

**RULE 5.120. ADMINISTRATOR AD  
LITEM AND GUARDIAN AD  
LITEM**

(a) **Appointment.** [No change]

(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) – (5) [No change]

(c) – (g) [No change]

**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.

The Florida Probate Rules Committee determined that several rules require amendments to comply with the minimization standards set forth in R. Jud. Admin. 2.425.

Amends subdivision (b) to substitute initials and year of birth in place of name and date of birth.

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.

Committee notes and rule references are updated accordingly.

## **Statutory References**

[No change]

## **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 references are updated accordingly.

**RULE 5.200.**

**PETITION FOR  
ADMINISTRATION**

(a) – (b) [No change]

(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) – (j) [No change]

**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

Amends subdivision (c) to substitute year of birth for date of birth for minors who are beneficiaries.

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.

Rule references and committee notes are updated accordingly.

### **Statutory References**

[No change]

### **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 references are updated accordingly.

**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) – (2) [ No change]

(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) – (8) [No change]

**(b) – (d)** [ No change]

Amends subdivision (a)(3) to substitute the name and year of birth instead of the date of birth of any beneficiaries who are minors.

**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.

Rule references and committee notes are updated accordingly.

### **Statutory References**

[No change]

### **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 references are updated accordingly.

**RULE 5.385.**                    **DETERMINATION OF  
BENEFICIARIES AND  
SHARES**

**(a) – (c)** [No change]

**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.

Updates the committee notes and rules references.

### **Statutory References**

[No change]

### **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.

Updates rules references.

**RULE 5.405.**

**PROCEEDINGS TO  
DETERMINE PROTECTED  
HOMESTEAD REAL  
PROPERTY**

(a) **Petition.** [No change]

(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) – (5) [No change]

(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.

Amends subdivision (b)(3) to require a statement as to whether the decedent had any minor children and identifies them by name and year of birth. The date of birth of the decedent's surviving lineal descendents is no longer required.

Amends subdivision (c) to require that the order will identify the person entitled to protected homestead real property by name.

**Committee Notes**

## 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.

Updates the committee notes and rules references.

## **Constitutional Reference**

[No change]

## **Statutory References**

[No change]

## **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.

Updates rules references.

**RULE 5.406.**

**PROCEEDINGS TO  
DETERMINE EXEMPT  
PROPERTY**

**Rule History**

(a) **Petition.** [No change]

(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.

Amends subdivision (b)(2) to require the year of birth instead of the date of birth of any decedent's children who are minors.

(c) **Order.** [No change]

**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.



[No change]

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.

Rule references and committee notes are updated accordingly.

## **Statutory References**

**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 references are updated accordingly.

**RULE 5.407. PROCEEDINGS TO  
DETERMINE FAMILY  
ALLOWANCE**

(a) **Petition.** [No change]

(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.** [No change]

**Committee Notes**

**Rule History**

2003 Revision: New rule.

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

Amends subdivision (b)(1) to require the initials, address and year of birth of the decedent's lineal heirs who are minors, instead of the date of birth to conform.

Subdivision (b)(2) is amended to require the name of adult person's or minor child's initials to determine family allowance.

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

Committee notes and rule references are updated accordingly.

### **Statutory References**

[No change]

### **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 references are updated accordingly.

**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 ~~date~~year of birth of any who are minors;

(4) – (8) [No change]

(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

Amends subdivision (a)(3) to require the year of birth instead of the date of birth of any minor beneficiaries.

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;.

Corrects punctuation to be consistent with subdivisions (i) – (iii).

(10) – (12) [No change]

**(b) – (d)** [No change]

### **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**

[No change]

### **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.

Committee notes and rule references are updated accordingly.

Rule references are updated accordingly.



**RULE 5.550.**

**PETITION TO DETERMINE  
INCAPACITY**

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

(1) - (6) [No change]

(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) – (d)** [No change]

**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

Subdivision (a)(7) is amended to substitute year of birth for the date of birth of minor children of the incapacitated person.

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

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.

Committee notes and rule references are updated accordingly.

### **Statutory References**

[No change]

### **Rule References**

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 references are updated accordingly.

1996 Revision: Committee notes revised.

**RULE 5.555. GUARDIANSHIPS OF MINORS**

**(a) – (f)** [No change]

**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.

of an incapacitated person.

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.

Updates the committee notes and rule references.

### **Statutory References**

[No change]

### **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

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.

Updates the rule references.

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

(a) – (c) [ No change]

**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

Updates the committee notes and rule references.

order relating to parental responsibility, time-sharing, or child support.” Committee notes revised.



**Statutory References**

[No change]

**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.

Updates the rule references.

**RULE 5.590.**

**APPLICATION FOR  
APPOINTMENT AS  
GUARDIAN; DISCLOSURE  
STATEMENT; FILING**

to serve as a guardian; and

**(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

Amends subdivision (a)(1)(B) to require the initials of any ward who is a minor.

(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) – (d) [No change]

### **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

Amends subdivision (b)(1)(B) to require the initials of any ward who is a minor.

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.

Committee notes and rule references are updated accordingly.

### **Statutory References**

[No change]

### **Rule References**

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

Creates a rule reference.

**RULE 5.636. SETTLEMENT OF MINORS' CLAIMS**

(a) **Time of Settlement.** [No change]

(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) – (f) [No change]

Amends subdivision (b)(1) to provide for the initials and year of birth of the minor.

figure from \$25,000 to \$50,000 as threshold amount requiring

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

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**

[No change]

### **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.

Committee notes and rule references are updated accordingly.

Rule references are updated accordingly.

**RULE 5.646. STANDBY GUARDIANS**

(a) – (b) [No change]

(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) – (H) [No change]

(2) **Service.** [No change]

**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.

Subdivision (c)(1)(B) is amended to require the initials, year of birth and residence address of the minor.



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.

Committee notes and rule references are updated accordingly.

### **Statutory Reference**

[No change]

### **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.

Rule references are updated accordingly.