

## **POLICIES AND PROCEDURES FOR GUARDIANSHIP CASES IN LEE COUNTY, FLORIDA**

### **1. Applicability**

#### **a. Guardian Advocacy**

Unless otherwise provided in Chapter 393, Florida Statutes, or in the applicable Florida Probate Rules, any proceeding on a petition for the appointment of a guardian advocate will be governed by these policies and procedures. The term “guardian” as used herein also applies to a guardian advocate unless otherwise noted. The notice required to a person with a developmental disability who is the subject of a petition filed under Section 393.12, Florida Statutes, may be satisfied by filing proof of service on counsel for the person with a developmental disability and that such counsel has waived notice on behalf of his or her client.

#### **b. Guardianship**

Unless otherwise provided in Chapter 744, Florida Statutes, or in the applicable Florida Probate Rules, all guardianship proceedings will be governed by these policies and procedures.

#### **c. Conservatorship**

Unless otherwise provided in Chapter 747, Florida Statutes, or in the applicable Florida Probate Rules, any proceeding on a conservatorship will be governed by these policies and procedures. The term “guardian” as used herein also applies to a conservator unless otherwise noted.

### **2. Dismissal of Petition for Incapacity**

A petition to determine incapacity, once filed, may not be voluntarily dismissed. *Jasser v. Saadeh*, 97 So. 3d 241 (Fla. 4th DCA 2012). A motion to dismiss filed by any person must be scheduled for hearing for the court's consideration. The motion must state with specificity the reasons for the dismissal and whether the petitioner stipulates to pay the costs of the examining committee and court-appointed attorney for the alleged incapacitated person. Corresponding proposed orders dismissing the petition will be provided to the court at the time the motion to dismiss is heard. A hearing may not be required in the event of the death of the alleged incapacitated person prior to a determination of incapacity or a stipulation for dismissal by all persons entitled to notice provided that the motion is verified and the payment of costs of the examining committee and court-appointed attorney is adequately addressed.

### **3. Notice of Related Cases**

Attorneys and parties must notify the Court, by filing a notice of related case in each case, upon awareness of the existence of any other court proceedings in any jurisdiction that may be relevant to the subject matter before the Court. This includes cases pending in other divisions, such as dependency, family, and civil. A copy of any relevant orders from the related case must be provided to the Court promptly. This obligation is continuing, and applies throughout the proceeding.

### **4. Application for Appointment as Guardian**

Every proposed guardian seeking appointment by the court must file an application for appointment as guardian that is signed by the proposed guardian under penalties of perjury.

Professional guardians must update their application annually by filing either a list of current wards served by the guardian or a complete application for appointment as guardian. Professional guardians must denote any *pro bono* cases in the initial application and annual updates to their application. Nonprofit corporate guardians must file quarterly disclosure statements, in lieu of an application for appointment as guardian, denoting any *pro bono* cases.

## **5. Appointment of Guardian**

### **a. Professional Guardians**

Professional guardians seeking appointment must establish a professional guardian file with the Clerk of the Circuit Court ("Clerk") and submit documentation that the requirements of Sections 744.2002, 744.2003, and 744.3135, Florida Statutes, have been satisfied.

In addition to the credit and criminal history investigation documentation contained within a professional guardian's file maintained by the Clerk under Section 744.3135, Florida Statutes, professional guardians must submit the following items, which the Clerk will maintain in the professional guardian's file:

- i. Application for appointment as guardian and annual updates, or quarterly disclosure statements for nonprofit corporate guardians, in accordance with Section 744.3125, Florida Statutes;
- ii. Proof of blanket fiduciary bond required by Section 744.2003, Florida Statutes; and
- iii. Proof of registration and good standing with the Statewide Public Guardianship Office under Section 744.2002, Florida Statutes;

The above items should be updated at least annually, unless otherwise required by Chapter 744, Florida Statutes. Prior to the hearing on the appointment of a guardian, all proposed professional guardians shall ensure that all of the above documents have been filed in their file maintained by the Clerk.

Additionally, each professional guardian is responsible for maintaining individual records of attendance at continuing education programs. The records must include the date, hours, title, location, and sponsor of the course and the certificate of attendance if provided. At least 8 of the 16 hours of continuing education required by Section 744.2003, Florida Statutes, every two years must be directly related to ethics, guardianship duties, or care of the ward.

### **b. Nonprofessional Guardians**

Prior to the hearing on the appointment of a guardian, all proposed nonprofessional guardians must file a level 2 criminal background investigation and all proposed nonprofessional guardians of the property must file a full credit report taken within the last year in accordance with Section 744.3135, Florida Statutes. A copy of the entire free annual credit report from Equifax, Experian, or TransUnion is acceptable. At any other time, the court may require a nonprofessional guardian to submit to a level 1 or level 2 background screening and credit check under section 744.3135, Florida Statutes. In accordance with Section 744.3135, Florida Statutes, the Clerk will maintain a separate file on each guardian appointed by the court and retain in the guardian file documentation of the results of any investigation conducted under the section.

In order to obtain a level 2 criminal background screening, please visit the Florida Department of Law Enforcement's (FDLE) website for live scan vendors: <http://www.fdle.state.fl.us/cms/Criminal-History-Records/Documents/ApplicantLivescanService-ProvidersVendors.aspx>. The proposed guardian must make an appointment with a vendor to get fingerprints completed for a national background screening. The results will be sent electronically from the FDLE and Federal Bureau of Investigation (FBI) to the Clerk's office (using ORI # FL036023Z). Once received, the Clerk will file the results in the subject case as a confidential document. The results must be received by the Clerk directly from the FDLE and FBI.

#### **6. Constructive Service-Affidavit of Diligent Search and Inquiry**

To obtain constructive service in a guardianship case, all counsel and interested persons (if unrepresented) must complete and file an affidavit of diligent search and inquiry substantially similar to the affidavit designated as Florida Rule of Civil Procedure Form 1.924.

#### **7. Referral to General Magistrate**

Upon request of the presiding judge, a general magistrate will review guardianship inventories, accountings, and plans without an order of referral. See Fla. Prob. R. 5.697. Upon the filing of any other matter that may be referred to a general magistrate, an order of referral will be entered. Any objection to a referral should be in writing and filed no later than the date of the hearing of the matter referred. If an objection is filed, the matter will be heard by the presiding judge.

When a matter is referred to a general magistrate, any party may set the matter for hearing before the magistrate. The general magistrate will set aside specific dates and times to conduct guardianship hearings; however, hearings on guardianship matters are not limited to these general guardianship dockets and may be set during any available hearing time. If any hearing set on a general guardianship docket is expected to require more than fifteen (15) to twenty (20) minutes, it should be rescheduled as a special-set hearing with sufficient time to hear the matter.

#### **8. Setting of Hearings**

Initial hearings on petitions to determine incapacity and petitions to appoint a guardian, guardian advocate, or emergency temporary guardian will be set and noticed by the Clerk of Court. For all other hearings, attorneys may obtain available hearing times and schedule hearings by accessing the Judicial Automated Calendaring System (JACS) at <http://www.ca.cjis20.org/home/main/jacs.asp> or by telephoning the judge's or magistrate's judicial assistant in accordance with each judge's or magistrate's JACS guidelines. Unrepresented persons may obtain available hearing times and schedule hearings by telephoning the judge's or magistrate's judicial assistant.

If any hearing is cancelled or rescheduled, the attorney or unrepresented interested person setting the hearing is responsible for notifying the judge's or magistrate's judicial assistant and the opposing counselor(s) or interested person(s) of the cancellation as soon as possible. Attorneys must also cancel the hearing through JACS if the hearing was scheduled by the attorney through JACS.

All notices of hearing must state the length of the time reserved on the judge's or magistrate's calendar for the hearing and specify the matters to be heard. A notice indicating the hearing will be on "all pending motions" is not authorized. The matter to be heard must be set out

with particularity. There will be no cross-noticing on hearing times unless the opposing counsel or opposing interested person contacts the judge's or magistrate's office and determines whether the docket will accommodate hearing additional matters at the same time.

## **9. Hearings**

### **a. Non-Emergency Hearings**

Any petition, pleading, motion, or other document that is the subject of a hearing or a conference set before the court must be filed with the clerk no later than five days before the matter is to be considered. A hearing on any such petition, pleading, motion, or other document not so filed may be postponed until another hearing is scheduled. Memoranda of law and courtesy copies of any case law to be presented at the hearing must be delivered to the judge's or magistrate's chambers at least 48 hours prior to the hearing, unless otherwise specified in the judge's or magistrate's guidelines.

### **b. Emergency Hearings (excluding petitions to appoint emergency temporary guardian)**

Application for emergency relief in a case must be made to the presiding judge. Matters scheduled for hearing as an emergency shall be noticed and heard as the circumstances permit based upon judicial discretion.

### **c. Hearings on Petitions to Appoint an Emergency Temporary Guardian**

Hearings on petitions to appoint an emergency temporary guardian shall be noticed and heard in accordance with Section 744.3031, Florida Statutes.

### **d. General**

In the interest of the efficient administration of justice and in consideration of the court's docket, as well as opposing parties' or their counsel's time and expense, it is incumbent upon the parties and their counsel to notify promptly the court and all interested parties of an objection or substantial dispute which will affect the court's ability to proceed with a scheduled hearing.

## **10. Court Reporters**

The court will not provide court reporters for hearings. If an attorney or unrepresented interested person wishes to have a court reporter present during any hearing, it is that attorney's or unrepresented interested person's responsibility to contact a court reporter to arrange for the presence of such reporter. However, all guardianship hearings are electronically recorded by the Court. A party may request an electronic certified copy of the proceeding on CD, at that party's expense, and may then have the recording transcribed, at that party's expense. Media request forms, procedures, and fees, and a list of approved transcriptionists are available on the Court's website, [www.ca.cjis20.org](http://www.ca.cjis20.org), or by calling the Court's Electronic Court Reporting Department at 239-533-8207.

## **11. Adversary Proceedings**

In an adversary proceeding as defined by Florida Probate Rule 5.025, the following provisions apply:

### **a. Case Management Conference**

All petitioners must schedule a case management conference within 60 days of commencing an adversary proceeding. All trials or final hearings of adversary proceedings must be set by the court entering a Uniform Order Setting Adversary Proceeding for Trial and Pretrial Conference (Nonjury). Once scheduled, a hearing may not be cancelled unilaterally by counsel.

b. Military Service -Memorandum for Certificate of Military Service

If a petitioner does not know whether the respondent is on active duty in a branch of the military service of the United States, the petitioner must complete a memorandum for certificate of military service substantially similar to the memorandum designated as Florida Family Law Rule of Procedure Form 12.912(a).

c. Default Judgment -Affidavit of Military Service

If a petitioner seeks a default judgment and the respondent has been properly served and has not responded to the petition, the petitioner must complete and file an affidavit of military service substantially similar to the affidavit designated as Florida Family Law Rule of Procedure Form 12.912(b).

d. Motions to Compel-Order Without Hearing

When a motion to compel complying with Florida Rule of Civil Procedure 1.380(a)(2) alleges the absence of a response or objection to discovery and there has been no request for an extension of time to respond, the court, without a hearing, may enter an order requiring compliance with the original discovery request within 10 days of the signing of the order, provided no written showing of good cause has been filed by the non-movant. The movant or movant's attorney must submit to the presiding judge sufficient hard copies of the proposed order along with stamped, addressed envelopes.

e. Motions to Set Case for Trial-Certificate by Attorney

All motions to set a case for trial must contain a certificate by the attorney or party filing such motion that the attorney or party has discussed the subject matter of the motion with all other attorneys or parties and has been unable to reach agreement concerning the setting of the case for trial, or that the opposing attorneys or parties have failed to respond.

**12. Orders and Reports and Recommendations**

a. Consultation with Opposing Counsel or Party

Unless the presiding judge or magistrate directs otherwise, prior to submitting a proposed order or report and recommendation ("report") for the court's consideration after a hearing, the counsel submitting the proposed order or report must consult with opposing counsel or unrepresented party within five days after the court's decision and make a genuine effort to agree on the language of the proposed order or report.

b. Timely Submission

All proposed orders and reports must be submitted to the court by the attorney directed to prepare the order or report within 10 days after the court's decision.

c. Submission of Proposed Orders

Unless the presiding judge or magistrate directs otherwise, the party or attorney who is requested to submit a proposed order or report will do so by submitting to the presiding judge or

magistrate sufficient hard copies of the proposed order or report along with stamped, addressed envelopes. Prior to submitting a proposed order or report, the attorney must review the presiding judge's or magistrate's guidelines to determine that judge's or magistrate's format preference. Generally, if the proposal is anticipated to be revised in any way by the presiding judge or magistrate, Microsoft Word is the preferred format. Conversely, if the proposed order or report is on a routine matter and is expected to be adopted without any revisions by the court, then searchable PDF is the preferred format.

d. Title

The title of every proposed order submitted must contain the subject matter of the pleading or motion upon which the ruling is made and must fairly apprise the reader of the action being ordered. Phrasing such as "order granting . . ." or "order denying . . ." is preferred over "order on . . ."

e. Required Statement

An order must not be submitted to a judge unless the order contains one of the following: (1) a statement of the hearing date during which the subject matter of the order was argued before the court; (2) a statement that the matter was submitted *ex parte*; or (3) a statement that the matter was presented by stipulation. All proposed orders based on a stipulation must be submitted as a separate document apart from the stipulation. A report submitted to a magistrate must contain a statement of the hearing date during which the subject matter of the report was argued before the court.

f. Objections

Any attorney or party who objects to the entry of a proposed order or report which has been submitted to the presiding judge or magistrate must immediately notify the judge's or magistrate's office via telephone or e-mail. If the objection notification is made by e-mail, the opposing attorney or party must be copied on the e-mail message. The objecting attorney or party must submit an alternative proposed order or report within five days of communicating the objection. If an alternative proposed order or report has not been received by the court within five days, the court will consider the objection withdrawn.

**13. Notice of Change of Guardian's Contact Information**

A guardian must promptly advise the court, via written notice filed with the Clerk in each case in which the guardian has been appointed and is serving, of any change of his or her name, address, telephone number, or e-mail address. Notice should be filed with the Clerk within thirty (30) days of such change and must list the case number.

**14. Substitution of Counsel and Resident Agent**

Any stipulation for the substitution of counsel for a guardian must be signed by the attorneys involved and by the guardian. If the former attorney is the designated resident agent for the guardian, then the former attorney should resign, and a new resident agent should be designated. This rule will not affect the right of a guardian to change attorneys, so long as notice is given to the former attorney.

## **15. Mediation**

The court may on its own motion or on the motion of the guardian or other interested person refer adversary proceedings or other adversarial matters to mediation. If the mediation order is entered on the motion of the guardian or other interested person, an order with sufficient copies and stamped, addressed envelopes will be provided for the service of the copies of the mediation order.

## **16. Guardianship of Veterans and Other Persons Entitled to Receive Benefits from the United States Department of Veterans Affairs**

Part VIII of Chapter 744 (Sections 744.602-.653), Florida Statutes, applies to the guardianship of a veteran and other persons who are entitled to receive benefits from the United States Department of Veterans Affairs (the "Department"). The Secretary of Veterans Affairs is a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward, and in any suit or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits paid by the Department. Notice to the Department must be provided in writing at least fifteen (15) days prior to hearing such matters. To the extent known, a petition for appointment of a guardian should state whether the alleged ward is a veteran or other person entitled to benefits from the Department and should identify any such benefits. In such cases, the guardian shall post a bond in an amount not less than the sum of the amount of moneys then due to the ward and the amount of moneys estimated to become payable during the ensuing year. In such cases, notice of a petition to apply estate funds for the support and maintenance of a person other than the ward must be provided to the proper office of the Department. In addition to such other accounts as may be required by the court, every guardian who receives on account of a ward any moneys from the Department shall file under oath annually, on the anniversary date of the appointment, a full, true, and accurate account of all moneys received as set forth more particularly in Section 744.634(1), Florida Statutes. The guardian shall send a certified copy of such account to the Department. If a hearing is set on such account, either at the court's discretion or upon petition of an interested party, notice of same shall be provided to the Department and all other persons identified in Section 744.634(3), Florida Statutes. The failure to file any account or to furnish the Department with a copy of an account shall be grounds for removal of the guardian. Upon issuing letters of guardianship, the Clerk shall send to the regional office of the Department having jurisdiction in this state two certified copies of the letters and two certified copies of the bond approved by the court, without charge or expense to the estate involved. The Clerk shall also send a certified copy of the letters to the property appraiser and to the tax collector in each county in which the ward owns real property. The fee for the attorney filing the petition and conducting the proceedings shall be fixed by the court in an amount as small as reasonably possible, not to exceed \$250, subject to the filing of a petition for extraordinary attorney's fees. Absent a petition for extraordinary services and hearing on same, the amount of compensation payable to a guardian shall not exceed five (5) percent of the income of the ward during any year and such may be taken by the guardian on a monthly basis. If the Department approves a request for extraordinary attorney's fees or guardian services, a hearing is not required but the court must enter an order authorizing the guardian to withdraw the funds from the guardianship account. A guardian appointed under Part VIII of Chapter 744, Florida Statutes, shall not be required to comply with the annual reporting requirements set forth in Section 744.367, Florida Statutes.

## **17. Guardianship of a Minor**

A petition for a custody arrangement in a guardianship of the person for a minor child under Section 744.3021, Florida Statutes, requires the voluntary consent of all living parents, and must be accompanied by a UCCJEA Affidavit, Family Law Form 12.902(d). If the location of a living parent is unknown, sworn testimony must be elicited to establish same, including all efforts of diligent search and inquiry.

If a guardianship of the person for a minor child is established and a parent later withdraws the consent, the parent must file a notarized notice of withdrawal of consent with the Clerk and serve the notice on all interested parties and the Court. The parent, guardian, or any interested person may afterwards file a petition for discharge of the guardian and termination of the guardianship. A hearing must be scheduled with the Court prior to the termination of guardianship.

If the minor is the subject of a petition for adoption, counsel for the adoption petitioner must present to the adoption court an order terminating the guardianship of the person of the minor at the same time the final judgment of adoption is presented. The original of this order must be promptly filed with the Clerk, and a copy must be filed in the guardianship case. If the adoption is finalized in another circuit, a notice of adoption must be filed with the guardianship court within thirty (30) days following the adoption of the minor child along with a petition to terminate the guardianship of the person of the minor.

A petition for guardianship of the property of a minor must be accompanied by an Acknowledgment of Proposed Guardian of a Minor's Property and Acknowledgment of Counsel for Proposed Guardian of a Minor's Property, which forms are available at <https://www.ca.cjis20.org/home/main/probate.asp>.

## **18. Approval of Settlement of Minor and Incompetent Claims**

A petition seeking court approval of the settlement of a claim on behalf of a minor or incompetent must comply with Florida Probate Rule 5.636 and Sections 744.301, .3025, and .387, Florida Statutes.

All settlements arising out of an action filed in civil court must be approved by the civil court judge having jurisdiction over the action. With respect to settlements reached prior to the filing of an action in civil court, the guardianship court will conduct a hearing to determine if the settlement is in the best interest of the minor or incompetent and if the attorney's fees and costs are fair and reasonable. An incompetent must be present at the hearing as well as the parent, next friend or guardian, unless excused by the court. A minor is not required to attend the hearing unless otherwise directed by the court. The attorney must have available for the court the most recent medical report of the treating physician in tort claims.

In situations where approval of a settlement for less than the actual value of the claim is requested because of policy limits, evidence indicating the amount of insurance coverage must be produced at the hearing. If a guardian ad litem report is required based on the amount of the settlement or otherwise ordered by the court, a courtesy copy of the report must be provided to the court at least 48 hours prior to the hearing.

In accordance with Section 744.3025, Florida Statutes, in cases involving a minor in which the gross settlement exceeds \$15,000, the Court may appoint a guardian ad litem to represent the



minor's interests if the Court believes a guardian ad litem is necessary to protect the minor's interest. In cases involving a minor in which the gross settlement equals or exceeds \$50,000, the Court shall appoint a guardian ad litem to represent the minor's interest. In cases requiring the appointment of a guardian ad litem or where a guardian ad litem is otherwise requested, a petition for appointment of guardian ad litem must be filed and a proposed order granting same may be submitted to the Court for entry without a hearing.

## **19. Mandatory Depository**

### **a. Minor Guardianships**

Unless waived or otherwise ordered by the court, in every guardianship of the property of a minor ward, a depository must be designated in accordance with Section 69.031, Florida Statutes, for deposit of all cash owned by or owed to the ward, wherever located. For good cause shown, the court may waive the necessity of a depository, in which case a bond will be required.

### **b. All Other Guardianships of Property**

Unless waived or otherwise ordered by the court, in every guardianship of the property, except a minor guardianship (see above), the guardian must file a bond with surety in accordance with Section 744.351, Florida Statutes, or place in a restricted depository in accordance with Section 69.031, Florida Statutes, all cash assets or cash-equivalent assets of the ward. A one-time sum of \$3,000, or any other amount specified by the court, may be maintained outside of the depository for payment of the ward's initial expenses, including costs incurred with the establishment of the guardianship proceeding and payment of the examining committee. The ward's income need not be placed in the restricted depository, unless otherwise ordered by the court.

## **20. Order of Appointment of Guardian**

Every order appointing a guardian submitted to the court for entry must include the following language:

*The guardian is directed to read and become familiar with the Policies and Procedures for Guardianship Cases in Lee County, Florida and, further, to comply with such Policies and Procedures. The failure to comply may result in contempt proceedings and/or other appropriate sanctions.*

## **21. Initial and Annual Guardianship Reports**

Every guardian must file an initial guardianship report, as required by Sections 744.362, 744.363, and 744.365, Florida Statutes, within the statutory timeframe, unless waived by the court. The reporting period for the initial plan will begin with the date that letters of guardianship were signed by the court and end the following year, on the last day of the anniversary month in which the letters of guardianship were signed. Upon approval of the initial guardianship report (plan and inventory, if applicable), counsel for the ward is no longer obligated to represent the ward pursuant to Section 744.362(2), Florida Statutes. Within thirty (30) days of filing the initial guardianship report, Counsel for the guardian should submit a proposed order approving the initial guardianship report to the Clerk, and such proposed order should state that counsel for the ward is discharged upon approval of the initial guardianship report. The Clerk will forward the proposed order with

the Clerk's audit to the judge for review. The failure to file timely the initial guardianship report or to submit a proposed order granting same may result in the issuance of an order to show cause.

A guardian of the person must, thereafter, file the annual guardianship plan as required by Sections 744.367 and 744.3675, Florida Statutes. Unless otherwise ordered, annual plans must be filed within 90 days after the last day of the anniversary month in which the letters of guardianship were signed by the court, and must cover the coming fiscal year, ending on the last day in such anniversary month. The reporting period for the annual plan will begin on the first day of the first month following the month in which letters of guardianship were signed by the court and end the following year, on the last day of the anniversary month in which the letters of guardianship were signed. The plan must accurately indicate the time period covered so that there is no lapse between annual reporting periods, and the plan must be prospective to cover the upcoming year. If a ward is in a persistent vegetative condition and the guardian wishes to use substantially the same plan as in previous years, then the guardian must provide a reasonable basis for doing so.

A guardian of the property must file the annual guardianship accounting as required by Sections 744.367 and 744.3678, Florida Statutes, on a fiscal-year basis unless otherwise ordered. Annual accountings must be filed on or before the first day of the fourth month after the end of the fiscal year, and must cover the preceding fiscal year. The fiscal year will be deemed to end on the last day of the anniversary month in which the letters of guardianship were signed. Therefore, the reporting period for the first annual accounting will begin with the date that letters of guardianship were entered and end on the last day of the anniversary month in which the letters of guardianship were signed. Thereafter, the reporting period for all future accountings will begin on the first day of the first month following the month in which letters of guardianship were signed by the court and end the following year, on the last day of the anniversary month in which the letters of guardianship were signed. Annual accountings must include all property interests of the ward regardless of how the property is titled unless specifically exempted under Section 744.3678, Florida Statutes, and should be accompanied by copies of all bank statements for the ward's assets.

All reports must include the guardian's signature, current address, current telephone number with area code, and e-mail address. Additionally, all reports must include the signature of the attorney of record, the attorney's current address, current telephone number with area code, e-mail address, and Florida Bar number. All reports must be signed under penalties of perjury. If the reports cannot be filed in the time required by law, a motion for extension of time must be filed within the respective time period. Reports must not be filed prior to the end of the applicable reporting period. Within thirty (30) days of filing the annual guardianship plan and/or accounting, Counsel for the guardian should submit a proposed order approving the annual guardianship plan and/or accounting to the Clerk. The Clerk will forward the proposed order with the Clerk's audit to the judge for review.

Audit fees must be paid to the clerk in accordance with Sections 744.365 and 744.3678, Florida Statutes.

Under the appropriate circumstances, the guardian may use the simplified accounting procedures under Section 744.3679, Florida Statutes, or file a verified petition clearly indicating the justification for the court to allow simplified plans or waive the requirement of annual accountings. If the court grants a petition to allow simplified plans, the guardian must use the court's approved form.

## **22. Trust Reporting and Authority upon Court Approval**

### **a. Verified Inventory**

Where the ward is the beneficiary of a trust, the guardian must file the page(s) of the trust listing the amount in the trust, the identity of the trustee, and the identity of the ward as a beneficiary. A copy of the entire trust is required if the guardian also serves as a trustee. If the guardian is not a trustee, the inventory should reflect the ward's beneficial interest in the trust at a \$1.00 carrying value. If the guardian serves as trustee, the trust assets should be itemized and listed as the value on hand at the time of appointment. The court will require copies of statements, as of the date of appointment so that the beginning values can be verified before any monies are expended. The audit fee is based on the corpus of inventory, which includes trust assets so listed. All other requirements stated in Section 19 above apply.

### **b. Annual Accounting**

The annual accounting need not include "any property or any trust of which the ward is a beneficiary but which is not under the control or administration of the guardian." If the trust is controlled or administered by the guardian, then it must be included in the annual accounting. If the guardian is the trustee, then the trust property must be included in the annual accounting. The annual accounting shall include any income received from the trust. All other requirements stated in Section 19 above apply.

### **c. Powers of Guardian Regarding Trusts upon Court Approval**

With court approval, the guardian has the power to create or amend a revocable trust or create an irrevocable trust with the ward's property for tax/estate/gift/income planning purposes. The court now retains "oversight" of the property transferred to the trust, unless the court orders otherwise. This court has interpreted this to mean the court has oversight when it reviews the trust property per the annual accounting. By court order, the court can relieve the guardian of the court's oversight.

### **d. Bond**

If the guardian is also the trustee of a trust, the bond amount shall include all trust assets unless otherwise waived and approved by the court. If the guardian is not the trustee of the trust, the bond amount need not include all trust assets.

### **e. Guardian Fees and Expenses**

A guardian shall not request the trustee to pay guardian fees or reimburse the guardian's expenses without prior court approval per Section 744.108, Florida Statutes. However, upon the filing of a petition for guardian fees, reimbursement of the guardian's expenses, or payment of funeral expenses, a guardian may request the trustee to pay the amount requested in such petition to the guardian's attorney, to be held in the attorney's trust account pending court approval. The order on the petition may direct the guardian's attorney to release the funds, or a portion thereof, to the guardian or to return the funds, or a portion thereof, to the trust.

### **f. Pooled Trusts and Qualified Income Trusts**

Pooled trusts and qualified income trusts shall be treated the same as any other trust for reporting and all other purposes.

### 23. Guardian's Fees

All petitions to the court for approval of compensation to a guardian must be accompanied by an itemized description of the services provided for which fees are sought. This itemization of services must be provided in chronological date order and in line-item format, with each line-item entry containing a specific description of the services rendered, the date listed with the amount of time expended on each service in one-tenth (0.10) of an hour increments. This information must also state the rate charged and amount sought to be approved. Notices to, or the signed consent of, the guardian of the property or the Veterans Administration or both must be submitted with the petition for guardian's fees, if applicable. No payment of guardian's fees or expenses may be made without the prior entry of a court order approving the fees and expenses. Fees will be awarded by the court after applying the analysis specified in Section 744.108, Florida Statutes. When fees and expenses are awarded, the approved amount must be transferred in full from the ward's account.

All petitions for guardian's fees must reference all prior fees paid and the billing time period included. A petition must not exceed a billing time period of one year without prior court approval, and must not be filed more frequently than quarterly. The first petition for guardian's fees may be filed as early as three months after letters of guardianship are signed; however, the first fee petition will not be approved until the inventory is filed by the guardian and approved by the court. Thereafter, a petition for guardian's fees will not be approved if statutorily-required reports are delinquent, without a court-ordered extension. Instances of non-compliance with statutory, administrative, or court-ordered requirements may result in a reduction of a guardian's fees. Any reductions imposed by the court for such non-compliance will not become final until the guardian has had an opportunity to be heard on the matter.

The fee structure for professional guardians will vary and be based primarily upon a guardian's years of experience as a professional guardian. Please see Appendix A, Professional Guardian Fee Guidelines, which includes a schedule of customary rates charged in Lee County by guardians for similar services. These rates are non-binding guidelines, and are subject to review given the criteria set forth in Section 744.108(2), Florida Statutes, based upon the facts and circumstances of each particular case. If the guardian's requested fees exceed these guidelines, the factual basis justifying deviation from the guidelines should be stated in the petition for fees and should be verified by the guardian.

All petitions for guardian's fees must include the following certification immediately before the guardian's signature:

*I certify that all reports currently due, including, but not limited to the initial plan, initial inventory, annual plan, annual accounting, and/or final accounting, and the educational requirements, if applicable, have been filed. I further certify that I am familiar with the Policies and Procedures for Guardianship Cases in Lee County, Florida and affirm that I am in compliance with such Policies and Procedures.*

Professional guardians must add the following sentence:

*I further certify that my professional guardian file is current and complies with all statutory and administrative requirements.*

## **24. Attorney's Fees**

The attorney for a guardian may petition the court for approval of attorney's fees *ex parte* at any time if the guardian has executed a written consent or has joined in the petition only if no other persons are entitled to notice of the petition. When notice is required, the guardian may submit the petition for approval of attorney's fees *ex parte* 30 days after service by formal notice upon all interested persons. Any petition for attorney's fees must contain an itemized billing statement for the attorney's service with the amount of time expended on each service in no more than one-tenth (0.10) of an hour increments and must be served on all interested persons. If the attorney and the guardian cannot agree upon a fee or if an objection to the attorney's fees is made by an interested person, a hearing must be set before the court. If attorney's fees are paid to the attorney by the guardian without prior court approval, the guardian must attach an itemized billing statement for the fees, in accordance with the provisions of Section 744.108, Florida Statutes, to the annual accounting in which the disbursement for the attorney's fees is documented. Any written consent of the guardian, and any interested person(s), to the requested fees must be filed contemporaneously with the fee petition or motion. *Any attorney's fees paid without prior court approval are subject to review by the Court in conjunction with the annual accounting and the attorney may be ordered to disgorge any fees found to be unnecessary, unreasonable, or otherwise inappropriate.*

## **25. Court Reviews**

The Public Integrity Unit/Guardianship Audit Program, under the auspices of the Lee County Clerk of Court & Comptroller's Inspector General Department, is utilized by the court to review filings and documentation related to guardianship cases and report to the court based upon its reviews. The Public Integrity Unit/Guardianship Audit Program staff will review: (a) professional guardian files for annual statutory compliance; (b) guardians' petitions for fees and compensation; (c) initial reports; (d) annual plans; and (e) accountings as requested by the court. The above persons will be authorized to participate in guardianship hearings, as requested by the court, to address issues related to their reviews.

Additionally, the court may select a number of guardianship files for a comprehensive audit of all transactions. The audit may be conducted by a court monitor, the clerk, the Public Integrity Unit/Guardianship Audit Program, a general magistrate, or anyone else designated by the court.

## **26. Requests for Notices and Copies of Pleadings**

In accordance with Florida Probate Rule 5.060, any interested person who desires notice may file a written request for notice of further proceedings. Such persons must indicate a current residence, post office address, and e-mail address. A new address designation must be filed by the requesting person when any address changes occur. Any person filing a request for notice must also provide a copy of the request to the clerk for forwarding to the guardian's attorney or the guardian, if not represented by counsel. Thereafter, the interested person must receive notice of further proceedings and must receive copies of subsequent pleadings and papers by the movant as long as such person remains an interested person.

## **27. Change of Ward's Residence**

As the court has an interest in management of the ward's care, the guardian should inform the court, in writing, if the ward's residence changes to a new location within Lee County or to an adjacent county in accordance with Section 744.1098(2), Florida Statute, within 15 days of such

change. In accordance with Section 744.1098(1), Florida Statutes, a guardian may not, without prior court approval, change the residence of the ward to another state or to a non-adjacent county. If a ward's permanent residence is changed to a county other than Lee County, the guardian and the guardian's attorney must file all appropriate pleadings and proposed orders to have venue of the guardianship case transferred to the court in the appropriate county.

## **28. Death of the Ward**

Within 30 days after the death of the ward, the guardian must file a notice of death. A certified copy of the ward's death certificate must be applied for within 15 days of the ward's death and filed immediately upon receipt.

The guardian of the property must file a final report in compliance with Section 744.527, Florida Statutes, and Florida Probate Rule 5.680, unless waived in writing by all necessary interested persons, and petition for discharge, unless extended by court order. Any objections to the final accounting or discharge are required to be filed in accordance with Florida Probate Rule 5.680.

## **29. Motions to Withdraw**

Any motion to withdraw as attorney for a guardian that is based upon lack of client contact must be verified and include all diligent efforts made by the attorney to locate the guardian. Any motion to withdraw as attorney for a guardian must include the name, address, and telephone number of the financial institution where the guardianship funds are located; the account number(s); and the current balance on all accounts, together with verifying account documentation, if available. If this information is not obtainable by counsel, the motion to withdraw as attorney for guardian must detail all diligent efforts made to secure this information and documentation for the court. Termination of representation must comply with Rule 4-1.16 of the Rules Regulating The Florida Bar.

## **30. Order to Show Cause Docket**

The clerk will prepare an order to show cause docket in accordance with the applicable Florida Rules of Civil Procedure and the applicable Florida Probate Rules to address the failure to file (or the non-compliant filing of) an inventory, plan, accounting, or any other required paper or backup documentation, to pay any required fee or cost, or to comply with any order of the court, statute, rule of procedure, or other requirement of law. Appearance at the hearing by all persons named in the order is mandatory unless compliance is obtained sufficiently in advance of the hearing to permit the hearing to be cancelled by the court.

## **31. Professional Conduct and Courtroom Decorum**

Counsel must adhere to the Oath of Admission to The Florida Bar, The Florida Bar's Creed of Professionalism, The Florida Bar's Professionalism Expectations, the Guidelines for Professional Conduct, and the Rules Regulating The Florida Bar ([www.floridabar.org](http://www.floridabar.org)), all decisions and opinions of the Florida Supreme Court and the Standards of Professional Courtesy and Conduct for Lawyers Practicing in the Twentieth Judicial Circuit (Admin. Order 2.20 available at [http://www.ca.cjis20.org/home/main/ao\\_judicial.asp](http://www.ca.cjis20.org/home/main/ao_judicial.asp)). Each judge or magistrate may announce and enforce additional requirements, or may excuse compliance with any provision(s) of the Guidelines or Standards as that judge or magistrate deems appropriate.

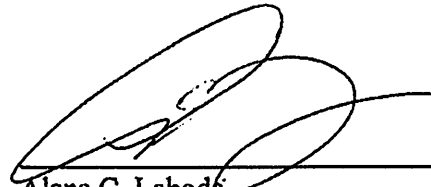
**32. Priority**

The procedures and time standards set forth herein are intended to facilitate the timely, fair and effective resolution of guardianship cases while ensuring the efficient use of court resources. The procedures and time standards do not supplant any existing rule, statute, or law. These policies and procedures shall not be construed as granting any rights not already provided for by rule, statute, or law. To the extent that any provision of these policies and procedures may be construed as being in conflict with any applicable rule, statute, or law, the rule, statute, or law shall prevail.

**33. Effective Date**

These policies and procedures are effective immediately upon approval by the Chief Judge as set forth below.

Date: 2/12/19

  
\_\_\_\_\_  
Alane C. Labodé  
Civil Administrative Judge, Lee County

## APPENDIX A

### PROFESSIONAL GUARDIAN FEE GUIDELINES FOR GUARDIANSHIP CASES IN LEE COUNTY, FLORIDA

I. Purpose and Application. These Guidelines are advisory only. The taxation of guardian fees and costs in any particular proceeding is guided by Section 744.108, Florida Statutes, and within the broad discretion of the trial court. The trial court should exercise that discretion in a manner that is consistent with the policy of reducing the overall costs of guardianship and of keeping such costs as low as justice will permit. With this goal in mind, the trial court should consider and reward utilization of innovative technologies which minimizes costs and should reduce the award when the use of innovative technologies would have resulted in lowering costs. These guidelines are not intended to limit the amount of fees or costs recoverable under a contract or statute or to prejudice the rights of any person objecting to an assessment of costs on the basis that the assessment is contrary to applicable substantive law.

II. Burden of Proof. Under these guidelines, it is the burden of the moving party to show that all requested fees and costs were reasonably necessary at the time the action precipitating the fee or cost was taken.

III. Customary Hourly Rates for Professional Guardians. Below is a fee schedule of customary rates charged in Lee County by professional guardians for similar services. These rates are non-binding guidelines, and are subject to review given the criteria set forth in Section 744.108(2), Florida Statutes, based upon the facts and circumstances of each particular case. Once a guardian's fee request has been approved at a particular rate in a particular case, future requests at the same rate in the same case are likely to be granted. **Unilateral raises without leave of court are not permitted. Any increase to a prior-approved rate should be sought by motion supported with evidence based upon the facts and circumstances of each particular case and the criteria set forth in Section 744.108(2), Florida Statutes.**

Years of Experience	Customary Hourly Rate
0-3 years (through third anniversary)	\$70-75
4-5 years (after third anniversary through fifth anniversary)	\$75-85
6+ years (after fifth anniversary)	\$85-90

IV. General Guidelines and Recordkeeping. Each guardian shall maintain contemporaneous records of the time spent on behalf of each ward. Itemization of services and costs shall be listed in chronological order. Sufficient detail shall be provided to permit the Court to determine a.) that the services were rendered on behalf of the ward and b.) the reasonableness and necessity of the services provided. *See In re Guardianship of Sapp*, 868 So. 2d 687, 695 (Fla. 2d DCA 2004) ("The strict enforcement of the mandate of section 744.108(5) will promote the efficient and inexpensive administration of guardianship estates."). Whenever a guardian seeks fees or costs which exceed these guidelines, a justification shall be provided in the time records. Time shall be billed in



increments no larger than tenths (0.1) of an hour (6 minutes). The petition and proposed order for fees and costs shall state the amount of fees and costs awarded to date, as well as the time periods covered for each award and the current request. Petitions for fees shall include an itemized statement of services, expenses, and the rate charged for services. Notices to, or the signature/consent of, all interested persons and persons entitled to notice including the ward, where applicable, should be submitted with the petition for fees. Proposed orders for fees and costs should include blank spaces and the Court will fill in the amounts. Block billing should only be used when similar or related matters are performed at or around the same time. For example, block billing is appropriate to group together a number of small time entries, which would aggregate to more time than the actual time necessary to complete the task (e.g., billing several 0.1 and 0.2 entries for multiple phone calls to make arrangements for an appointment totaling 0.6 hours, when the cumulative time actually spent to complete the whole task was only 0.3 hours). The Court is obligated to act in the best interest of the ward and having guardians group related items most often works out to be in the best interest of the ward. Unrelated matters should be itemized separately with a corresponding time entry. Fee petitions should be filed no less than annually and no more than quarterly. Fee petitions should not be submitted, and will not be approved, if the guardian is delinquent on any filing requirement. If the guardian is unable to comply with any filing requirement for reasons beyond his/her control, the guardian should petition for and obtain an extension of time to comply prior to the deadline.

V. Guardian Versus Clerical Fee Distinction. The below guidelines assume the elimination of the guardian versus clerical rate distinction because the review of petitions using the distinction can be unduly burdensome. Reasonable steps have been taken in order to avoid potential fee inequities that would likely result from the elimination of the guardian/clerical distinction. Accordingly, the below written guidelines incorporate safeguards in the form of fee caps for particular matters involving traditionally clerical matters such as bill paying, shopping, and copying/faxing/filing. Additionally, as noted more particularly below, whenever possible guardians should use clerical staff, companions, and/or caregivers to perform work that does not require the guardian's fiduciary expertise.

VI. Guardian Fees and Costs That Should Be Awarded. This is a non-exhaustive list of services customarily provided by professional guardians for a ward, and is not intended to limit a request for compensation for services provided by a professional guardian on behalf of a ward.

A. Paying the Ward's Bills. Paying the ward's bills, including reviewing and paying the bills, is compensable. Generally, the bill should be paid at the same time it is reviewed so that there are not separate or duplicative time entries for each. The payment of most ordinary and regular bills should be limited to 0.1 hours per bill, but the Court understands there may be times when the payment of a bill may justify a higher amount of billed time. By way of example, where the payment of a medical bill that was partially covered by insurance requires the guardian to review the Explanation of Benefits ("EOB") provided by the insurance company to make sure the amount being paid is appropriate and there was some problem or confusion regarding the amount billed that required additional time to resolve, more than 0.1 hours may be appropriate if clearly documented in the billing records. However, the review of an EOB when paying a bill alone would not, by itself,

warrant more than 0.1 hours per bill. Bill paying should not exceed two (2) hours per month without detailed explanation.

B. Visiting with the Ward. In general, professional guardians should visit the ward monthly, and those visits are compensable. If more frequent visits are required, the professional guardian should explain in the billing description why the extra visit was necessary and describe how the visit benefitted the ward. In certain circumstances, it might be beneficial for the guardian to pay for a companion, at a much lower hourly rate than the guardian, to visit the ward. If a guardian chooses to use a companion service for social visits to the ward, the guardian should check to see if the agency requires a minimum time, and if the hourly charge is less than the guardian's rate of pay. Separate time entries should be made for the visit with the ward and the travel time to the ward's residence.

C. Banking for the Ward/Direct Deposit. Generally, time spent attending to the banking needs of the ward are compensable; however, professional guardians are strongly encouraged to have all of a ward's income directly deposited. If direct deposit is not possible, the guardian should explain why direct deposit was not available in the billing record. If the guardian otherwise is required to conduct banking business in person, the guardian should provide a detailed description of the duties performed to show that the visit was necessary and in the ward's best interest.

D. Arranging Transportation, Appointments & Services for the Ward and Attendance at Appointments. Attending appointments with the ward where the guardian's presence is required, such as visits to new doctors or specialists or appointments requiring decisive action by the guardian, is compensable. The guardian should provide detail in the billing entry to explain the guardian's need to attend the appointment. It is usually not necessary for a guardian to attend routine appointments with an established physician or where no fiduciary expertise is required. Guardians are encouraged to have a companion or caregiver accompany the ward to any appointments or activities where the guardian's presence is not required (such as dental cleanings, eye exams, and family functions) and the cost of a companion or caregiver would be less (taking into consideration any minimum amount charged by the companion or caregiver). In general, the ward should not be paying for both a companion/caregiver and the guardian to attend an appointment. Because arranging transportation and appointments could be done by clerical staff and does not require the fiduciary expertise of a professional guardian, fees for such services should be kept to a minimum and if substantial time is spent in this regard, a detailed explanation should be provided. Additionally, whenever the ward's living facility can assist with these matters, such as setting up transportation, the guardian should utilize such services, which the ward is already paying for as part of their residential care, and not unnecessarily charge for same.

E. Shopping with or for the Ward. Shopping for the ward is compensable, but, generally, should not exceed two-and-a-half (2.5) hours per month if a ward is at home and one (1) hour per month if the ward is in a facility without detailed explanation. If the guardian exceeds these guidelines, the guardian should explain in detail in the billing entry why the additional time was necessary. Guardians are encouraged to have a companion or caregiver perform these services, when possible to reduce costs. Companions or caregivers