guardian Advocate. In Pinellas Counties, the Court requires the proposed Guardian Advocate to submit to a credit and criminal background check and also allow DCF (Florida Department of Children and Families) to release any information that agency may have regarding complaints.

The Florida Department of Law Enforcement (FDLE) requires all fingerprints be submitted via live scan device. Locations providing this service can be found at: www.identogo.com/services/live-scan-fingerprinting. Select Florida for the state. Scroll down to "Enrollment Services" and click on "Digital Fingerprinting." Then click on "Schedule a New Appointment." In the alternative, the Pinellas County Sheriff's Office conducts LiveScan fingerprinting. Please see the Pinellas County Sheriff's Office website for details. The applicant will need the Originating Agency Identification Number (ORI) in order to schedule an appointment.

Pinellas ORI # for Non-Professional/Family guardian applicants: FL052104Z. Additional information and instructions, please see Pinellas Clerk of Court website, www.mypinellasclerk.org (under Probate & Mental Health, Guardian Qualifications)

****FDLE will not allow the Clerk of Court to accept the results of a background check until AFTER the new case is filed. Any fingerprints submitted prior to filing a new case will not be reviewed.** Therefore it is very important for the Applicant to submit fingerprints within 1-3 days after the filing of the new case in order for the results to be processed by the Clerk of Court in time for the final hearing.

The Step-by-Step Process to Becoming a Guardian Advocate:

Step One: Gather the following documents

- Guardian Advocate Appointment Forms
- Names/Addresses of Next of Kin (see definition in glossary)
- Name/Address of Current treating physician(s)
- Date of Diagnosis of Ward (if available)
- Amount and proof of assets or income of the alleged developmentally disabled person

Step Two:

- Complete Necessary Paperwork for Filing with the Clerk of the Court (*Please note that neither the Court nor the staff will help you fill out any of these documents. Do not ask them to help you fill this out as they cannot provide legal advice to you.*)
- Keep copies of all forms for your records
- File the forms with the Pinellas Clerk of Court (see addresses below)
- Review and Submit Electronic Fingerprints for the proposed Guardian(s). *Several companies in both Pinellas Counties provide electronic fingerprint services for Guardian Advocate applicants. In order for the results of the background check to be sent to Clerk of the Court you must provide the finger print company the following Originating Agency Identification Number ORI number: **ORI # FL052104Z***
- File a copy of the receipt of the payment for the fingerprints with your petition for appointment of Guardian Advocate (***The New Case must be filed in Pinellas County prior to fingerprints results being submitted to the Clerk and Court for review*)

Step Three:

The following forms to be completed and filed with the Clerk:

☐ **Petition for Appointment of Guardian (or Co-Guardian) Advocate (Form A)**

This is the actual request that the court appoint a Guardian Advocate, The Petitioner(s) must provide ALL of the requested information, do not leave any information blank

☐ **Application for Appointment as Guardian Advocate (Form B)**

This includes basic information about the person requesting to be appointed Guardian Advocate of the person with developmental disabilities such as name, address, phone number, date of birth, education, employment, etc. The Petitioner must provide ALL of the information, do not leave any information blank.

☐ **Application for Determination of Civil Indigent Status (Form C)**

If the individual with a developmental disability cannot afford the filing fees and court appointed attorney fee, then to fill this form out. This needs to be answered as if it is the developmentally disabled individual, income, etc. A developmentally disabled individual is considered indigent if his/her income is equal to or below 200% of the federal poverty guidelines. There is a presumption that the applicant is not indigent if he/she owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000. For further information on completing this form or eligibility to be considered indigent, the Clerk of Court can provide more information.

☐ **Waiver and Consent to Appointment of Guardian/Co-Guardian Advocates(s)**

(Form D) *Signed by the parent not being appointed Guardian Advocate; use only if both parents are not going to serve as co-Guardians. If the other parent has died, provide a copy of his/her death certificate and use Notice of Filing (Form I) to go with death certificate.*

☐ **Oath of Guardian Advocate and Designation of Resident Agent (Form E)**

*This document ensures that the proposed Guardian Advocate will faithfully perform his or her duties if selected and certifies that all the information presented to the Court in this proceeding is true. The designation and acceptance by the resident agent constitutes consent to service of process or notice on the agent in its representative capacity in any action and in its personal capacity only in those actions if the guardian is sued personally for claims arising from the administration of the guardianship, pursuant to Florida Probate Rules 5.110. **This document must be signed in the presence of a Notary Public or Clerk of the Court who can notarize.***

☐ **Oath of Co-Guardian Advocate and Designation of Resident Agent (Form E)**

*Complete another Form E for the second Guardian Advocate applicant, if applicable. **This document must be signed in the presence of a Notary Public or Clerk of the Court who can notarize. Print two (2) copies of Form E if petitioning for co-guardians.***

☐ **Notice of Confidential Filing Information (Form F)**

You must file this to notify the Clerk of any confidential information that is in the forms you fill out. This includes Social security numbers, bank account information, health record information, Psychological reports, IEP (Individual Education Reports), etc.

☐ **Notice of Filing (Form G)**

Use this form to notify the court that you have filed any of the applicable documents, Death Certificates, Medical or school reports, receipt for fingerprints for criminal background check reports, etc.

☐ **Designation of Primary and Secondary Email Addresses (Form H)**

Use this form to designate a primary and secondary email address for the court to direct all service, correspondence and pleadings to.

Step Four:

Where to file with Clerk of Court (in person is recommended)

Clearwater location:
315 Court Street, Room 106
Clearwater, Florida 33756
Phone: 727-464-3321

St. Petersburg location:
545 First Avenue North
St. Petersburg, FL 33701
Phone: (727) 464-7000

Step Five:

After documents are filed:

- Confirm with the Clerk's office that the file was opened and Case Number assigned (you may already have received the case number when you went to the courthouse to file your paperwork)
- A sheriff will serve the documents filed on the alleged developmentally disabled person.
- The Court will appoint an attorney to represent the developmentally disabled person. He/she will need to meet with the developmentally disabled person prior to the hearing. If the attorney does not contact you within 10 days of being appointed, you should call his/her office to find out when they will meet with developmentally disabled person.
- Also, ask the Court Appointed Attorney if he/she is waiving the appearance of your child – if he/she says “yes” then the individual does not have to come with you to the hearing; if he/she says “no”, then you must bring the individual to the hearing
- Clerk or Court staff will contact the proposed Guardian(s) and the court-appointed attorney to coordinate a date, time and location for the hearing.
- A notice of hearing will be mailed to all parties. Make sure you are aware of the location where the hearing is to be held, the location will be listed in the notice of hearing.
- Plan to wear clothes that are business casual (collared shirt/slacks) or nicer to the hearing
- Arrive 15-20 minutes prior to the hearing so there is plenty of time to get through security.

AFTER THE HEARING

- The Magistrate/Judge will sign a Recommendation Report which the Probate Judge will review.
- The Probate Judge will then sign the letters and orders thereby appointing you as the Guardian Advocate. This usually comes the same time as the

Recommendation Report.

- The process of receiving the letters and orders may take a few days. Once you receive the signed, conformed copies, you will need to go to the Clerk's office and get certified copies of the letters.
- "Conformed" means it will have the date that the judge signed the Letters and Orders, but it may not have their actual signature.
- "Certified" copy has the actual signature and date the letters and Orders were signed and is certified by the Clerk of Court to be an actual copy of what the judge signed. You may need a certified copy of the letters to show to your child's school, doctors or a financial institution.
- Bring cash to pay for the certified copies.

REPORTS REQUIRED AFTER APPOINTMENT OF THE GUARDIAN ADVOCATE

Unless waived, the Guardian Advocate(s) must file annual reports with the Clerk of the Court. The Order appointing the Guardian Advocate(s) will identify the specific documents and reports applicable including an Annual Plan, Annual Inventory, Simplified plan, Annual Affidavit, or documents that are acceptable alternatives. Forms for the Guardian Advocate(s) annual reports are available on the court's website at www.jud6.org.

Glossary of Terms which may be used in these forms

(As defined in 393.063 or 744.102, Florida Statutes)

Autism: a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

Cerebral palsy: a group of disabling symptoms of extended duration which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles. For the purposes of this definition, cerebral palsy does not include those symptoms or impairments resulting solely from a stroke.

Developmental disability: a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

Domicile: the place where a client legally resides and which is his or her permanent home. Domicile may be established as provided in s.[222.17](#). Domicile may not be established in Florida by a minor who has no parent domiciled in Florida, or by a minor who has no legal guardian domiciled in Florida, or by any alien not classified as a resident

alien.

Down syndrome: a disorder caused by the presence of an extra chromosome 21.

Guardian advocate a person appointed by a written order of the court to represent a person with developmental disabilities under s. [393.12](#).

Intellectual disability: significantly sub average general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. For the purposes of this definition, the term:

(a) Adaptive behavior” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.

(b) Significantly sub average general intellectual functioning” means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

Next-of-Kin: 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.

Phelan-McDermid syndrome: a disorder caused by the loss of the terminal segment of the long arm of chromosome 22, which occurs near the end of the chromosome at a location designated q13.3, typically leading to developmental delay, intellectual disability, dolicocephaly, hypotonia, or absent or delayed speech.

Prader-Willi syndrome: an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate intellectual disability, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior.

Relative: an individual who is connected by affinity or consanguinity to the client and who is 18 years of age or older.

Resident: a person who has a developmental disability and resides at a residential facility, whether or not such person is a client of the agency.

Residential facility: a facility providing room and board and personal care for persons who have developmental disabilities.

Spina bifida: a person with a medical diagnosis of spina bifida cystica or myelomeningocele.

Other Relevant Links and Information

Florida Statutes Guardian Advocate Statute:

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0393/Sections/0393.12.html

Sixth Judicial Circuit

<http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/SubjectAO/Proguard/proguard.htm>