



# 14<sup>th</sup> Judicial Circuit

## GUARDIAN ADVOCATE INFORMATION

ELIJAH SMILEY, Administrative Probate Judge



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**Guardian Advocate Forms: Available at [www.jud14.flcourts.org](http://www.jud14.flcourts.org)**

**Form A-** Application for Proposed Guardian Advocate

**Form B-** Notice of Petition for Guardian Advocate

**Form C-** Petition for Guardian Advocate

**Form D-** Oath of Guardian Advocate

**Form E-** Order Appointing Guardian Advocate

**Form F-** Letters of Guardian Advocacy of person

**Form G-** Initial Plan for Ward

**Form H-** Annual Plan for Ward

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Attachment: Guardian Advocate Florida Statute- 393.12

# GUARDIAN ADVOCATE HANDBOOK

## 1. What is a Guardian Advocate?

Often a Guardian Advocate needs to be appointed when a person with a developmental disability turns 18 years old. Upon becoming an adult, the parent no longer has the legal ability to make decisions for them. To qualify under Florida Statute 393.13, the person must have a **developmental disability. Developmental disability**” means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

**Guardian Advocacy** is a process for families, caregivers, and friends of individuals with a developmental disability to obtain a guardianship without declaring the individual incompetent. Guardian Advocate appointments are governed by Florida Statute Section 393.12. The appointment of a Guardian Advocate allows the guardian to make decisions for the person with a developmental disability. Not everyone with a developmental disability needs a legal guardian. One is necessary if the person lacks the decision-making ability to make necessary decisions relating to daily life. The person with the developmental disability for whom a Guardian Advocate has been appointed is known as the “Ward. The Guardian Advocate is responsible for only those duties approved by the Judge and listed in the Court Order.

## 2. Do I need an attorney to become a Guardian Advocate?

The process of becoming a Guardian Advocate of a person with developmental disabilities does not require the hiring of an attorney. During the Guardian Advocacy proceedings, the Court will appoint an attorney for the person with a developmental disability to ensure that his or her best interest is protected.

If there is property involved, other than social security benefits or other government payee programs, the person seeking to become a Guardian Advocate of the person and the property *must* hire an attorney. These property rights include, but are not limited to: a pending law suit, estate matter, or other income or property right coming to the person with a developmental disability. The Court can expand the description of property rights by Petition and Order.

### **3. Who may serve as a Guardian Advocate?**

Any resident of the State of Florida who is 18 years old and of sound mind is qualified to act as Guardian Advocate. In addition, a non-resident may serve if he or she is related to the Ward by blood, adoption or law according to Florida Statute Section 744.309(2).

The court may appoint any person whom it considers fit, proper, and qualified to act as guardian whether or not related to the ward. However, the court gives preference to a person who:

- Is related by blood or marriage to the incapacitated person;
- Has relevant educational, professional or business experience;
- Has the capacity to manage the finances involved; or
- Has the ability to meet the requirements of the law and the unique needs of the individual.

The court shall also consider the wishes expressed by a developmentally disabled person as to whom shall be appointed guardian.

### **4. Who may NOT serve as a Guardian Advocate?**

No person who has been convicted of a felony can be appointed to act as Guardian Advocate. Furthermore, no person who has been judicially determined to have committed abuse, abandonment, or neglect against a child as defined in Florida Statutes Sections 39.01 and 984.03(1), (2), and (37), or who has been found guilty of, regardless of adjudication, or entered a plea of no contest under any similar statute of another jurisdiction can be appointed to act as a Guardian Advocate.

Additionally, a person who provides substantial services to the proposed ward in a professional or business capacity, or is a creditor of the proposed ward, may not be appointed Guardian Advocate and retain that previous professional or business relationship. A person may not be appointed as Guardian Advocate if he or she is an employee of any person, agency, government, or corporation that provides service to the proposed ward in a professional or business capacity, except that a person so employed may be appointed if he or she is the spouse, adult child, parent, or sibling of the proposed ward or the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the proposed ward's best interest.

A provider of health care services to the ward, whether direct or indirect, may not be appointed the Guardian of the ward, unless the court specifically finds there is no conflict of interest with the ward's best interest.

## **5. How do I Become a Guardian Advocate:**

- a. **Complete Necessary Paperwork.**
  1. Application for Appointment as Guardian Advocate. Attached Form A
  2. Petition for Appointment of Guardian Advocate of the person. Attached Form C
  3. Oath of Guardian Advocate, Designation & Acceptance. Attached Form D
- b. **File all Paperwork with Clerk's Office.**
  - The person filing the paperwork is called the Petitioner.
  - The Petitioner should attach a copy of the medical records of the person with a developmental disability to the Petition for Appointment of Guardian Advocate.
  - Petitioner must pay the required filing fees.
  - Always submit the original and 3 copies and 2 stamped envelopes with sufficient postage to mail copies of all pleadings.
- c. **The Probate Clerk will schedule your case for a hearing before the Judge.**
- d. **Hearing.**
  - Attend the hearing with the person with a developmental disability if they are able to travel.
  - Bring your proposed Orders filled out and typed completely.

## **6. Guardian Advocates Education Requirement**

Florida Statutes 393.12(10) and 744.3134 requires every person appointed as a Guardian Advocate to complete educational training. Once a person is appointed by the Court to be the Guardian Advocate they must complete the required training. The Probate Clerk will provide you with the date of the training session. Also, The Department of Children and Families is developing an online course that should be available in 2017.

## **7. Guardian Advocate: Reporting Requirements?**

A Guardian Advocate must file an Initial Report *within 60 days* of appointment pursuant to Florida Statute Section 744.361 and 744.362. The initial report must include a statement of medical, mental, or personal care services of the ward, and a statement of the place and kind of residential setting best suited for the needs of the ward. In addition, the Initial Report (Form G) includes all physical and mental examinations necessary to determine the ward's medical and mental health treatment needs.

In addition, a Guardian Advocate *must* file a report *each year*. The Annual Report (Form H) must be filed *within 90 days* from the anniversary date of appointment as Guardian Advocate. The Annual Report must include information concerning the residence of the ward, the medical

and mental health conditions, treatment and rehabilitation needs of the ward, and the social condition of the ward.

### **8. Restoration of Rights:**

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