

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA PROBATE RULES**

CASE NO: 14-

FAST-TRACK REPORT ON LEGISLATION

Sean W. Kelley, Chair of the Florida Probate Rules Committee (“Committee”), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this fast-track report to address recently enacted legislation (*see* Appendix D).

The Committee met on June 25, 2014, to evaluate and discuss the recently passed legislation and propose conforming language. The Committee reviewed the matter further and approved the proposed amendments by a vote of 22-3.

All rule and form amendments have been approved by the full Committee and, as required by Florida Rule of Judicial Administration 2.140, reviewed by The Florida Bar Board of Governors’ Executive Committee. The voting records of the Committee and the Executive Committee of the Board of Governors are attached as Appendix A.

Because these amendments are the result of recently approved legislation, notice of the amendments was not published in *The Florida Bar News* prior to filing this report.

The rule amendments are proposed for the following reasons:

**RULE 5.590. APPLICATION FOR APPOINTMENT AS GUARDIAN;
DISCLOSURE STATEMENT; FILING**

The Committee proposes amendments to subdivision (a) to conform to recently enacted legislation. In chapter 2014-124, Laws of Florida, the legislature amended section 943.0585, Florida Statutes, to require that a person who is the subject of a criminal history record and whose record is expunged may not fail to acknowledge the underlying arrests covered by the expunged record when the person is seeking to be appointed as a guardian. Accordingly, the Committee recommends conforming amendments to Rule 5.590(a)(1)(A).

Specifically, the addition of item 7 to section 943.0585(4)(a), Florida Statutes, provides that a person who is seeking to be appointed as a guardian pursuant to section 744.3125, Florida Statutes, and who is the subject of a criminal history record that is expunged, may not lawfully deny or fail to acknowledge any arrest covered by the expunged record. Additionally, amendments to item 8 of section 943.059(4)(a), Florida Statutes, specify that the court ordered sealing of a criminal history record is not confidential and exempt as to a person seeking to be appointed guardian pursuant to section 744.3125, Florida Statutes. Thus, the newly amended statutory framework suggests that a person seeking to be appointed guardian has an affirmative obligation to acknowledge arrests. He or she may not simply sit back and remain silent.

It is also important to note that section 744.309(3), Florida Statutes, concerning “disqualified persons,” provides that any person who has been convicted of a felony may not serve as a guardian.

There appears to be an exception to the requirement of full disclosure of arrest records contemplated by section 943.0585(4)(a). Specifically, section 943.0583(8)(b), Florida Statutes, provides that a “victim of human trafficking,” as defined in that statute, may lawfully deny or fail to acknowledge arrests, except when the subject of the record is a candidate for employment with a criminal justice agency or is a defendant in a criminal prosecution. Thus, under section 943.0583(8)(b), it appears that, notwithstanding the language in section 943.0585(4)(a), a victim of human trafficking whose criminal record has been expunged may fail to acknowledge arrests even when applying to serve as a guardian.

There was concern expressed by a Committee member that applicants with expunged records would have difficulty accessing the details of their arrest and would be unable to fulfill the disclosure requirements.

Respectfully submitted on October 13, 2014.

/s/ Sean W. Kelley

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CERTIFICATE OF COMPLIANCE

I certify that these rules were read against *West's Florida Rules of Court—State* (2014 Revised Edition).

I certify that this report was prepared in compliance with the font requirements of Fla. R. App. P. 9.210(a)(2).

/s/ Heather S. Telfer

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