

GUARDIAN ADVOCATE INFORMATION

For Persons with a Developmental Disability

What is a Guardian Advocate?

Often a Guardian Advocate needs to be appointed when a person with a developmental disability turns 18 years old. Upon becoming an adult, the parent no longer has the legal ability to make decisions for them. To qualify under Florida Statutes, the person with a developmental disability must have a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

Guardian Advocacy is a process for families, caregivers, and friends of individuals with a developmental disability to obtain a guardianship without declaring the individual incompetent. Guardian Advocate appointments are governed by Florida Statute Section 393.12. The appointment of a Guardian Advocate allows the guardian to make decisions for the person with a developmental disability. Not everyone with a developmental disability needs a legal guardian. One is necessary if the person lacks the decision-making ability to make necessary decisions relating to daily life. During any Guardian Advocate proceedings the Court will appoint an attorney for the person with a developmental disability to ensure their best interest is protected.

The Guardian Advocate is responsible for only those duties approved by the Judge and listed in the Court Order. The process of becoming a Guardian Advocate of the person does not require the hiring of an attorney. If there is property involved, other than social security benefits or other government payee programs, the person

seeking to become a Guardian Advocate of the person and the property must hire an attorney. These property rights include, but are not limited to: a pending law suit, estate matter, or other income or property right coming to the person with a developmental disability. The Court can expand the description of property rights by Petition and Order.

Background Check Requirements:

Florida Statute Section 744.3135 allows the court to require a non-professional Guardian Advocates to submit, at their own expense, to an investigation of the Guardian Advocate's credit history and to a level 2 background screening prior to being appointed to serve as Guardian Advocate. The Guardian Advocate must call a live scan service provider to schedule an appointment to undergo the finger printing process. The cost will vary from provider to provider so the Guardian Advocate should ask each provider about the cost involved. Please remember the background check must be completed before a hearing for appointment as Guardian Advocate can be scheduled.

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

1. Complete Necessary Paperwork.
 - A. Application for Appointment as Guardian Advocate. Form A
 - B. Application for Appointment as Standby Guardian Advocate. Form B
 - C. Joinder signed by the proposed Standby Guardian Advocate. Form C
 - D. Petition for Appointment of Guardian Advocate of the person. Form D
 - E. Oath of Guardian Advocate, Designation & Acceptance. Form F
 - F. Guardian Education and Background Check Requirements Form.

2. File all Paperwork with Clerk's Office.

- A. The person filing the paperwork is called the Petitioner.
- B. The Petitioner should attach a copy of the medical records of the person with a developmental disability to the Petition for Appointment of Guardian Advocate.
- C. Petitioner must pay the required filing fees.
- D. Always submit the original and three copies and two stamped envelopes with sufficient postage to mail copies of all pleadings.

3. Give Notice of Filing Petition for Appointment of Guardian Advocate.

You must serve notice to parties that the petition was filed and the date and time of the hearing which is set by calling the Judicial Assistant for the Judge at (407) 836-2229. Form G

4. Hearing.

- A. Attend with the person with a developmental disability if they are able to travel.
- B. Bring your proposed Orders filled out and typed completely.

Detailed Process for Appointment of a Guardian Advocate(s):

First: Complete all the necessary paperwork.

Application for Appointment as Guardian Advocate(s):

This includes basic information about the person requesting to be appointed Guardian Advocate(s) of the person with developmental disabilities.

Application for Appointment as Standby Guardian Advocate:

Application and appointment of Standby Guardian is optional. If a Standby Guardian Advocate is appointed they will not take any action for the benefit of the person with a developmental disability until the appointed Guardian Advocate is unable to perform their duties either because of death, removal, resignation, or adjudication of incompetency. The proposed Standby Guardian Advocate must sign a **Joinder**, see, Form C and file it with the Petition for Appointment of Guardian Advocate and the Application of Standby Guardian Advocate. Order appointing Standby Guardian, Form N.

Petition for Appointment of Guardian Advocate(s):

The Petition **must** state the following:

- A. Name, age, present address of individual filing petition and his or her relationship to the person with developmental disability
- B. Name, age, county of residence, and present address of the person with a developmental disability
- C. State why the person filing petition feels a Guardian Advocate is necessary
- D. Include specific factual information
- E. State specific areas where the person lacks decision-making ability
- F. Specify the legal disabilities as defined in Florida Statute 393.063(9)
- G. State name of proposed Guardian Advocate(s), relationship to the person with a development disability

- H. Also, state any relationship the proposed Guardian Advocate(s) has or had with provider of health services, residential services, or other services to the person with a developmental disability
- I. Pursuant to Probate Rule 5.649(a) (7) the petition must state whether the petitioner has knowledge, information, or belief that the person with a developmental disability has created an advanced directive, or a durable power of attorney.
- J. Complete and sign Guardian Education and Background Check Requirement form. This form confirms the petitioner is aware he or she must submit to a complete background screening (FL. Statutes 744.3135) prior to appointment. It also verifies the petitioner is aware of the education requirement.

Second: File all paperwork with the Clerk’s Office. Always submit the original and three copies and two stamped envelopes with sufficient postage to mail copies of all pleadings.

You may file by mailing in the documents to:

Clerk of the Court, Probate Department, 425 N. Orange Avenue, Suite 340, Orlando, FL 32801

You may file the documents in person at the Clerk’s Office located on the third floor of the Courthouse Room # 340.

Filing Fees:

Guardian Advocate of Person only: \$235.00

Guardian Advocate of Person and Property: \$400.00

(Fees are subject to change)

Upon filing the Petition for Appointment of a Guardian Advocate(s)

- A. The Court will appoint an attorney to represent the person with a developmental disability. Please bring to the clerk the original and three copies of Form E
- B. The attorney appointed, by the Court, needs to be notified by copy of Form E of the appointment and needs to meet with the person with a developmental disability and the petitioner(s) must cooperate with the Court appointed attorney. If no contact from attorney within 10 days of appointment, call their office or contact the Court.

Third: Give notice of filing of Petition for Appointment of Guardian Advocate. Form G

Notice **must** be given to the following:

- A. The person with a developmental disability verbally and in writing
- B. Both in English and language of the person
- C. The next of kin of the person with a developmental disability
- D. The Health Care Surrogate designated by an advance directive if the person with a developmental disability has created one
- E. An agent under a Durable Power of Attorney, if the person with a developmental disability has one

A copy of the Petition for Appointment of a Guardian Advocate must be served with the notice.

The notice **must** state:

- A. Hearing will be held to inquire into capacity of person with a developmental disability to exercise rights listed in petition

B. Date of hearing

C. That person with a developmental disability has right to an attorney of his or her choice but the Court shall appoint them one initially.

Fourth: Hearing.

Once all the necessary documents are filed with the Court a case number is assigned and a Judge will be assigned. The Petitioner must call the Judge's Judicial Assistant to set the hearing date and time. The facts of the petition will be presented to the Judge. The Judge will make a decision whether or not to appoint a Guardian Advocate. The person with a developmental disability has the right to be present at the hearing.

At the hearing the Judge may issue an Order Appointing Guardian Advocate of the Person, please use Form H. Also, the Judge may issue Letters of Guardian Advocate; see Form I. You need to bring these forms, to the hearing, filled in with the information you put in your Petition for Appointment of Guardian Advocate of the person, Form D. Please have all blank spaces in the body of the document filed out, including the name of the person with a developmental disability, the case name and number. Do the same for the Order appointing and the Letters. Use your computer and type all Orders for the Court.

Upon Appointment of a Guardian Advocate:

If the Judge decides the person with a developmental disability is in need of a Guardian Advocate the Judge will enter an Order Appointing a Guardian Advocate and

issue Letters of Guardian Advocate of the Person. The Order will contain the powers, duties, and responsibilities of the Guardian Advocate.

The person with a developmental disability retains all legal rights except those which the Court gives to the Guardian Advocate.

Requirements for Guardian Advocates after Court Appointment:

Education Requirement

Florida Statutes 393.12(10) and 744.3134 requires every person appointed as a Guardian Advocate to complete educational training. Once a person is appointed by the Court to be the Guardian Advocate they must complete the required training within four months of his or her appointment.

- A. Each person appointed a Guardian Advocate must complete a minimum of **8 hours** of instruction and training.

An approved course on guardianship education is available through Seniors First in Orange County. To register for the class call Seniors First at: (407) 297-9980.

Seniors First address:

5393 LB McLeod Rd, Orlando, FL 32801

Required Filings with Court after Appointment

Guardians are required to file certain periodic reports with the Court. Failure to comply with any of the reporting requirements may require appearance before the Court and fines, removal, or other actions may be taken against the Guardian Advocate.

Required Plans

Initial Plan: Form J - 1 & 2

Must be filed within 60 days of appointment as Guardian Advocate

Must include the following:

- A. Statement of medical, mental, or personal care services for the welfare of the ward
- B. Statement of social and personal services for the welfare of the ward
- C. The place and kind of residential setting best suited for the needs of the ward
- D. The application of health and accident insurance and any other private or governmental benefits to which the ward may be entitled to meet any part of the costs of medical, mental health, or related services provided to the ward; and
- E. Any physical and mental examinations necessary to determine the ward's medical and mental health treatment needs.

Annual Plan: Form S

Must be filed within 90 days from the anniversary date of appointment as Guardian Advocate

Report must include:

Information concerning the residence of the ward, including:

The ward's address at the time of filing the plan.

The name and address of each place where the ward was maintained during the preceding year.

The length of stay of the ward at each place.

A statement of whether the current residential setting is best suited for the current needs of the ward.

Plans for ensuring during the coming year that the ward is in the best residential setting to meet his or her needs.

Information concerning the medical and mental health conditions and treatment and rehabilitation needs of the ward, including:

A resume of any professional medical treatment given to the ward during the preceding year.

A report of a physician who has examined the ward within the last 90 days before the reporting period. The report must contain an evaluation of the ward's condition and a statement of the current level of capacity of the ward.

The plan for providing medical, mental health, and rehabilitative services in the coming year.

Information concerning the social condition of the ward, including:

The social and personal services currently used by the ward.

The social skills of the ward, including a statement of how well the ward communicates and maintains interpersonal relationships.

The social needs of the ward.

Each plan must address the issue of restoration of rights to the ward and include:

A summary of activities during the preceding year that were designed to enhance the capacity of the ward.

A statement of whether the ward can have any rights restored.

A statement of whether restoration of any rights will be sought.

Restoration of Rights:

Any interested person, including the person with a developmental disability, may file a suggestion of restoration of rights with the Court. This must state the person with a developmental disability is currently capable of exercising some or all of the rights given to the Guardian Advocate. Meaning the person is no longer in need of a Guardian Advocate. Some evidentiary support must be included in the filing of the suggestion. Such evidentiary support includes: a signed statement from a medical, psychological, or psychiatric doctor whom has evaluated the person with a developmental disability. If no evidentiary support can be accessed then the petitioner may state a good faith basis for suggestion. The Court shall immediately set a hearing.

FORMS ATTACHED TO GUARDIAN ADVOCATE INFORMATION

- A. Application For Appointment As Guardian Advocate
- B. Application For Appointment As Standby Guardian Advocate
- C. Standby Guardian's Joinder In Petition
- D. Petition for Appointment of Guardian Advocate Of The Person Only
- E. Order Appointing Attorney For The Person With A Developmental Disability
- F. Oath of Guardian Advocate, Designation Of Resident Agent & Acceptance
- G. Notice of Hearing
- H. Order Appointing Guardian Advocate Of The Person Only
- I. Letters Of Guardian Advocate Of The Person Only
- J-1 Initial Plan of Guardian Advocate of the Person
- J-2 Proof of Service of Guardian Advocate of the Person
- N. Order Appointing Standby Guardian Advocate Of The Person Only
- O. Joint Stipulation for Appointment of Guardian Advocate and Standby
Guardian Advocate
- Q. Order Appointing Guardian Advocate of The Person and Property
- R. Letters of Guardian Advocate of The Person and Property
- S. Annual Plan
Guardian Education and Background Check Requirements

Updated as of October 7, 2010 by Lawrence R. Kirkwood