

RULE 5.120. ADMINISTRATOR AD LITEM AND GUARDIAN AD LITEM

(a) **Appointment.** When it is necessary that the estate of a decedent or a ward be represented in any probate or guardianship proceeding and there is no personal representative of the estate or guardian of the ward, or the personal representative or guardian is or may be interested adversely to the estate or ward, or is enforcing the personal representative's or guardian's own debt or claim against the estate or ward, or the necessity arises otherwise, the court may appoint an administrator ad litem or a guardian ad litem, as the case may be, without bond or notice for that particular proceeding. At any point in a proceeding, a court may appoint a guardian ad litem to represent the interests of an incapacitated person, an unborn or unascertained person, a minor or any other person otherwise under a legal disability, a person with a developmental disability, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The administrator ad litem or guardian ad litem shall file an oath to discharge all duties faithfully and upon the filing shall be qualified to act. No process need be served upon the administrator ad litem or guardian ad litem, but such person shall appear and defend as directed by the court.

(b) **Petition.** The petition for appointment of a guardian ad litem shall state to the best of petitioner's information and belief:

- (1) the ~~name~~initials and residence address of each minor, person with a developmental disability, or incapacitated person and ~~birth date~~year of birth of each minor who has an interest in the proceedings;
- (2) the name and address of any guardian appointed for each minor, person with a developmental disability, or incapacitated person;
- (3) the name and residence address of any living natural guardians or living natural guardian having legal custody of each minor, person with a developmental disability, or incapacitated person;
- (4) a description of the interest in the proceedings of each minor, person with a developmental disability, or incapacitated person; and
- (5) the facts showing the necessity for the appointment of a

guardian ad litem.

(c) **Notice.** Within 10 days after appointment, the petitioner shall serve 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 guardians or the living natural guardian having legal custody of the minor, person with a developmental disability, or incapacitated person.

(d) **Report.** The guardian ad litem shall serve 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, person with a developmental disability, or incapacitated person.

(e) **Service of Petition and Order.** Within 10 days after appointment, the petitioner for an administrator ad litem shall serve 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.

(f) **Enforcement of Judgments.** When an administrator ad litem or guardian ad litem recovers any judgment or other relief, it shall be enforced as other judgments. Execution shall issue in favor of the administrator ad litem or guardian ad litem for the use of the estate or ward and the money collected shall be paid to the personal representative or guardian, or as otherwise ordered by the court.

(g) **Claim of Personal Representative.** The fact that the personal representative is seeking reimbursement for claims against the decedent paid by the personal representative does not require appointment of an administrator ad litem.

Committee Notes

Rule History

1977 Revision: Editorial change in (a) limiting application of rule to probate and guardianship proceedings. In (b) the petition for appointment of a guardian need not be verified. Deletion of (g) as being substantive rather than procedural and changing former (h) to new (g). Change in committee note to conform to statutory renumbering.

This rule implements sections 731.303(5), 733.308, and 744.391, Florida Statutes, and includes some of the provisions of prior rule 5.230.

1988 Revision: Editorial changes; captions added to paragraphs. Citation form changes in committee notes.

1992 Revision: Addition of phrase in subdivision (a) to conform to 1992 amendment to section 731.303(5), Florida Statutes. Editorial changes. Committee notes revised. Citation form changes in committee notes.

2003 Revision: Committee notes revised.

2006 Revision: Committee notes revised.

2008 Revision: Subdivisions (a), (b), (c), and (d) amended to include persons with a developmental disability. Committee notes revised.

2012 Revision: The phrase “deliver or mail” in subdivisions (c), (d), and (e) has been replaced with the word “serve” to comply with other rules relating to service of pleadings and documents. Committee notes revised.

2013 Revision: Amends subdivision (b)(1) to conform to Fla. R. Jud. Admin. 2.425. Committee notes revised.

Statutory References

§ 393.12, Fla. Stat. Capacity; appointment of guardian advocate.

§ 731.303, Fla. Stat. Representation.

§ 733.308, Fla. Stat. Administrator ad litem.

§ 733.708, Fla. Stat. Compromise.

§ 744.3025, Fla. Stat. Claims of minors.

§ 744.3085, Fla. Stat. Guardian advocates.

§ 744.387, Fla. Stat. Settlement of claims.

§ 744.391, Fla. Stat. Actions by and against guardian or ward.

§ 744.446, Fla. Stat. Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty.

Rule References

Fla. Prob. R. 5.041 Service of pleadings and documents.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.200. PETITION FOR ADMINISTRATION

The petition for administration shall be verified by the petitioner and shall contain:

- (a) a statement of the interest of the petitioner, the petitioner's name and address, and the name and office address of the petitioner's attorney;
- (b) the name and last known address of the decedent, last 4 digits of the decedent's social security number, date and place of death of the decedent, and state and county of the decedent's domicile;
- (c) so far as is known, the names and addresses of the surviving spouse, if any, ~~and~~ the beneficiaries and their relationship to the decedent and the ~~date~~year of birth of any beneficiaries who are minors;
- (d) a statement showing venue;
- (e) the priority, under the Florida Probate Code, of the person whose appointment as the personal representative is sought and a statement that the person is qualified to serve under the laws of Florida;
- (f) a statement whether domiciliary or principal proceedings are pending in another state or country, if known, and the name and address of the foreign personal representative and the court issuing letters;
- (g) a statement of the approximate value and nature of the assets;
- (h) in an intestate estate, a statement that after the exercise of reasonable diligence the petitioner is unaware of any unrevoked wills or codicils, or if the petitioner is aware of any unrevoked wills or codicils, a statement why the wills or codicils are not being probated;
- (i) in a testate estate, a statement identifying all unrevoked wills and codicils being presented for probate, and a statement that the petitioner is unaware

of any other unrevoked wills or codicils or, if the petitioner is aware of any other unrevoked wills or codicils, a statement why the other wills or codicils are not being probated; and

(j) in a testate estate, a statement that the original of the decedent's last will is in the possession of the court or accompanies the petition, or that an authenticated copy of a will deposited with or probated in another jurisdiction or that an authenticated copy of a notarial will, the original of which is in the possession of a foreign notary, accompanies the petition.

Committee Notes

Rule History

1977 Revision: Addition to (b)(5) to require an affirmative statement that the person sought to be appointed as personal representative is qualified to serve. Committee note expanded to include additional statutory references.

Substantially the same as section 733.202, Florida Statutes, and implementing sections 733.301 through 733.305, Florida Statutes.

1988 Revision: Editorial changes. Committee notes revised.

1992 Revision: Addition of phrase in subdivision (b) to conform to 1992 amendment to section 733.202(2)(b), Florida Statutes. Reference to clerk ascertaining the amount of the filing fee deleted in subdivision (g) because of repeal of sliding scale of filing fees. The remaining language was deemed unnecessary. Editorial changes. Committee notes revised. Citation form changes in committee notes.

2002 Revision: Addition of phrases in subdivision (j) to add references to wills probated in Florida where the original is in the possession of a foreign official. Editorial changes. Committee notes revised.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2007 Revision: Editorial changes in (h) and (i).

2010 Revision: Editorial change in (e) to clarify reference to Florida Probate Code.

2011 Revision: Subdivision (b) amended to limit listing of decedent's social security number to last four digits.

2012 Revision: Committee notes revised.

2013 Revision: Subdivision (c) amended to conform to Fla. R. Jud. Admin. 2.425. Committee notes revised.

Statutory References

§ 731.201(23), Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 733.202, Fla. Stat. Petition.

§ 733.301, Fla. Stat. Preference in appointment of personal representative.

§ 733.302, Fla. Stat. Who may be appointed personal representative.

§ 733.303, Fla. Stat. Persons not qualified.

§ 733.304, Fla. Stat. Nonresidents.

§ 733.305, Fla. Stat. Trust companies and other corporations and associations.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and documents.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.201 Notice of petition for administration.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.210.

PROBATE OF WILLS WITHOUT ADMINISTRATION

(a) Petition and Contents. A petition to admit a decedent's will to probate without administration shall be verified by the petitioner and shall contain:

(1) a statement of the interest of the petitioner, the petitioner's name and address, and the name and office address of the petitioner's attorney;

(2) the name and last known address of the decedent, last 4 digits of the decedent's social security number, date and place of death of the decedent, and state and county of the decedent's domicile;

(3) so far as is known, the names and addresses of the surviving spouse, if any, ~~and~~ the beneficiaries and their relationships to the decedent, and the ~~date~~ name and year of birth of any who are minors;

(4) a statement showing venue;

(5) a statement whether domiciliary or principal proceedings are pending in another state or country, if known, and the name and address of the foreign personal representative and the court issuing letters;

(6) a statement that there are no assets subject to administration in Florida;

(7) a statement identifying all unrevoked wills and codicils being presented for probate and a statement that the petitioner is unaware of any other unrevoked wills or codicils or, if the petitioner is aware of any other unrevoked wills or codicils, a statement why the other wills or codicils are not being probated; and

(8) a statement that the original of the decedent's last will is in the possession of the court or accompanies the petition, or that an authenticated copy of a will deposited with or probated in another jurisdiction or that an authenticated copy of a notarial will, the original of which is in the possession of a foreign notary, accompanies the petition.

(b) Service. The petitioner shall serve a copy of the petition on those persons who would be entitled to service under rule 5.240.

(c) Objections. Objections to the validity of the will shall follow the form and procedure set forth in these rules pertaining to revocation of probate. Objections to the venue or jurisdiction of the court shall follow the form and

procedure set forth in the Florida Rules of Civil Procedure.

(d) Order. An order admitting the will to probate shall include a finding that the will has been executed as required by law.

Committee Notes

Examples illustrating when a will might be admitted to probate are when an instrument (such as a will or trust agreement) gives the decedent a power exercisable by will, such as the power to appoint a successor trustee or a testamentary power of appointment. In each instance, the will of the person holding the power has no legal significance until admitted to probate. There may be no assets, creditors' issues, or other need for a probate beyond admitting the will to establish the exercise or non-exercise of such powers.

Rule History

1975 Revision: Proof of will may be taken by any Florida circuit judge or clerk without issuance of commission.

1984 Revision: This rule has been completely revised to set forth the procedure for proving all wills except lost or destroyed wills and the title changed. The rule requires an oath attesting to the statutory requirements for execution of wills and the will must be proved before an order can be entered admitting it to probate. Former rules 5.280, 5.290, and 5.500 are included in this rule. Committee notes revised.

1988 Revision: Editorial and substantive changes. Change in (a)(3) to clarify which law determines validity of a notarial will; change in (a)(4) to clarify requirement that will of a Florida resident must comply with Florida law; adds new subdivision (b) to set forth required contents of petition for probate of will; moves former (b) to (c). Committee notes expanded; citation form change in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Subdivision (a)(4) changed to allow authenticated copies of wills to be admitted to probate if the original is filed or deposited in another jurisdiction.

2002 Revision: Substantial revision to the rule setting forth the requirements of a petition to admit a will to probate when administration is not required. Self proof of wills is governed by the Florida Statutes. Former subdivision (a)(4) amended and transferred to new rule 5.215. Former subdivision (a)(5) amended and transferred to new rule 5.216.

2003 Revision: Committee notes revised.

2007 Revision: Existing text redesignated as subdivision (a) and editorial change made in (a)(7). New subdivisions (b) and (c) added to provide for service of the petition and the procedure for objections consistent with the procedures for probate of a will with administration. Committee notes revised.

2010 Revision: Subdivision (b) amended to reflect that service of the petition to admit a decedent's will to probate without administration shall be served on the persons who would be entitled to service of the notice of administration in a formal administration as set forth in rule 5.240. New subdivision (d) added to provide that any order admitting the decedent's will to probate without administration contain a finding that the will was executed as required by law. Committee notes revised.

2011 Revision: Subdivision (a)(2) amended to limit listing of decedent's social security number to last four digits.

2013 Revision: Subdivision (a)(3) amended to conform to Fla. R. Jud. Admin. 2.425. Committee notes revised.

Statutory References

§ 731.201, Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 732.502, Fla. Stat. Execution of wills.

§ 732.503, Fla. Stat. Self-proof of will.

§ 733.103, Fla. Stat. Effect of probate.

§ 733.201, Fla. Stat. Proof of wills.

§ 733.202, Fla. Stat. Petition.

§ 733.204, Fla. Stat. Probate of a will written in a foreign language.

§ 733.205, Fla. Stat. Probate of notarial will.

§ 733.206, Fla. Stat. Probate of will of resident after foreign probate.

§ 733.207, Fla. Stat. Establishment and probate of lost or destroyed will.

§ 734.104, Fla. Stat. Foreign wills; admission to record; effect on title.

Rule References

Fla. Prob. R. 5.015 General definitions.

Fla. Prob. R. 5.020 Pleadings, verification; motions.

Fla. Prob. R. 5.205(a)(7) Filing evidence of death.

Fla. Prob. R. 5.215 Authenticated copy of will.

Fla. Prob. R. 5.216 Will written in foreign language.

Fla. Prob. R. 5.230 Commission to prove will.

Fla. Prob. R. 5.240 Notice of administration.

Fla. Prob. R. 5.270 Revocation of probate.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.385. DETERMINATION OF BENEFICIARIES AND SHARES

(a) Beneficiaries and Shares. If a personal representative or other interested person is in doubt or is unable to determine with certainty beneficiaries entitled to an estate or the shares of any beneficiary of an estate, or a beneficiary entitled to any asset or interest in an estate, the personal representative or other interested person may petition the court to determine beneficiaries.

(b) Petition. The petition shall include:

(1) the names, residences, and post office addresses of all persons who may have an interest, except creditors of the decedent, known to the petitioner or ascertainable by diligent search and inquiry;

(2) a statement of the nature of the interest of each person;

(3) designation of any person believed to be a minor or incapacitated, and whether any person so designated is under legal guardianship in this state;

(4) a statement as to whether petitioner believes that there are, or may be, persons whose names are not known to petitioner who have claims against, or interest in, the estate as beneficiaries.

(c) **Order.** After formal notice and hearing, the court shall enter an order determining the beneficiaries or the shares and amounts they are entitled to receive, or both.

Committee Notes

This rule represents a rule implementation of the procedure formerly found in section 733.105, Florida Statutes. It is not intended to change the effect of the statute from which it was derived but has been reformatted to conform with the structure of these rules. It is not intended to create a new procedure or modify an existing procedure.

Rule History

1988 Revision: New rule.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2002 Revision: Subdivision (c) added to implement procedure formerly found in section 733.105(2), Florida Statutes. Committee notes revised.

2003 Revision: Change in subdivision (c) to replace “heirs or devisees” with “beneficiaries” to incorporate term used in section 733.105, Florida Statutes. Committee notes revised.

2007 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2013 Revision: Fla. R. Jud. Admin. 2.425(b)(6) provides an exception for the full name of any minor “in any document or order affecting minor’s ownership of real property.” Committee notes revised.

Statutory References

ch. 49, Fla. Stat. Constructive service of process.

§ 731.201(2), (23), Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 733.105, Fla. Stat. Determination of beneficiaries.

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and documents.

Fla. Prob. R. 5.120 Administrator ad litem and guardian ad litem.

Fla. Prob. R. 5.205(a)(5) Filing evidence of death.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.405. PROCEEDINGS TO DETERMINE PROTECTED HOMESTEAD REAL PROPERTY

(a) **Petition.** An interested person may file a petition to determine protected homestead real property owned by the decedent.

(b) **Contents.** The petition shall be verified by the petitioner and shall state:

(1) the date of the decedent's death;

(2) the county of the decedent's domicile at the time of death;

(3) the name of the decedent's surviving spouse and the names ~~and dates of birth of the decedent's~~ of surviving lineal descendants, and a statement as to whether the decedent had any minor children as of the date of death. If so, they should be identified with name and year of birth.

(4) a legal description of the property owned by the decedent on which the decedent resided; and

(5) any other facts in support of the petition.

(c) **Order.** The court's order on the petition shall describe the real property and determine whether any of the real property constituted the protected homestead of the decedent. If the court determines that any of the real property was the protected homestead of the decedent, the order shall identify by name the person or persons entitled to the protected homestead real property and define the interest of each.

Committee Notes

This rule establishes the procedure by which the personal representative or any interested person may petition the court for a determination that certain real property constituted the decedent's protected homestead property, in accordance with article X, section 4 of the Florida Constitution. The jurisdiction of the court to determine constitutional protected homestead property was established by *In re Noble's Estate*, 73 So. 2d 873 (Fla. 1954).

Rule History

1984 Revision: New rule.

1988 Revision: Editorial change in (a). Subdivision (b)(4) amended to conform to constitutional change. Committee notes revised. Citation form change in committee notes.

1992 Revision: Editorial change. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Subdivision (c) amended to require description of real property that is the subject of the petition, description of any homestead property, and definition of specific interests of persons entitled to homestead real property.

2002 Revision: Replaces "homestead" with "protected homestead" throughout to conform to addition of term in section 731.201(29), Florida Statutes. Committee notes revised.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2013 Revision: Amends subdivisions (b)(3) and (c) to conform to Fla. R. Jud. Admin. 2.425. Committee notes revised.

Constitutional Reference

Art. X, § 4, Fla. Const.

Statutory References

§ 731.104, Fla. Stat. Verification of documents.

§ 731.201(33), Fla. Stat. General definitions.

§ 732.401, Fla. Stat. Descent of homestead.

§ 732.4015, Fla. Stat. Devise of homestead.

§ 733.607, Fla. Stat. Possession of estate.

§ 733.608, Fla. Stat. General power of the personal representative.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and documents.

Fla. Prob. R. 5.205(a)(6) Filing evidence of death.

Fla. Prob. R. 5.340 Inventory.

Fla. Prob. R. 5.404 Notice of taking possession of protected homestead.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.406. PROCEEDINGS TO DETERMINE EXEMPT PROPERTY

(a) **Petition.** An interested person may file a petition to determine exempt property within the time allowed by law.

(b) **Contents.** The petition shall be verified by the petitioner and shall:

(1) describe the property and the basis on which it is claimed as exempt property; and

(2) state the name and address of the decedent's surviving spouse or, if none, the names and addresses of decedent's children entitled by law to the exempt property and the ~~dates~~year of birth of those who are minors.

(c) **Order.** The court shall determine each item of exempt property and its value, if necessary to determine its exempt status, and order the surrender of that property to the persons entitled to it.

Committee Notes

This rule establishes the procedure by which the personal representative or any interested person may petition the court for determination of exempt property in accordance with article X, section 4 of the Florida Constitution and section 732.402, Florida Statutes.

Section 732.402, Florida Statutes, specifies the time within which the petition to determine exempt property must be filed, within 4 months after the date of service of the notice of administration, unless extended as provided in the statute.

Rule History

1984 Revision: New rule.

1988 Revision: Subdivision (a) revised to reflect editorial changes and to require verification. Subdivision (b)(1) revised to require the basis for asserting exempt property status. Subdivision (b)(2) added the requirement of stating addresses of those entitled to exempt property. Subdivision (c) revised to reflect editorial changes and to require determination of the value of each item of exempt property. Committee notes revised.

1992 Revision: Committee notes revised. Citation form changes in committee notes.

1996 Revision: Editorial changes in rule to conform to similar language in rule 5.405. Committee notes revised.

2003 Revision: Committee notes revised.

2010 Revision: Subdivision (c) amended to limit the instances in which the value of the property claimed as exempt needs to be stated in the order.

2012 Revision: Committee notes revised.

2013 Revision: Subdivision (b)(2) amended to conform to Fla. R. Jud. Admin. 2.425 and provide the year of birth of a minor. Committee notes revised.

Statutory References

§ 731.104, Fla. Stat. Verification of documents.

§ 732.402, Fla. Stat. Exempt property.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and documents.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.420 Disposition of personal property without administration.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.407. PROCEEDINGS TO DETERMINE FAMILY ALLOWANCE

(a) **Petition.** An interested person may file a petition to determine family allowance.

(b) **Contents.** The petition shall be verified by the petitioner and shall:

(1) state the names and addresses of the decedent's surviving spouse and the decedent's adult lineal heirs and the initials, address, and year of birth of the decedents' lineal heirs who are minors and who were being supported by the decedent or who were entitled to be supported by the decedent at the time of the decedent's death, stating the dates of birth of those who are minors; and

(2) for each person for whom an allowance is sought, state the adult person's name, or minor child's initials, and relationship to the decedent, the basis on which the allowance is claimed, and the amount sought.

(c) **Order.** The order shall identify the persons entitled to the allowance, the amount to which each is entitled, the method of payment, and to whom payment should be made.

Committee Notes

Rule History

2003 Revision: New rule.

2012 Revision: Editorial change in (b)(1) for gender neutrality. Committee notes revised.

2013 Revision: Subdivisions (b)(1) and (b)(2) are amended to conform to Fla. R. Jud. Admin. 2.425. Committee notes revised.

Statutory References

§ 731.104, Fla. Stat. Verification of documents.

§ 732.403, Fla. Stat. Family allowance.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and documents.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.530. SUMMARY ADMINISTRATION

(a) **Petition.** The petition shall be verified as required by law and shall contain:

(1) a statement of the interest of each petitioner, each petitioner's name and address, and the name and office address of each petitioner's attorney;

(2) the name and last known address of the decedent, last 4 digits of the decedent's social security number, date and place of death of the decedent, and state and county of the decedent's domicile;

(3) so far as is known, the names and addresses of the surviving spouse, if any, and the beneficiaries and their relationship to the decedent and the dateyear of birth of any who are minors;

(4) a statement showing venue;

(5) a statement whether domiciliary or principal proceedings are pending in another state or country, if known, and the name and address of the foreign personal representative and the court issuing letters;

(6) a statement that the decedent's will, if any, does not direct administration as required by chapter 733, Florida Statutes;

(7) a statement that the value of the entire estate subject to administration in this state, less the value of property exempt from the claims of creditors, does not exceed \$75,000 or that the decedent has been dead for more than 2 years;

(8) a description of all assets in the estate and the estimated value of each, and a separate description of any protected homestead and exempt property;

(9) a statement either that all creditors' claims are barred or that a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors has been made and one of the following:

(A) A statement that the estate is not indebted.

(B) The name and address of each creditor, the nature of the debt, the amount of the debt and whether the amount is estimated or exact, and when the debt is due. If provision for payment of the debt has been made other than for full payment in the proposed order of distribution, the following information shall be shown:

- (i) The name of the person who will pay the debt.
 - (ii) The creditor's written consent for substitution or assumption of the debt by another person.
 - (iii) The amount to be paid if the debt has been compromised.
 - (iv) The terms for payment and any limitations on the liability of the person paying the debt;.
- (10) in an intestate estate, a statement that after the exercise of reasonable diligence each petitioner is unaware of any unrevoked wills or codicils;
- (11) in a testate estate, a statement identifying all unrevoked wills and codicils being presented for probate, and a statement that each petitioner is unaware of any other unrevoked will or codicil; and
- (12) a schedule of proposed distribution of all probate assets and the person to whom each asset is to be distributed.

(b) Service. The joinder in, or consent to, a petition for summary administration is not required of a beneficiary who will receive full distributive share under the proposed distribution. Any beneficiary and any known or reasonably ascertainable creditor not joining or consenting shall receive formal notice of the petition.

(c) Testate Estate. In a testate estate, on the filing of the petition for summary administration, the decedent's will shall be proved and admitted to probate.

(d) Order. If the court determines that the decedent's estate qualifies for summary administration, it shall enter an order distributing the probate assets and specifically designating the person to whom each asset is to be distributed.

Committee Notes

Verification and service of a petition for summary administration are governed by rules 5.020, 5.040, and 5.041. Section 735.206(2), Florida Statutes, relating to diligent search for, and service of the petition for summary

administration on, reasonably ascertainable creditors is substantive. Nothing in this rule is intended to change the effect of the statutory amendments.

Rule History

1977 Revision: Changes to conform to 1975 statutory revision. Established the requirements of a petition for summary administration and provided for the hearing thereon and the entry of the order of distribution of the assets.

1984 Revision: Extensive revisions and editorial changes. Committee notes revised.

1988 Revision: Editorial change in caption of (a). Committee notes revised.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2002 Revision: Replaces “homestead” with “protected homestead” in (a)(2) to conform to addition of term in section 731.201(29), Florida Statutes. Committee notes revised.

2003 Revision: Committee notes revised.

2005 Revision: Subdivision (a)(3) amended to include requirements of section 735.206(2), Florida Statutes.

2007 Revision: Rule substantially rewritten to require petition to include essentially the same information required to be stated in a petition for administration and to require the petitioners to specify facts showing they are entitled to summary administration. New subdivision (b) added to provide for formal notice of the petition, and subsequent subdivisions relettered.

2011 Revision: Subdivision (a)(2) amended to limit listing of decedent’s social security number to last four digits.

2012 Revision: Committee notes revised.

2013 Revision: Subdivision (a)(3) amended to provide only the year of birth of a minor to conform to Fla. R. Jud. Admin. 2.425. Committee notes revised.

Statutory References

§ 731.104, Fla. Stat. Verification of documents.

§§ 735.201–735.2063, Fla. Stat. Summary administration.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and documents.

Fla. Prob. R. 5.205(a)(3) Filing evidence of death.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.550. PETITION TO DETERMINE INCAPACITY

(a) **Contents.** The petition to determine incapacity shall be verified by the petitioner and shall state:

(1) the name, age, and present address of the petitioner and the petitioner's relationship to the alleged incapacitated person;

(2) the name, age, county of residence, and present address of the alleged incapacitated person, and specify the primary language spoken by the alleged incapacitated person, if known;

(3) that the petitioner believes the alleged incapacitated person to be incapacitated, the facts on which such belief is based, and the names and addresses of all persons known to the petitioner who have knowledge of such facts through personal observation;

(4) the name and address of the alleged incapacitated person's attending or family physician, if known;

(5) which rights the alleged incapacitated person is incapable of exercising to the best of the petitioner's knowledge; and, if the petitioner has insufficient experience to make that judgment, the petitioner shall so indicate;

(6) whether plenary or limited guardianship is sought for the alleged incapacitated person; and

(7) the names, relationships, and addresses of the next of kin of the alleged incapacitated person, specifying the ~~dates~~year of birth of any who are minors, to the extent known to the petitioner.

(b) Notice.

(1) Contents. The notice of filing the petition to determine incapacity shall state:

(A) the time and place of the hearing to inquire into the capacity of the alleged incapacitated person;

(B) that an attorney has been appointed to represent such person; and

(C) that if the court determines that such person is incapable of exercising any of the rights enumerated in the petition a guardian may be appointed.

(2) Service on Alleged Incapacitated Person. The notice and a copy of the petition to determine incapacity shall be personally served by an elisor appointed by the court, who may be the court appointed counsel for the alleged incapacitated person. The elisor shall read the notice to the alleged incapacitated person, but need not read the petition. A return of service shall be filed by the elisor certifying that the notice and petition have been served on and the notice read to the alleged incapacitated person. No responsive pleading is required and no default may be entered for failure to file a responsive pleading. The allegations of the petition are deemed denied.

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

(c) Verified Statement. An interested person may file a verified statement that shall state:

(1) that he or she has a good faith belief that the alleged incapacitated person's trust, trust amendment, or durable power of attorney is invalid; and

(2) facts constituting a reasonable basis for that belief.

(d) **Order.** When an order determines that a person is incapable of exercising delegable rights, it shall specify whether there is an alternative to guardianship that will sufficiently address the problems of the incapacitated person.

Committee Notes

Rule History

1980 Revision: Implements 1979 amendments to section 744.331, Florida Statutes.

1984 Revision: Change in title of rule. Editorial changes and adds a provision for service of petition. Committee notes revised.

1988 Revision: Committee notes revised. Citation form changes in committee notes.

1989 Revision by Ad Hoc Committee: The committee realized that formal notice as defined in rule 5.040(a)(1) requires the recipient of notice to file a responsive pleading within 20 days after the service of the notice. The committee believed that to impose such a requirement on the alleged incapacitated person would contravene the legislative intent of the 1989 revisions to chapter 744, Florida Statutes. The committee observed that the time required for appointment of mandatory appointed counsel might render a responsive pleading within 20 days impossible for the alleged incapacitated person. The committee concluded that, procedurally, notice upon the alleged incapacitated person should occur in the same manner as formal notice in rule 5.040, but the required response under that rule should not be imposed upon the alleged incapacitated person.

1991 Revision: Implements 1989 amendments to sections 744.3201 and 744.331, Florida Statutes, and 1990 technical amendments.

1992 Revision: Citation form changes in committee notes.

2006 Revision: Subdivisions (c) and (d) added to incorporate 2006 amendment to section 744.441 and creation of section 744.462, Florida Statutes. Committee notes revised.

2013 Revision: Amends subdivision (a)(7) to conform with Fla. R. Jud. Admin. 2.425. Committee notes revised.

Statutory References

§ 744.3201, Fla. Stat. Petition to determine incapacity.

§ 744.331, Fla. Stat. Procedures to determine incapacity.

§ 744.3371, Fla. Stat. Notice of petition for appointment of guardian and hearing.

§ 744.441(11), Fla. Stat. Powers of guardian upon court approval.

§ 744.462, Fla. Stat. Determination regarding alternatives to guardianship.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040(a)(3) Notice.

Fla. Prob. R. 5.800(a) Application of revised chapter 744 to existing guardianships.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.555. GUARDIANSHIPS OF MINORS

(a) **Application.** This rule shall apply to any guardianship for a minor.

(b) **Petition to Determine Incapacity.** No petition to determine incapacity need be filed.

(c) **Petition for Appointment of Guardian.** The petition shall be verified by the petitioner and shall state:

- (1) the facts to establish venue;
- (2) the petitioner's residence and post office address;
- (3) the name, age, and residence and post office address of the minor;
- (4) the names and addresses of the parents of the minor and if none, the next of kin known to the petitioner;
- (5) the name and residence and post office address of the proposed

guardian, and that the proposed guardian is qualified to serve; or, that a willing and qualified guardian has not been located;

(6) the proposed guardian's relationship to and any previous association with the minor;

(7) the reasons why the proposed guardian should be appointed;
and

(8) the nature and value of the property subject to the guardianship.

(d) 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.

(e) Initial and Annual Guardianship Reports.

(1) The initial guardianship report shall consist only of the verified inventory. The annual guardianship report shall consist only of the annual accounting.

(2) The guardian shall file an initial and annual guardianship plan as required by law.

(3) Unless otherwise ordered by the court or required by law, the guardian need not serve a copy of the initial guardianship report and the annual guardianship reports on the ward.

(f) Inspection of Inventory or Accounting. Unless otherwise ordered by the court for good cause shown, any inventory, amended or supplementary inventory, or accounting is subject to inspection only by the clerk, the ward or the ward's attorney, and the guardian or the guardian's attorney.

Committee Notes

The provisions of chapter 744, Florida Statutes, and the guardianship rules enacted in 1989 leave some uncertainty with respect to the procedural requirements in guardianships for minors who are not incapacitated persons. This rule is intended to address only certain procedures with respect to the establishment and

administration of guardianships over minors. The committee believes that certain provisions of the guardianship law and rules apply to both guardianships of minors as well as guardianships of incapacitated persons and no change has been suggested with respect to such rules. Because no adjudication of a minor is required by statute, it is contemplated that appointment of a guardian for a minor may be accomplished without a hearing. Initial and annual guardianship reports for minors have been simplified where all assets are on deposit with a designated financial institution under applicable Florida law.

Rule History

1991 Revision: New rule adopted to apply to guardianships over minors who are not incapacitated persons.

1992 Revision: Committee notes revised. Citation form changes in committee notes.

1996 Revision: Committee notes revised.

2000 Revision: Deletes requirement in subdivision (c) to report social security number of proposed guardian.

2003 Revision: Deletes requirement in subdivision (c) to report social security number of minor. Committee notes revised.

2006 Revision: Subdivision (e)(2) amended to conform to requirement in sections 744.362(1) and 744.3675, Florida Statutes, to file initial and annual guardianship plans. Subdivision (e)(3) amended to eliminate requirement of service on ward unless ordered by court or required by statute.

2013 Revision: Fla. R. Jud. Admin. 2.425(b)(4) – (5) provides exceptions for using the birth date of any minor “whenever the birth date is necessary for the court to establish or maintain subject matter jurisdiction,” as well as using the full name in situations in which the “name of the minor in any order relating to parental responsibility, time-sharing, or child support.” Committee notes revised.

Statutory References

§ 69.031, Fla. Stat. Designated financial institutions for assets in hands of guardians, curators, administrators, trustees, receivers, or other officers.

§ 744.3021, Fla. Stat. Guardians of minors.

§ 744.334, Fla. Stat. Petition for appointment of guardian or professional guardian; contents.

§ 744.3371(2), Fla. Stat. Notice of petition for appointment of guardian and hearing.

§ 744.342, Fla. Stat. Minors; guardianship.

§ 744.362, Fla. Stat. Initial guardianship report.

§ 744.363, Fla. Stat. Initial guardianship plan.

§ 744.365, Fla. Stat. Verified inventory.

§ 744.367, Fla. Stat. Duty to file annual guardianship report.

§ 744.3675, Fla. Stat. Annual guardianship plan.

§ 744.3678, Fla. Stat. Annual accounting.

§ 744.3679, Fla. Stat. Simplified accounting procedures in certain cases.

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.541 Recording of hearings.

Fla. Prob. R. 5.560 Petition for appointment of guardian of an incapacitated person.

Fla. Prob. R. 5.620 Inventory.

Fla. Prob. R. 5.636 Settlement of minors' claims.

Fla. Prob. R. 5.690 Initial guardianship report.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.560. PETITION FOR APPOINTMENT OF GUARDIAN OF AN INCAPACITATED PERSON

(a) **Contents.** The petition shall be verified by the petitioner and shall state:

- (1) the facts to establish venue;
- (2) the petitioner's residence and post office address;

(3) the name, age, and residence and post office address of the alleged incapacitated person;

(4) the nature of the incapacity, the extent of guardianship, either limited or plenary, requested for the alleged incapacitated person, and the nature and value of property subject to the guardianship;

(5) the names and addresses of the next of kin of the alleged incapacitated person known to the petitioner;

(6) the name and residence and post office address of the proposed guardian, and that the proposed guardian is qualified to serve, or that a willing and qualified guardian has not been located;

(7) the proposed guardian's relationship to and any previous association with the alleged incapacitated person;

(8) the reasons why the proposed guardian should be appointed;

(9) whether there are alternatives to guardianship known to the petitioner that may sufficiently address the problems of the alleged incapacitated person in whole or in part; and

(10) if the proposed guardian is a professional guardian, a statement that the proposed guardian has complied with the registration requirements of section 744.1083, Florida Statutes.

(b) Notice. Notice of filing the petition for appointment of guardian may 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.

Committee Notes

Rule History

1975 Revision: Substantially the same as section 744.334, Florida Statutes, expanded to include provisions of section 744.302, Florida Statutes, and section 744.312, Florida Statutes, by reference.

1977 Revision: Change in committee notes to conform to statutory renumbering.

1980 Revision: Implements 1979 amendment to section 744.334, Florida Statutes.

1984 Revision: Combines rule 5.560 and part of prior rule 5.570. Editorial changes and committee notes revised.

1988 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

1989 Revision by Ad Hoc Committee: Subdivision (a)(4) of the former rule has been deleted altogether because the date and court of adjudication will probably not be known at the time of filing the petition for the appointment since petition for appointment will henceforth be filed contemporaneously with the petition to determine incapacity.

1991 Revision: Implements 1989 amendments to sections 744.334 and 744.331(1), Florida Statutes, and 1990 technical amendments. Subdivision (c)(1) deleted because rule 5.555(d) addresses service on parents.

1992 Revision: Citation form changes in committee notes.

1996 Revision: Deletes requirement in subdivision (a) to report social security number of alleged incapacitated person. Adds provision to subdivision (b) for notice before hearing when petition is not served simultaneously with petition to determine incapacity.

2000 Revision: Deletes requirement in subdivision (a) to report social security number of proposed guardian.

2003 Revision: Committee notes revised.

2006 Revision: New (a)(9) added to incorporate 2006 passage of section 744.462, Florida Statutes. Subdivision (a)(10) added to implement section 744.1083, Florida Statutes. Committee notes revised.

2013 Revision: Fla. R. Jud. Admin. 2.425(b)(4) – (5) provides exceptions for using the birth date of any minor “whenever the birth date is necessary for the court to establish or maintain subject matter jurisdiction,” as well as using the full name in situations in which the “name of the minor in any order relating to parental responsibility, time-sharing, or child support.” Committee notes revised.

Statutory References

§ 744.1083, Fla. Stat. Professional guardian registration.

§ 744.309, Fla. Stat. Who may be appointed guardian of a resident ward.

§ 744.312, Fla. Stat. Considerations in appointment of guardian.

§ 744.331, Fla. Stat. Procedures to determine incapacity.

§ 744.334, Fla. Stat. Petition for appointment of guardian or professional guardian; contents.

§ 744.3371(1), Fla. Stat. Notice of petition for appointment of guardian and hearing.

§ 744.341, Fla. Stat. Voluntary guardianship.

§ 744.344, Fla. Stat. Order of appointment.

§ 744.462, Fla. Stat. Determination regarding alternatives to guardianship.

§ 744.703, Fla. Stat. Office of public guardian; appointment, notification.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.550 Petition to determine incapacity.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.590.

APPLICATION FOR APPOINTMENT AS GUARDIAN; DISCLOSURE STATEMENT; FILING

(a) Individual Applicants.

- (1) The application for appointment shall contain:

(A) the applicant's qualifications to serve as a guardian; and

(B) the names of all wards who are adults and the initials of any ward who is a minor for whom the applicant is then acting as guardian, the court file number and circuit court in which each case is pending, and a statement as to whether the applicant is acting as a limited or plenary guardian of the person or property, or both, of each ward.

(2) The application for appointment shall be filed and served a reasonable time before the hearing on the appointment of a guardian.

(b) Nonprofit Corporate Guardians.

(1) No application for appointment shall be required of a nonprofit corporate guardian.

(2) A disclosure statement shall contain:

(A) the corporation's qualifications to serve as a guardian;
and

(B) the names of all wards who are adults and the initials of any ward who is a minor for whom the corporation is then acting as guardian, the court file number and circuit court in which each case is pending, and a statement as to whether the corporation is acting as a limited or plenary guardian of the person or property, or both, of each ward.

(3) The disclosure statement of a nonprofit corporate guardian shall be filed quarterly with the clerk of the court for each circuit in which the corporation has been appointed, or is seeking appointment, as guardian.

(c) For Profit Corporations and Associations. No application for appointment or disclosure statement shall be required of any for profit corporation or association authorized to exercise fiduciary powers under Florida law.

(d) Public Guardians. No application for appointment or disclosure statement shall be required of a public guardian.

Committee Notes

Rule History

1988 Revision: Prior rule deleted; text of rule moved to rule 5.650.

1989 Revision: Rule reactivated with different title and text.

1991 Revision: Implements 1989 and 1990 amendments to section 744.3125, Florida Statutes.

1992 Revision: Citation form change in committee notes.

1996 Revision: Adds filing and service provisions consistent with rule 5.560. Corrects reference to corporations qualified to exercise fiduciary powers. Editorial changes. Adds statutory references.

2003 Revision: Committee notes revised.

2006 Revision: Committee notes revised.

2008 Revision: Committee notes revised.

2013 Revision: Amends subdivisions (a)(1)(B) and (b)(1)(B) to conform to Fla. R. Jud. Admin. 2.425. Creates a rule reference. Committee notes revised.

Statutory References

§ 393.063(17), Fla. Stat. Definitions.

§ 393.12, Fla. Stat. Capacity; appointment of guardian advocate.

§ 744.102(4), (9), (11), (14), (22) Fla. Stat. Definitions.

§ 744.3085, Fla. Stat. Guardian advocates.

§ 744.309, Fla. Stat. Who may be appointed guardian of a resident ward.

§ 744.3125, Fla. Stat. Application for appointment.

§ 744.331(1), Fla. Stat. Procedures to determine incapacity.

§ 744.3371, Fla. Stat. Notice of petition for appointment of guardian and hearing.

Rule References

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive

Information.

RULE 5.636. SETTLEMENT OF MINORS' CLAIMS

(a) **Time of Settlement.** Claims on behalf of minors may be settled either before or after an action is filed.

(b) **Petition.** The petition for approval of a settlement shall contain:

- (1) the ~~name~~initials, residence address, and ~~date~~the year of birth of the minor;
- (2) the name and address of any guardian appointed for the minor;
- (3) the name and residence address of the natural guardians or other persons having legal custody of the minor;
- (4) a statement disclosing the interests of any natural or court-appointed guardian whose interest may be in conflict with that of the minor;
- (5) a description of the cause of action in which the minor's interest arises;
- (6) a summary of the terms of the proposed settlement; and
- (7) copies of all agreements, releases, or other documents to be executed on behalf of the minor.

(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.

(d) **Guardian Ad Litem.** The court shall appoint a guardian ad litem on behalf of a minor, without bond or notice, with respect to any proposed settlement that exceeds \$50,000 and affects the interests of the minor, if:

- (1) there is no court-appointed guardian of the minor;
- (2) the court-appointed guardian may have an interest adverse to the minor; or

(3) the court determines that representation of the minor's interest is otherwise inadequate.

(e) **Valuation of Proposed Settlement.** A proposed settlement is deemed to exceed \$50,000 if the gross amount payable exceeds \$50,000, without reduction to reflect present value or fees and costs.

(f) **Report.** A guardian ad litem appointed with respect to a proposed settlement affecting the interests of a minor shall, not later than 5 days prior to the hearing on a petition for order authorizing settlement, file and serve a report indicating the guardian ad litem's determination regarding whether the proposed settlement will be in the best interest of the minor. The report shall include:

(1) a statement of the facts of the minor's claim and the terms of the proposed settlement, including any benefits to any persons or parties with related claims;

(2) a list of the persons interviewed and documents reviewed by the guardian ad litem in evaluating the minor's claim and proposed settlement; and

(3) the guardian ad litem's analysis of whether the proposed settlement will be in the best interest of the minor.

A copy of the report shall be served on those persons on whom service is required in subdivision (c) of this rule.

Committee Notes

When a civil action is pending, the petition for approval of settlement should be filed in that civil action. In all other circumstances, the petition for approval of settlement should be filed in the same court and assigned to a judge who would preside over a petition for appointment of guardian of a minor.

The total settlement to be considered under subdivisions (d) and (e) is not limited to the amounts received only by the minor, but includes all settlement payments or proceeds received by all parties to the claim or action. For example, the proposed settlement may have a gross value of \$60,000, with \$30,000 payable to the minor and \$30,000 payable to another party. In that instance the total proposed settlement exceeds \$50,000. Further, the "gross amount payable" under subdivision (e) is the total sum payable, without reducing the settlement amount by fees and costs that might be paid from the proceeds of the settlement. For example,

if the proposed settlement is \$60,000 but \$20,000 of that sum will be paid to the attorneys representing the minor's interest in the action, the "gross amount payable" still exceeds \$50,000. Likewise, the "gross amount payable" cannot be reduced to reflect the present value of the proposed settlement on behalf of the minor.

Rule History

1992 Revision: New rule.

2003 Revision: Committee notes revised.

2006 Revision: Amended to reflect 2006 passage of new section 744.3025, Claims of Minors, increasing dollar figure from \$25,000 to \$50,000 as threshold amount requiring appointment of guardian ad litem if interests of minor are not otherwise adequately represented. Committee notes revised.

2013 Revision: Amends subdivision (b)(1) to conform to Fla. R. Jud. Admin. 2.425. Committee notes revised.

Statutory References

§ 744.3025, Fla. Stat. Claims of minors.

§ 744.387, Fla. Stat. Settlement of claims.

§ 744.391, Fla. Stat. Actions by and against guardian or ward.

§ 744.441, Fla. Stat. Powers of guardian upon court approval.

§ 744.446, Fla. Stat. Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty.

§ 744.447, Fla. Stat. Petition for authorization to act.

§ 768.23, Fla. Stat. Protection of minors and incompetents.

§ 768.25, Fla. Stat. Court approval of settlements.

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.120 Administrator ad litem and guardian ad litem.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.630 Petition for approval of acts.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.646. STANDBY GUARDIANS

(a) Petition for Appointment of Standby Guardian for Minor.

(1) Contents. A minor's guardian or the natural guardians of a minor may petition for the appointment of a standby guardian of the person or property of the minor. The petition shall be verified by the petitioner and shall state:

- (A) the facts to establish venue;
- (B) the petitioner's residence and post office address;
- (C) the name, age, and residence and post office address of the minor;
- (D) the names and addresses of the parents of the minor and, if none, the next of kin known to the petitioner;
- (E) the name and residence and post office address of the proposed standby guardian, and that the proposed standby guardian is qualified to serve;
- (F) the proposed standby guardian's relationship to and any previous association with the minor;
- (G) the reasons why the proposed standby guardian should be appointed; and
- (H) the nature and value of the property subject to the guardianship.

(2) Notice and Waiver of Notice. Notice of the hearing on the petition must be served on the parents, natural or adoptive, of the minor and on any guardian for the minor. Notice may be waived by those required to receive notice or by the court for good cause.

(b) Petition for Appointment of Standby Guardian for Incapacitated Person.

(1) Contents. A currently serving guardian may petition for the appointment of a standby guardian of the person or property of an incapacitated person. The petition shall be verified by the petitioner and shall state:

- (A) the petitioner's residence and post office address;
- (B) the name, age, and residence and post office address of the incapacitated person;
- (C) the nature of the incapacity, the extent of guardianship, either limited or plenary, and the nature and value of property subject to the guardianship;
- (D) the names and addresses of the next of kin of the incapacitated person known to the petitioner;
- (E) the name and residence and post office address of the proposed standby guardian, and that the proposed standby guardian is qualified to serve;
- (F) the proposed standby guardian's relationship to and any previous association with the incapacitated person; and
- (G) the reasons why the proposed standby guardian should be appointed.

(2) Notice. Notice of the hearing on the petition must be served on the incapacitated person's next of kin.

(c) Petition for Confirmation.

(1) Contents. A standby guardian, not later than 20 days after the assumption of duties as guardian, shall petition for confirmation of appointment. The petition shall be verified by the petitioner and shall state:

- (A) the petitioner's residence and post office address;
- (B) the name, age, and residence and post office address of

the adult incapacitated person or initials, year of birth, and residence address of minor;

(C) the nature of the incapacity, the extent of guardianship, either limited or plenary, and the nature and value of property subject to the guardianship;

(D) the names and addresses of the next of kin of the incapacitated person or minor known to the petitioner;

(E) the name and residence and post office address of the proposed guardian, and that the proposed guardian is qualified to serve;

(F) the proposed guardian's relationship to and any previous association with the incapacitated person or minor;

(G) the reasons why appointment of the proposed guardian should be confirmed; and

(H) if the proposed guardian is a professional guardian, a statement that the proposed guardian has complied with the educational requirements of section 744.1083, Florida Statutes.

(2) **Service.** The petition for confirmation and notice of hearing shall be served on the incapacitated person's next of kin a reasonable time before the hearing on the petition or other pleading seeking confirmation of the guardian.

Committee Notes

The standby guardian must file an oath pursuant to rule 5.600 before commencing the exercise of authority as guardian. Prior to appointment, the standby guardian must file an application pursuant to rule 5.590.

Section 393.12(10), Florida Statutes, provides that a guardian advocate shall have all of the duties, responsibilities, and powers of a guardian under Chapter 744, Florida Statutes. However, section 744.304 authorizes the appointment of a standby guardian only for a minor or incapacitated person.

Rule History

2006 Revision: New rule.

2008 Revision: Committee notes revised.

2013 Revision: Subdivision (c)(1)(B) amended to conform to Fla. R. Jud. Admin. 2.425. Committee notes revised.

Statutory Reference

§ 744.304, Fla. Stat. Standby guardianship.

Rule References

Fla. Prob. R. 5.590 Application for appointment as guardian; disclosure statement; filing.

Fla. Prob. R. 5.600 Oath.

Fla. R. Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.