

GUARDIANSHIP 101

WHAT IS GUARDIANSHIP?

Whereby the Court appoints a **guardian** (family member/friend or professional guardian) to oversee the person or property or both of an individual (**Ward**) who has been deemed incapacitated due to mental/cognitive issues or physical disabilities.

GUARDIANSHIPS FOR ADULTS

There are two types – **voluntary and involuntary**. Some adults recognize that they need help in handling their affairs. Involuntary appointments are made by someone other than the incapacitated adult. The court then appoints an **examining committee**, made up of 3 examiners, one of which is a physician to help the court decide if guardianship is needed and if so what type.

GUARDIANSHIP FOR MINORS

If both parents die or develop a disability, then a guardian is needed.

This type of guardianship ends when the child reaches 18. Regardless, the court shall appoint a guardian of the property of a child when the minor is entitled to an inheritance of his/her parents' estate or when a minor receives a monetary settlement from a lawsuit exceeds \$15,000.

TYPES OF GUARDIANSHIP

Guardian Advocate: A person appointed by a written order of the court to represent a person with developmental disabilities, under s. 393.12.

Example: Autism. This type of guardianship does not have an examining committee appointed to determine incapacity. The person already has a confirmed diagnosis for a disability that limits their cognitive function.

GUARDIAN OF PERSON OR GUARDIAN OF PROPERTY

Guardian of Person: The guardian is responsible for making personal decisions for the Ward. Such decisions usually include day-to-day living arrangements, health care, education, and other matters related to the Ward's comfort and well-being. The Guardian is required to submit initial plans of care and annual plans to the court.

Guardian of Property: The guardian is responsible for managing all the assets of the Ward, ie., bank accounts, stocks, property, paying expenses, selling property when approved by the court and submitting verified inventory and accountings to the court.

PLENARY GUARDIAN OR LIMITED GUARDIAN

Plenary Guardian: A person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all the tasks necessary to care for his or her person or property. The guardian is responsible for all required person and property reports to the court.

Limited Guardian: A guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of a limited guardian. The Guardian is responsible for reports ordered by the court.

TYPES OF REPRESENTATION

Court Appointed Attorney (Elisor) for the Ward. The court maintains a list of attorneys who are willing to serve as attorneys for the Ward and the court chooses from that list who is assigned to a case. If the Ward is declared indigent, the Elisor can be paid a flat fee by JAC (Justice Administrative Commission). Payment is applied for when the elisor is discharged by the Court.

Represent a Professional Guardian who is the proposed guardian. Guardian signs an engagement of services agreement with the firm. Attorney fees and expenses are filed with the Court periodically throughout the case as determined by the attorney. Fees are paid from the assets of the Ward when the court issues an order authorizing the payment.

REPRESENT FAMILY MEMBER(S) WHO IS/ARE THE
PROPOSED GUARDIANS
(NON-CONTESTED CASE)

Family member(s) sign a fee agreement with the firm which can be a flat rate for initial pleadings and required initial reports. Flat rate is due at time fee agreement is executed. Once the client is appointed guardian (not in a Guardian Advocate case), a petition can be filed requesting reimbursement of the Client's flat rate through the Ward's assets and the ongoing attorney fees and expenses. If the case should become a contested case, per the fee agreement, it will move to an hourly rate for the attorney and paralegal services.

REPRESENTING A FAMILY MEMBER WHO IS
CONTESTING THE GUARDIANSHIP OR
PROPOSED GUARDIAN

The family member signs a fee agreement with the firm identifying a retainer that must be paid at the time the fee agreement is executed and the IOLTA account must be replenished by the client to maintain the same level of retainer at all times or as negotiated by the attorney.

GENERAL SERVICES IN GUARDIANSHIP

Counsel on case related issues, drafting pleadings for client review, filing of pleadings, providing copies of filed pleadings to client for their records, education on responsibilities of guardianship, responding to client questions, client preparation for hearings, representation at hearings, coordination with all parties, obtaining from client information needed for court ordered reports, preparation and filing of court ordered reports, providing copies of invoices for client review.

QUICK FACTS

- F.S. 744 Florida's Guardianship Law
- Florida Probate Rules: Part I –GENERAL; PART III – GUARDIANSHIP; Part IV – EXPEDITED JUDICIAL INTERVENTION CONCERNING MEDICAL TREATMENT PROCEDURES relevant to guardianship matters.
- The firm currently provides guardianship legal services in Brevard, Osceola, Charlotte, Duval and Polk Counties.
- Guardianship hearings are evidentiary; they are not trials.
- Hearings are held remotely unless the Court orders an in-person hearing.

QUICK FACTS - CONTINUED

- If the Ward is living in an unsafe environment and/or is vulnerable to exploitation, the court will appoint an emergency temporary guardian before the capacity of the Ward has been ruled upon.
- All Wards are appointed an attorney (Elisor) and served notice of petition for appointment of a guardian and petition to determine incapacity by their court appointed attorney prior to the hearing. However, Wards are allowed to select a private attorney if they so choose.
- Guardianship ends when the Ward dies or it is determined that the Ward's capacity has improved where a guardian is no longer required.