DUSTIN ANDERSON
CIRCUIT COURT JUDGE
PROBATE AND GUARDIANSHIP
SECTION J

Judicial Assistant: crprobw2@jud6.org
7530 Little Road Rm. 215
New Port Richey, FL 34654
(727) 847-8173
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JUDICIAL PRACTICES AND PROCEDURES

Please note: This document is meant to be a guideline to facilitate the efficient movement of cases through the sections over which Judge Anderson presides. They do not relieve anyone from adhering to statutory and procedural requirements. Additionally, this document is subject to change. Judge Anderson will make every effort to ensure changes are made widely available and with as much notice as possible.

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I. GENERAL OFFICE PROCEDURES

A. Communication with the Judicial Office

- In an effort to facilitate the efficient and prompt processing of cases, the preferred form of communication when contacting the judicial office is by email to crprobw2@jud6.org. The subject line of any email to the judicial office must contain the case number, case name, and relevant matter (e.g., 2026GA1234, Guardianship of John Doe, 2-hour hearing requested).
- The judicial assistant is not permitted to answer legal questions, give advice, or explain your situation to the judge. Your opportunity to speak to the judge happens in court only, when all parties are given the opportunity to be present and heard.
- All parties must be copied on any e-mail directed to the judicial office, unless an ex parte communication is authorized by law.
- Unsolicited communications from non-parties will not be considered by the court. Parties may only contact the judicial office in accordance with these practices and procedures.
- All attorneys and self-represented litigants must provide an email address to receive signed orders electronically, unless excused. It is the responsibility of attorneys and self-represented litigants to update their contact information using Fla. R. Gen. Prac. & Jud. Admin. Form 2.603 any time there is a change in the email account registered for electronic service.

- The judicial assistant is typically available from 8:30 a.m. – 12:00 p.m. and from 1:00 p.m. – 4:30 p.m. Monday through Friday, excluding court holidays. Although the judicial assistant may send communications outside of these hours, the judicial assistant might not respond to incoming communications.
- The judicial assistant strives to substantively respond to all inquiries within one business day. If the judicial assistant is unable to substantively respond within one business day, your message will be acknowledged as received with an indication of when to expect a substantive response for immediate assistance.
- All motions and pleadings must be filed with the Clerk of Court.
- Substantive ex parte communications sent to the court, regardless of how they are sent, will be filed in the court file. Communications solely related to the scheduling of hearings are not substantive.
- Please be advised that all email communications sent to the court are subject to public records requests.
- If you are inquiring as the status of the case or the entry of an order, first check the Clerk of Court's online docket to make sure it has not already been entered. Next, contact the Clerk's office to determine the status. The clerk may not yet have reviewed the relevant documents or may have the case pending before it can send to the judicial office for review (usually because of missing documents). Once the case is electronically sent to the court, the turn-around time is typically very quick, usually no more than a day. If the order(s) cannot be signed at that time, the court will either forward the case to the judicial assistant for further action or return the case to the Clerk for preparation of an Order Checklist.
- Please do not call the judicial office to inquire about the status of orders unless you have confirmed with the Clerk that the case has been sent to the judicial office for review.

B. E-filing

- Please review Administrative Order 2023-040 PA-CIR ("AO"). Pursuant to the AO, all pleadings including proposed orders must be electronically submitted through the Florida Courts E-Filing Portal. Numbered paragraph 3 of the AO lists the original documents which must be filed with the Clerk of Court (primarily for purposes of this division, that would be the original Will, codicils and separate writings, original Pre-need guardian declarations, original Commissions to take Oath of witness to Will and Certificates of Commissioner). Do not send these documents to the judicial office.

- The judicial office cannot accept any documents for filing with the Pasco County Clerk of the Circuit Court or checks for certified copies of orders. You must send those documents directly to the Clerk of Court.
- All responses and documents in response to the Order Checklist must be filed with the Clerk. Please do not send any response or document directly to the judicial office; electronic filing is required.
- In all but the most exceptional circumstances, documents must be e-filed and posted on the docket before the court will take any action. Notifications that e-filings are "accepted" are not the same as documents being processed, reviewed and posted on the docket by the Clerk's office.
- Please also note that even though you have e-filed a pleading, it does not mean that the pleading will be automatically forwarded to the judicial office. There are several essential processes the Clerk's office performs before documents are forwarded to the judge.
- It is also the responsibility of the attorneys to make sure their filings have been properly e-filed and posted on the docket, and not rejected at any point. If you do not see your filings posted after a few days, please check your email for notification of rejection or follow up with the Clerk's office (and have your e-filing reference number available).

C. Judicial Review of Matters Forwarded by the Clerk

- The court normally receives numerous cases per day from the Clerk requiring review. These cases must be addressed by the court in between hearings, trials and emergencies. Many matters can be handled quickly but some require extensive review of the court file by the court.
- In most circumstances, lengthy review by the court would not have been necessary had the attorney supplied the information needed either in the petition itself or by writing a letter (and uploaded through the E-Portal) to the court explaining why the order being sought to be entered is ready to be signed.
- Either the petition for the relief or the cover letter should act as a "roadmap" for the judge which shows why the proposed order is ready to be entered.
- Information for which the court typically has to conduct a time-consuming search includes whether the creditor period has passed, whether claims have been filed, and whether interested parties have been formally noticed or have consented to the order being entered. Providing this information, as well references to other important information in the court file, either in the petition itself or by separate letter, will result in your proposed orders being signed quickly and is greatly appreciated by the court.

D. Extensions of Time

- Florida Rule of Judicial Administration 2.250 requires the court resolve uncontested probate cases within 12 months. The court reviews and rules on many Petitions for Extension of Time every day. Every Petition for Extension of Time must include the reason(s) the extension is needed. Petitions which simply state that "more time is needed" are insufficient and will be denied. The Petitions must allege why more time is needed.
- Attorneys should submit proposed orders for extension of time containing no blanks; i.e., the proposed date of extension must be included in the proposed order. If the court does not agree with the relief sought, the court may change the language of the order, ask that a new order be submitted, or deny the order but the attorney must e-file the order contained the proposed extension sought.
- Petitions which seek a reasonable extension and provide a facially legitimate reason are granted without hearing. Because of this process, occasionally an objection is not docketed until after the order is entered. In these circumstances, the court may rescind the order of extension or may treat the objection as a motion for rehearing.

E. Motions for Rehearing

- Such Motions are not set for hearing without review by the court. You must electronically file the motion with the Clerk and provide a copy of the motion to the court by email to ensure that it comes to the court's attention. If the court determines a hearing is required, the judicial assistant will contact the moving party to schedule the hearing.

F. Orders to File Required Documents

- Attorneys often have legitimate reasons to disagree with various orders setting out requirements or can demonstrate they have already complied with the requirements. In all of these circumstances, the attorney must electronically file a written "Response to Order Checklist" to the particular order stating why the attorney should be excused from, or has complied with, the requirement. It is highly recommended to title the document "Response to Order Checklist" to make it obvious what you are e-filing, otherwise it will simply be filed as "Correspondence." All responses and documents must be filed with the Clerk, do not send anything directly to the judicial office.
- Neither the attorney nor any member of his or her staff should contact the judicial office by telephone or email to "explain" the circumstances or ask the judge for reconsideration. The court will have the opportunity to consider any explanation or request for reconsideration in its review of the electronically filed written response. The Clerk's office will forward the written response to the court for its consideration as well as any "Priority Request" that has been made.

- Order Checklists are prepared following the probate statutes and rules. You must fully comply with the Order Checklist, either by filing the checklist documents and/or e-filing a response (as directed above). Once you have addressed each item listed on the checklist, the Clerk will forward the case to the judge for review. However, if all items on the Checklist have not been fully addressed (either by providing the documents and/or in your written response), the Clerk will continue to leave the case status as pending until the order checklist has been fully complied with by filing the documents and/or addressed in your response.

G. Notice and Certificates of Service

- Attorneys should be familiar with applicable notice requirements including, but not limited to, Fla. Prob. R. 5.040 and 5.041. Generally, interested persons are required to receive appropriate notice of relief sought. Thus, every petition or motion should contain a certificate of service stating who has been served and the date and manner of service. If there are no interested persons, it must be so stated in the petition or motion.
- In most cases, a hearing will be required when interested persons have been noticed. However, if formal notice is served on all interested persons, and proof of service is filed, in accordance with Fla. Prob. R. 5.040 and no objections have been filed, a hearing is typically not necessary.

H. Pre-Trials, Jury Trials, and Non-Jury Trials

- A Case Management Conference (CMC) will be scheduled for a minimum of 30 minutes, prior to scheduling any Pre-Trial Conference (PTC), Jury Trial, or Non-Jury Trial (NJT).
- At the CMC, the judge will schedule the PTC and NJT, if necessary, and the attorneys should have their calendars available at the CMC.
- The court requires a mediation prior to the Trial.

I. Submission of Proposed Orders

- Pasco County utilizes the Judicial Automated Workflow System (JAWS). All parties on a case should be registered with JAWS.
- For assistance with JAWS, see: http://www.jud6.org/legalcommunity/JAWS/howto.html.

- When the court signs an order in JAWS, the order and cover letter are filed directly with the Clerk of the Court. The order is automatically served upon all parties

registered and case-connected with JAWS. As such, the court may not provide attorneys or unrepresented parties with electronic conformed copies of orders filed in JAWS.

- Orders filed in JAWS may take several days to appear in the court file.
- If a proposed order is rejected, the party/counsel who submitted the proposed order may be required to submit a new proposed order to the court.
- Unless otherwise informed in advance by the court, the court will not consider any proposed orders until all interested parties/counsel have had an opportunity to review it and lodge any objections.
- Proposed orders should be filled out as completely as possible. Only in exceptional circumstances should there be any blanks in the body of the order for the court to fill in. Attorneys should submit proposed orders containing the relief that is sought. For example, when seeking an extension of time, the proposed order should include the date of extension; and be sure to include the amount of the bond in a new estate according to the bond scheduled. If the court does not agree with the relief sought, the court may change the language of the order, ask that a new order be submitted, or deny the order.
- With regard to the placement of the date and signature, the electronic signing system includes the full date as well as the Judge's name and status as a Circuit Court Judge. **Thus, your proposed order should not contain multiple blanks for the date to be entered nor should it contain any reference to the name of the Judge.** The following format should be used:

  ORDERED

- Unless otherwise specifically instructed by the judge, the proposed order from a hearing must be electronically submitted along with a cover letter to the judge to advise the proposed order is from a hearing on "X" date and that the proposed order has been approved by opposing counsel, if any.
- If opposing counsel does not agree to the proposed order, please also e-file a cover letter so indicating and stating that opposing counsel will e-file an alternative proposed order within five days if desired. Of course, your cover letter should also be sent to opposing counsel. Sadly, the court has seen too often "Agreed Upon" orders, where the attorney represents that the attorney and the client are the ones that have "Agreed", not opposing counsel – so the correspondence needs to be specific as to who agrees. Correspondence needs to be specific as to who agrees.
- Proposed orders may not be submitted to the court at the same time as the communication with the opposing party/counsel about the proposed order. The court will not retain orders pending review by opposing party/counsel and those orders will be rejected.
- All proposed orders, regardless of submission method, must contain a cover letter.

- Any proposed order without a cover letter may be rejected.
- The first paragraph of the proposed order must indicate the date of the hearing (if any), the title of the motion/pleading upon which the hearing was held, the date of filing of the motion, who was present at the hearing, and the manner of appearance (in-person or Zoom). If a party failed to appear at the hearing, please state the date the notice of hearing was served as well as the manner and location of service, and whether the halls were sounded.
- Proposed orders should have numbered pages and the case style on each page.
- The judge's signature line must not be its own page.
- Proposed orders must be submitted within 10 days after any hearing.
- Proposed amended orders must normally be submitted with a properly e-filed Petition to Amend Order. However, in cases involving an amendment to correct a scrivener's or other technical error, a short letter of explanation for the need of an amended order is acceptable. Proposed amended orders submitted without any written explanation in either motion or letter form will not be signed.

J. Scheduling Procedures

- At this time, the court is not utilizing JAWS for scheduling of hearings. Hearings must be requested by email to crprobw2@jud6.org.
- Except when authorized in emergencies, or as otherwise detailed in these practice preferences, the court will not act without a hearing.
- Motions must be e-filed with the Clerk of Court and served upon opposing counsel or self-represented party prior to scheduling a hearing. The court will not accept any motions not first filed with the Clerk. Although the court will file correspondence in the court file, the court will neither file nor serve motions for a party.
- Please note that when new cases are e-filed, unless there is a Priority Request, the thorough review and audit process performed by the Clerk's office can take several weeks. When documents are missing, the Clerk's office will prepare an Order to File Required Documents ("Order Checklist") and it may not be appropriate to schedule a hearing until all of the required documents have been filed. When the Order Checklist has been fully complied with, the Order to File Required Documents ("Order Checklist") and it may not be appropriate to schedule a hearing until all of the required documents have been filed. When the Order Checklist has been fully complied with, the Clerk will forward the case to the judge. If a hearing is required, the judicial assistant will contact you via email to schedule a hearing and hearing dates, times and instructions will be provided.
- A party seeking to schedule a hearing must contact the court's judicial assistant via email to obtain available hearing dates and times. Please obtain several dates/times as the proposed dates/times you will be provided will not be held and may no longer be available when you contact the office again to schedule the hearing.

- Parties seeking to schedule a hearing should do their best to estimate the amount of time required for the totality of the hearing, as the court may not allow additional time for the matter to be heard.
- Parties will be held to the time requested and that time shall be split equally between the parties. This includes: opening and closing remarks, the examination of witnesses, introduction of exhibits, objections, and legal arguments.
- Failure to request sufficient time may result in the court ruling on a matter with the evidence presented in the time allotted.
- The parties shall be responsible for allocating their time accordingly, however the court will monitor the time each party uses.
- Unless addressed in advance and approved by the court, all matters raised in a petition or motion shall be litigated within the time requested for a hearing. Absent permission from the court, no additional time will be permitted to litigate a matter noticed for hearing.
- In estimating the time for a hearing, parties should also permit time for the court to make findings and enter a ruling.
- It is not the judicial assistant's responsibility to monitor exchanges of communication between attorneys or their legal assistants. Under those circumstances, please remove the judicial assistant from any email string and notify the judicial assistant once the parties have agreed to a date and time.
- If, after three separate, good faith attempts to coordinate with the opposing party you do not receive a response, you may contact the judicial assistant to set the hearing. You must explain your unsuccessful attempts at coordination with the opposing party before the court will schedule a hearing. You must copy the opposing party in your correspondence to the judicial assistant.
- If the agreed-upon hearing time will result in an unnecessary delay, or if the parties are unable to reach an agreement regarding the hearing date or length of hearing, the court may schedule the matter for hearing or may set the matter for a case management conference.
- Upon the agreement of a hearing date/time, you must contact the office again to secure the hearing time on the court's calendar. You must confirm your requested date and time with the judicial assistant. A phone message or an un-replied to email is not sufficient confirmation that you will receive your requested time. Failure to confirm the hearing date with the judicial assistant will result in the matter not being placed on the court's calendar.
- After securing the hearing time with the judicial assistant, the moving party must serve a notice of hearing on all parties and file it in the court file.
- All notices of hearing must be served within a reasonable time before the hearing. A failure to file a notice of hearing, or a notice of hearing filed unreasonably before the hearing, may result in the court continuing the hearing to another date.

- Parties may not cross-notice a hearing without the prior approval of both the court and any other parties involved. The court may elect not to hear a motion cross-noticed without court approval.
- Continuances are disfavored and will be granted only upon good cause shown. A request for continuance must be submitted at least five days prior to the scheduled court date. Except for good cause shown, the motion must be signed by the party requesting the continuance, as required by Florida Rule of General Practice and Judicial Administration 2.545(e).
- If the parties agree to cancel a hearing, the party setting the hearing must notify the judicial assistant immediately and file and serve a notice of cancellation on opposing counsel and any self-represented litigant. You must copy the opposing party in your correspondence to the judicial assistant.

K. Substitution and Withdrawal of Counsel

- Fla. R. Jud. Admin. 2.505(e)(2) requires that the client agree in writing to substitution or withdrawal of counsel. Proposed Orders Approving Stipulations for Substitution of Counsel submitted without the written consent of the client will not be signed by the court.
- The court will consider proposed orders for withdrawal of counsel if accompanied by a consent from the client. Otherwise a motion and hearing will be required. Also, a hearing will be required in circumstances where the attorney is seeking to withdraw from representing either a PR or a guardian unless a substitution of counsel has been e-filed. When the withdrawal of counsel will result in a party being without counsel, the proposed order must contain the complete contact information for the party (i.e. address, phone number, e-mail address.)

L. Motions to Compel Discovery

- This division utilizes Administrative Order 20-011 Motions to Compel Discovery in order to avoid unnecessary hearings. Attorneys should be aware of this tool to facilitate discovery matters.

M. Motions Decided on Written Submissions

- This division utilizes Administrative Order 20-012 Motions Decided on Written Submissions. While many of the Petitions in this division are non-adversarial and this would not be applicable, this is a good tool for moving cases on those that are adversarial. If this tool is used, please be sure to send notice to crprobw2@jud6.org to let the judicial assistant know that the motion/petition is ripe for the court's decision following the instructions and forms in the A.O.

N. Remote Appearances

- Pursuant to Fla. R. Gen. Prac. & Jud. Admin. 2.530, all evidentiary motions and all non-evidentiary motions that require more than 30 minutes of hearing time shall be conducted in person at the West Pasco Judicial Center, absent a written motion.
- Hearings in which no testimony will be given or evidence received and which are scheduled for 30 minutes or less may be conducted via the audio-visual platform Zoom. No motion is required in this circumstance.
- If a party would like to request that an evidentiary hearing or a hearing scheduled for more than 30 minutes be conducted via Zoom, the party must first inquire of the opposing counsel or self-represented party if they object to the request. The party must then file a motion with the court requesting the Zoom hearing. The motion shall specify if the opposing party has an objection to the Zoom hearing. The motion shall include with specificity what good cause exists for the request. The court may rule on the motion without a hearing, or may set the motion for a hearing.
- Zoom hearings shall be scheduled by the court, utilizing the court's Zoom account.
- Zoom meeting and login information will only be sent to attorneys or self-represented parties. It is the attorney's/self-represented party's responsibility to share the login information with clients, court reporters, witnesses, or anyone else who is to attend the hearing.
- It is the attorney's/self-represented party's responsibility to share these guidelines with invitees and ensure their compliance.
- No unauthorized recording of remote hearings is permitted. This includes, but is not limited to, audio recording, video recording, or screen captures.
- If a witness appears remotely, the party calling the witness must ensure the witness has a functioning camera and microphone and has tested the internet connection before the hearing. The oath will be administered in accordance with Florida Rule of General Practice and Judicial Administration 2.530.
- All participants shall dress appropriately and govern themselves accordingly as if appearing in-person.
- Upon joining the meeting, all participants shall rename themselves, if necessary, so their identity is easily identifiable to the other participants. Participants should be cognizant of how they are identified as inappropriate names will be admonished and may be excluded to the virtual court hearing.
- Participants shall remain in the virtual waiting room until brought into the virtual courtroom.
- The court will control access to the virtual courtroom.
- Participants should be cognizant of their surroundings and background. Virtual backgrounds are acceptable, but should not be a distraction. Similarly, virtual backgrounds should not contain offensive images or messages.
- Participants should make their best efforts to limit background noise. Participants should keep themselves muted when not talking to avoid disruptions.

- The court will allow participants to share their screens for the viewing of exhibits and demonstrative aids. The court may terminate the sharing of anyone's screen at any time.
- The court will allow the participants to utilize the chat feature to speak with one another. Participants should be conscientious about to whom they are sending messages to. There should be no ex parte communication by any participant with the court. Any messages viewable by the court will be shared with all participants and read into the record.
- The court allows the use of breakout rooms by the participants. Breakout rooms are not monitored by the court and, unless specifically requested by a party, do not become a part of any official record. Use of a breakout room may be requested by any participant and may be used for attorney-client conversations, attorney-attorney discussions, or sidebar conferences.

O. Evidence, Exhibits, and Case Law

- Any party or attorney submitting evidence to the court must be familiar with, and is responsible for following, the requirements of Florida Rules of Judicial Administration 2.420 and 2.425 as well as Administrative Order 2021-021 PA/PI-CIR. Nothing in these guidelines should be interpreted contrary to any Rule or Administrative Order.
- Any evidence or exhibit that a party wishes the court to consider at an in-person hearing should be brought to court with the party on the day of the hearing. The court will not accept in advance any evidence or exhibit prior to the in-person hearing.
- All attorneys and self-represented litigants must bring sufficient copies of each exhibit for the court and each party to review during the hearing or trial.
- If a party intends to introduce a USB flash drive into evidence, the party must first contact the Sixth Circuit's Court Technology Office at (727) 453-7928 to schedule a scan of the flash drive. The court is not permitted to access a flash drive that has not been scanned by the Court Technology Office.
- The circuit has available, audio/visual equipment for the presentation of multimedia-based evidence at all locations within the circuit. Each courtroom has a standardized installation of equipment consisting of high definition displays, document cameras, wireless laptop interfaces, and wireless presentation equipment. These systems allow litigants to present various forms of multimedia-based documentation and evidence such as PowerPoint presentations, video depositions, electronic documents, security video and other multimedia-based information in the courtrooms. All of the equipment is available at no charge. Some systems and equipment will require training prior to usage, and training is available for all the equipment provided by the Sixth Judicial Circuit. Please communicate all training

requests a minimum of 72 hours prior to the proceedings. To schedule training on the audio/visual equipment, or discuss presentation needs, please call the Court Technology Office-Video Operations at (727) 453-7928.

- Any evidence or exhibit that a party wishes the court to consider at a remote hearing must be marked and submitted to the court a minimum of two business days prior to the hearing where the evidence is anticipated to be submitted.
- It is suggested that evidence/proposed exhibit submissions be made more than two business days before a remote hearing.
- Evidence/proposed exhibits for a remote hearing must be delivered to the court during the business hours listed in the first section, and should not be delivered during the lunch hour. No one will be available to accept items outside of the hours above. Exhibits delivered to the court outside of the published business hours may be misplaced, will be the responsibility of the party delivering them, and may be unavailable to the court at the time of the hearing. Parties should call ahead before delivering exhibits to confirm the judicial assistant's availability. If dropping off the proposed exhibits in the box outside of chambers, please notify the judicial assistant.
- The court will not accept proposed exhibits for hearings via email.
- Failure to abide by the advanced submission of exhibits may result in exhibits being unavailable for the court during a remote hearing. The court's requirement for advanced submission of evidence/exhibits is a preference intended to ensure the court's access to a party's proposed exhibits during a hearing. This practice preference is not an exclusionary rule and, absent an order from the court regarding the submission of exhibits, is not a valid basis for an objection by a party to the submission of exhibits at a hearing.
- Any evidence or exhibits delivered to the court less than two business days before the remote hearing may be unavailable for submission at the remote hearing.
- Arrangements may be made with the court in advance of a remote hearing for the submission and publishing of digital media exhibits (photographs, video recordings, etc.).
- It is the responsibility of the parties or their counsel to ensure that all exhibits have sensitive information redacted in accordance with Rules 2.420 and 2.425, Fla. R. Jud. Admin., and, if items are filed directly in the court file, that they are accompanied by a notice of confidential information, if appropriate.
- A copy of any evidence or exhibit that a party wishes the court to consider for any non-emergency hearing (either in-person or remote) must be provided to the opposing party no later than five (5) business days prior to the hearing.
- Nothing in these guidelines should be interpreted to alter any party's statutory or procedural responsibilities or notice requirements.
- Case law that a party intends to rely upon should be provided to the court at least two business days in advance of any hearing to give the court an opportunity to

review it. A courtesy copy should be provided to the opposing party at the same time.

- If a Pretrial Order was issued in a case, the parties must abide by the requirements in the Pretrial Order regarding evidence, exhibits, and case law.

P. ADA Accommodations and Interpreters

- Information on ADA accommodations can be found on the circuit's website at the following link: https://www.jud6.org/GeneralPublic/ADAAssistance.html
- Information on interpreters' services can be found on the circuit's website at the following link: https://www.jud6.org/LegalCommunity/Interpreters.html

II. ADMINISTRATION OF ESTATES

A. Time Standards

- Pursuant to Rule 2.250 (1)(d) Rules of Judicial Administration, uncontested administrations, with or without a federal estate tax return, should be completed within 12 months, from the issuance of Letters of Administration to Final Discharge. Contested administrations are to be completed within 24 months from the filing to final discharge. Please note that these time standards are strictly enforced and automatically calculated by the Clerk's program.
- Attorneys are responsible for calculating and calendaring these time periods. Otherwise, there will be an Order to Show Cause why the case should not be dismissed for lack of prosecution. If the administration requires additional time to complete the estate, file a Petition to Extend, with the specific reasons and a proposed Order. (See Section D in the General Office Procedures above)

B. Bonds - Estates

- In setting an appropriate bond, the court evaluates the circumstances of each case and considers the unofficial bond schedule developed many years ago by predecessor judges. Typically, the minimum bond set is $18,000 as that is the highest bond available for the minimum bond premium; i.e., it costs the same for a bond of $18,000 as it does for a bond of a lesser amount. The bond schedule has been adjusted to reflect that minimum and is set out below.

Bond Schedule:

Estate Gross Value:	$0 – $75,000 *	$75,001 – $100,000	$100,001 – $175,000	$175,001 – $250,000	$250,001 - $500,000	$500,001 - Unlimited
Bond:	$18,000	$25,000	$35,000	$50,000	$75,000	$100,000 minimum**

* Every wrongful death estate will have a minimum bond of $18,000.
** Do multipliers of $100,000 for each $500,000 of estate (i.e. $1,100,000 estate calls for a bond of $225,000).

- Typically, the value of exempt assets and homestead property is excluded from the total amount of assets in determining the bond. It is recommended that you propose a bond amount in accordance with the bond schedule AND include the bond amount in the proposed Order Appointing the Personal Representative.
- The bond exists to insure the performance of the Personal Representative (PR) to both beneficiaries and creditors and only in exceptional circumstances will it be waived. Examples of those circumstances include cases in which the decedent has been dead for more than two years.
- If you wish to seek that bond be waived, e-file a petition setting out the specific facts of your case that merit consideration for waiver of bond. Petitions to Waive Bond are routinely denied which merely state "boilerplate" language that doesn't explain the facts and circumstances of the case.

C. "Homestead" or "Exempt" Property Sales Prior to the Expiration of Creditor's Period

- Creditors of the estate have the right to object to petitions that may result in a determination that property is exempt from their claims. Nevertheless, the court recognizes that there may be an emergent need to conduct a sale prior to the end of the creditor period. Therefore, the court will consider petitions to sell property which PRs will eventually seek to determine to be "homestead" or "exempt" as long as the proceeds are held in escrow or trust until such time as the creditors have been ascertained and are noticed of the petitions to determine property to be protected from their claims. Additionally, the sale of the property requires the consent of every beneficiary. Failure to obtain and e-file consent with the petition will seriously delay the signing of the order.
- The proposed orders authorizing any sales prior to the expiration of the creditor period must not contain any language stating that the court finds the property to be exempt or to be the homestead of the decedent or otherwise protected from claims of creditors.

D. Summary Administration

- Summary Administrations do not contemplate hearings. If there are issues beyond the limited relief provided in a summary administration, the estate must be converted to a formal administration. There are no provisions for objections to claims in a Summary Administration. If there is an order checklist, you must fully comply with each item and once you have filed everything, the Clerk will do a final audit and forward the case to the court to sign the order(s).

III. GUARDIANSHIP

A. Guardianship Petitions for Authority to Act and Waiver of Requirements

- It is essential to comply with the requirements of Fla. Stat. 744.447 including Section (2). Except for petitions to authorize sale of perishable or rapidly deteriorating property, notice of petitions for authorization to act "shall be given to the ward, the next of kin, if any," and to interested persons. Notice need not be given to a ward who is under 14 years of age or who has been determined to be totally incapacitated. If the guardian has consulted with the next of kin and they agree with the Petition, so stating would be helpful. If the next-of-kin disagree, perhaps setting an expedited hearing with notice to the next-of-kin would be the most expeditious method to accomplish the goal.
- In order to comply with this Statute, the Certificate of Service shall either show that the required people were served or, if appropriate, should indicate that there are no known next of kin, or the basis why the next of kin should not receive a copy of the Petition, or that the ward is under 14 or is totally incapacitated.
- The court will rarely consider waiving the educational requirements for guardians. If all funds are to be held in a designated depository throughout the existence of the guardianship, the court may waive the requirement. However, if, at any point, the guardian seeks release of any of the depository funds during the course of the guardianship, the court may withdraw the waiver of the educational requirement. When seeking a waiver of the educational requirement, the guardian should submit an affidavit which sets out his or her understanding of basic guardianship principles relating to inventory, accountings and court approval of expenditures of funds.

B. Types of Petitions

- Contents of petitions seeking the court to authorize or approve of actions of PRs or guardians should be as thorough and specific as possible. It is difficult for the court to take the time to search through the court file to find information which should have been included in the petition. Examples are set out below:
- Sale of Real Property:

  In guardianship cases, sufficient evidence of the market value of real property is required. In most circumstances, mere reference to records of the Pasco County Property Appraiser is insufficient. An appraisal or a market analysis by a real

estate professional is necessary unless there are exceptional circumstances. In estate cases, if all interested parties consent to the sale of the property at a particular price, typically the court will not require evidence of value.

- Sale of Vehicles:

  In guardianship cases, a petition to sell a vehicle should include reference to the market value of the vehicle by some generally recognized source such as Kelley Blue Book or Edmunds. If the vehicle is being sold by the guardian through a bidding process, the petition should include an explanation of how it was advertised for bid or how bidders were chosen. In addition, in most cases, either a bid or written statement declining to bid must be included from a generally recognized dealer such as CarMax. Be sure to include the VIN number for any vehicles in the Petition.

- Approval for Medicaid Planning:

  Petitions seeking authority to act related to Medicaid planning should contain as much information as possible including, but not limited to, the amount of the ward's assets and monthly income, whether or not any known beneficiaries of the ward's estate have been made aware of, and agree with, the plan, and the types of actions that will be taken in the process including whether a personal services contract is included and, if so, the general terms of the contract.

- Payment of Certain Expenses in Minor Guardianships:

  In many minor guardianship cases, authority is being sought to pay expenses of the minor from guardianship funds. Parents have a legal obligation to support their minor children. Thus, in circumstances in which the expenses sought to be paid involve such things as clothing, tuition, medical, dental and orthodontic care, the petition must be supported by information demonstrating to the court why the expenses should be paid by the guardianship rather than the parent. In most of these cases, the parent(s) having the support obligation are also the guardian(s) seeking the expense payment. If the reason that guardianship funds are sought is that the parent(s) cannot afford the expense, detailed information must be provided demonstrating that allegation. Specifically, information regarding the income and expenses of the parent(s) must be included by either affidavit or verified petition. One means of providing this information is for the parent(s) to complete and file a simplified family law financial affidavit.

- Purchase of Vehicles for Minors:

  Authority is often sought to purchase vehicles for children. Unfortunately, many parent/guardians make the decision to purchase a vehicle in advance and then ask the court to approve it after the fact. In some cases, these retroactive petitions are denied. In representing clients, it is important for attorneys to make it clear to guardians that automobile purchases, like most other expenses, require advance approval. The court takes many factors into consideration in weighing the

decision to approve purchase of a vehicle but, of course, the cost of the vehicle in relationship to the total amount of assets is important. In addition, the court considers whether the proposed vehicle appears to be a reasonable choice for the child. In some cases, the court is willing to consider authorizing a maximum purchase price in advance and then allowing the guardian the discretion to select a vehicle that does not exceed that price.

- Petition seeking Authorization for a Do Not Resuscitate Order (DNR) or to withhold life-prolonging procedures F.S. 744.4431(2) and Rule 5.631:
  File a Petition and proposed Order which includes the following:
  1) Information as to any advanced directives the Ward may have executed in the past (Living Will, Health Care Surrogate, Organ Donation intent, previous DNR;
  2) Medical condition of the Ward, including any physician recommendations; is Hospice involved;
  3) Family or friend input or consents;
  4) Any knowledge of the Ward's preferences considering the Ward's values, culture, religious preference and a statement as to how the Guardian has complied with Rule 58M-2.009(10):

  Professional Guardians shall determine the extent to which Wards under guardianship identify with particular ethnic, religious, and cultural values. To determine these values, Professional Guardians shall consider the following:

  (a) The Ward's attitudes regarding illness, pain, and suffering;
  (b) The Ward's attitudes regarding death and dying;
  (c) The Ward's views regarding quality of life issues;
  (d) The Ward's views regarding societal roles and relationships; and,
  (e) The Ward's attitudes regarding funeral and burial customs.

  5) If the request for DNR is an emergency, file a Priority Request and be sure to include "DNR" in the title of your Petition.
  6) If the Petition or attachments include the Ward's medical records, consider filing a "Motion to Determine Confidentiality of Court Records" (See Rule 2.420 (e)) and proposed Order. A person's medical records enjoys a confidential status. First the right to privacy contained in Art. I § 23, Fla. Const., second, § 456.057(7)(a), Fla. Stat. and third § 90.503(2), Fla. Stat. all provide a basis for medical records to remain confidential. And, also consider Judicial Administration Rule 2.420 records pertaining to Baker Act, substance abuse services, tuberculosis, specific Guardianship reports, if applicable.

C. <u>Requirements for Approval of a Minor's Settlement</u>

- Multiple issues need to be addressed prior to the court considering the potential approval of a proposed settlement. Florida law requires that the court act as a "final check" before an attorney, guardian, or parent settles a claim and discharges a child's

rights. The claim and the distribution of the proceeds must be examined as well as what protections are afforded to the corpus of the funds.

- Florida Statute 768.25 requires court approval of any settlement of a minor or incompetent which an action is pending. This statute also requires the court to approval "apportionment among the beneficiaries. "The Court is also specifically charged with "provide(ing) protection for any amount awarded for the benefit of a minor child or incompetent … ," See also, Fla. Stat. 744.387.
- In performing its duties with regard to evaluation of, and possible approval of, a settlement for a minor, the court may appoint a guardian ad litem before approving settlement if " … the gross settlement of the claim exceeds $15,000." Fla. Stat. 744.3025 (1)(a). However, "… before approving a settlement of the minor's claim in any case in which the gross settlement involving a minor equals or exceeds $50,000," the court must appoint a guardian ad litem. Fla. Stat. 744.3025 (1)(b).
- The court requires the following information in most cases, in addition to if not specifically set forth in Rule 5.636, Florida Rules of Probate Procedure as to the Settlement of Minors' Claims:
- Amount of Settlement: The specific amount of gross settlement in this proposed offer and Motion for Approval.
- Distribution of Net Proceeds: The itemized proposed distribution amongst the beneficiaries and/or survivors, the Estate, or other entities with claims and costs and attorney's fees.
- Guardian Ad Litem Report: The appointment of, and report from, a Guardian Ad Litem regarding the proposed settlement. The dollar amount, as noted above may require the appointment of a GAL. Special attention will be necessary where the Personal Representative is representing the entire Estate and all the survivors and appears to have "potential adverse interest(s) to the minor(s)." The GAL should present the position of the natural parent or guardian as to the settlement and distribution and whether it comports with the GAL's recommendation or that it does not.
- Closing Statement: A copy of a detailed closing statement showing the attorney's fees and the recipients, costs expended or to be expended, anticipated distribution of funds and to whom, liens resolved and unresolved, outstanding balances owed, as require by The Rules Regulating the Florida Bar and specifically Rule 4-1.5, and unresolved claims against the Estate, as well as any other claims being compensated from these proceeds. The closing statement should be filed with the court under seal or be emailed to crprobw2@jud6.org prior to any hearing.
- Protection of Minor's Net Proceeds: The court will need to know how the funds will be invested or protected and in what institution(s) or through which vehicle(s). This would include the rating or stability or the institution(s) or fund(s). A designated financial institution can be used under Florida Statute 69.031 to protect the assets of

the minor until he or she reaches the age of majority. Disbursement of the funds deposited to the account can only occur with an order from the court.

- Annuity: If an annuity is to be purchased, the court will need a copy of the information setting forth the cost, present value, payment schedule, the name of the company that will be used, the name of the owner of the annuity and its relationship to those companies being released, as well as the rating of the company.
- Medical Records: Copies of the initial medical records including the history and physical showing the present condition, if hospitalized the admission and discharge summary will be necessary. A final report from each primary treating physician with an indication of the need for, or the lack of need for, future care, and if possible, the approximate costs. A medical summary is also required.
- Scarring/Disfigurement: If the injury or treatment involves resulting scarring or disfigurement, photographs of the child after the incident and photographs of the present condition will be required. The court may require that the child appear at the hearing in order to allow the court to observe the condition(s). The above-mentioned medical reports should contain an estimate of the cost of an explanation of the treatment plan for these injuries.
- Insurance: The existence of medical insurance, Medicaid, Medicare or other sources of payment, or lack thereof, for future treatment that has been projected.
- Life Care Plan: In cases involving a catastrophic injury or chronic health care need for a minor, a projection of the anticipated medical, rehabilitative and/or vocational needs and associated expenses for the minor child. The Life Care Plan should be based upon published standards of practice, comprehensive assessment, data analysis and research, which provides an organized concise plan reflecting current and future needs with associated costs.
- Effect of release and/or settlement agreement:
- Release: A copy of the release, and any settlement agreements to which the minor, or his guardian on behalf of the minor, will need to sign and assurances that it has been reviewed by counsel and that all parties agree, in writing, that it is only intended to release the settling party and their insurers as insurers of this particular settling party, and is not intended to release any other defendant or non-party.
- Indemnification: If the release and/or settlement agreement contain a duty to defend, indemnify and hold harmless, it must state if such agreement is intended to bind and apply to the minor child or just the guardian. If it is intended to apply to the minor child, it must state by what legal authority the minor child can be bound to defend, indemnify and hold harmless this party.
- Confidentiality: If the release and/or settlement agreement require a confidentiality agreement, it must state if the minor child is meant to be bound by such agreement and if so, by what authority. It must also stat what is the anticipated consequence to the minor child for violation of this confidentiality

agreement and which party will take responsibility to seek, and obtain, the appropriate measure to seal the limited documentation in the court file pursuant to Florida Rules of Judicial Administration, Rule 2.420(d)

D. Guardianship and Trust/Guardianship Fee Petitions

- Please note that fee petitions are held up to 15 days for an objection period. Fee petitions are not routinely set for hearing. When the order is ready for signature, the Clerk will forward the proposed order to the judge. If there is an objection, and the attorneys cannot resolve the issue, the fee petition and objection can be set on the judge's calendar for a hearing.
- It is the policy of this court to require that the guardianship fee petition process be followed in cases where the court has established a trust within a guardianship (typically for Medicaid planning purposes) and guardianship assets have been transferred to that trust, subject to the court's jurisdiction. In these cases, the fees of the trustee and the attorney for the trustee must be approved by the court in the same manner as guardianship fee petitions.
- To assist in the review process, there is a sample fee petition form and checklist on the 6th Judicial Circuit website.