

RULE 5.050. TRANSFER OF PROCEEDINGS

(a) Incorrect Venue. When any proceeding is filed laying venue in the wrong county, the court may transfer the proceeding in the same manner as provided in the Florida Rules of Civil Procedure. Any action taken by the court or the parties before the transfer is not affected because of the improper venue.

(b) Change of Residence of Ward. When the residence of a ward is changed to another county, the guardian of the person or the guardian advocate shall have the venue of the guardianship changed to the county of the acquired residence.

Committee Notes

Subdivision (b) of this rule represents a rule implementation of the procedure found in section ~~744.202(3)~~744.1097(3), Florida Statutes.

Rule History

1975 Revision: Same as section 733.101(3), Florida Statutes.

1977 Revision: Title changed to indicate that the rule is one dealing with transfer.

1988 Revision: Prior rule renumbered as (a). New (b) is rule implementation of procedure in section 744.202(2), Florida Statutes. Editorial changes. Committee notes expanded. Citation form changes in rule and committee notes.

1991 Revision: Editorial changes.

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

2003 Revision: Committee notes revised.

2008 Revision: Change in (b) to add reference to guardian advocate. Committee notes revised.

2016 Revision: Committee notes revised to reflect renumbering of section 744.202(3) to section 744.1097(3), Florida Statutes. Updated statutory references.

Statutory References

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ch. 47, Fla. Stat. Venue.

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

§ 733.101, Fla. Stat. Venue of probate proceedings.

§ 744.106, Fla. Stat. Notice.

§ ~~744.201~~744.1096, Fla. Stat. Domicile of ward.

§ ~~744.202~~744.1097, Fla. Stat. Venue.

§ ~~744.2025~~744.1098, Fla. Stat. Change of ward's residence.

§ 744.306, Fla. Stat. Foreign guardians.

§ 744.3085, Fla. Stat. Guardian advocates.

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

Rule References

Fla. Prob. R. 5.200(d) Petition for administration.

Fla. Prob. R. 5.240(b)(3), (d) Notice of administration.

Fla. Prob. R. 5.649 Guardian advocate.

Fla. R. Civ. P. 1.060 Transfers of actions.

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

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

- (1) the facts to establish venue;
- (2) the petitioner's residence and post office address;
- (3) the name, age, and residence and post office address of the alleged incapacitated person;
- (4) the nature of the incapacity, the extent of guardianship, either limited or plenary, requested for the alleged incapacitated person, and the nature and value of property subject to the guardianship;
- (5) the names and addresses of the next of kin of the alleged incapacitated person known to the petitioner;
- (6) the name and residence and post office address of the proposed guardian, and that the proposed guardian is qualified to serve, or that a willing and qualified guardian has not been located;
- (7) the proposed guardian's relationship to and any previous association with the alleged incapacitated person;
- (8) the reasons why the proposed guardian should be appointed;
- (9) whether there are possible alternatives to guardianship known to the petitioner ~~that may sufficiently address the problems of the alleged incapacitated person in whole or in part, including, but not limited to, trust agreements, powers of attorney, or advance directives;~~ and
- (10) if the proposed guardian is a professional guardian, a statement that the proposed guardian has complied with the registration requirements of section ~~744.1083~~ 744.2002, Florida Statutes.

(b) Notice. Notice of filing the petition for appointment of guardian may be served as a part of the notice of filing the petition to determine incapacity, but

shall be served a reasonable time before the hearing on the petition or other pleading seeking appointment of a guardian.

(c) Service on Public Guardian. If the petitioner requests appointment of the public guardian, a copy of the petition and the notice shall be served on the public guardian.

Committee Notes

Rule History

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

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

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

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

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

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

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

1992 Revision: Citation form changes in committee notes.

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

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

2003 Revision: Committee notes revised.

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

2014 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.

20__ Revision: Subdivision (a)(9) revised to require the disclosure of whether there are possible alternatives to guardianship known to the petitioner. Committee notes revised.

20__ Revision: Subdivision (a)(10) amended to reflect the renumbering of the statute from section 744.1083 to section 744.2002, Florida Statutes. Committee notes revised to update statutory references.

Statutory References

§ ~~744.1083~~744.2002, Fla. Stat. Professional guardian registration.

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

§ 744.3115, Fla. Stat. Advance directives for health care.

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

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

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

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

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

§ 744.341, Fla. Stat. Voluntary guardianship.

§ ~~744.344~~744.2005, Fla. Stat. Order of appointment.

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

§ ~~744.703~~744.2006, Fla. Stat. Office of public guardian; appointment, notification.

§ 765.102, Fla. Stat. Legislative intent and findings.

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.

NOTE TO COURT: Amendments indicated in double underline and double strikethrough are pending with the Court in *In re: Amendments to the Florida Probate Rules*, SC16-168.

RULE 5.646. STANDBY GUARDIANS

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

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

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

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

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

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

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

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

(c) Petition for Confirmation.

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

- (A) the petitioner's residence and post office address;
- (B) the name, age, and residence and post office address of the adult incapacitated person or initials, year of birth, and residence address of minor;

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

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

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

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

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

(H) if the proposed guardian is a professional guardian, a statement that the proposed guardian has complied with the educational requirements of section ~~744.1083~~744.2002, Florida Statutes.

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

Committee Notes

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

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

Rule History

2006 Revision: New rule.

2008 Revision: Committee notes revised.

2014 Revision: Subdivision (c)(1)(B) amended to conform to Fla. R. Jud. Admin. 2.425. Committee notes revised.

20 Revision: Subdivision (c)(1)(H) amended to reflect the renumbering of section 744.1083 to section 744.2002, Florida Statutes. Committee notes revised.

Statutory Reference

§ 744.304, Fla. Stat. Standby guardianship.

Rule References

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

Fla. Prob. R. 5.600 Oath.

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

RULE 5.648. EMERGENCY TEMPORARY GUARDIAN

(a) Petition for Appointment of Emergency Temporary Guardian.

Prior to appointment of a guardian but after a petition for determination of incapacity has been filed, the alleged incapacitated person or any adult interested in the welfare of that person may petition for the appointment of an emergency temporary guardian of the person or property. The petition shall be verified and shall state:

- (1) the petitioner's residence and post office address;
- (2) the name, age, and residence and post office address of the alleged incapacitated person;
- (3) that there appears to be imminent danger that the physical or mental health or safety of the alleged incapacitated person will be seriously impaired or that the alleged incapacitated person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken;
- (4) the nature of the emergency and the reason immediate action must be taken;
- (5) the extent of the emergency temporary guardianship, either limited or plenary, requested for the alleged incapacitated person, and, if known, the nature and value of the property to be subject to the emergency temporary guardianship;
- (6) the names and addresses of the next of kin of the alleged incapacitated person known to the petitioner;
- (7) the name and residence and post office address of the proposed emergency temporary guardian, and that the proposed emergency temporary guardian is qualified to serve, or that a willing and qualified emergency temporary guardian has not been located, and;
- (8) the proposed emergency temporary guardian's relationship to or any previous association with the alleged incapacitated person.

(b) Notice. Notice of filing of the petition for appointment of an emergency temporary guardian and hearing on the petition must be served on the alleged incapacitated person and on the alleged incapacitated person's attorney at least 24 hours before the hearing on the petition is commenced, unless the petitioner demonstrates that substantial harm to the alleged incapacitated person would occur if the 24-hour notice is given.

(c) Service on Public Guardian. If the petitioner requests appointment of the public guardian as emergency temporary guardian, a copy of the petition and notice shall be served on the public guardian.

(d) Order. The order appointing the emergency temporary guardian shall specify the powers and duties of the emergency temporary guardian.

(e) Extension of Authority. Prior to the expiration of the authority of the emergency temporary guardian, any interested person may file a verified petition for extension of authority of the emergency temporary guardian. The petition must show that the conditions that warranted the initial appointment of the emergency temporary guardian still exist. The petition shall be served on the ward's attorney and on the emergency guardian.

(f) Final Report. An emergency temporary guardian shall file a final report no later than 30 days after the expiration of the emergency temporary guardianship. A copy of the final report shall be served on the successor guardian, if any, the ward, and the ward's attorney. With approval of the court, service on the ward may be accomplished by serving the attorney for the ward.

(1) If the emergency temporary guardian is a guardian of the property, the final report shall consist of a verified inventory of the ward's property as of the date letters of emergency temporary guardianship were issued, a final accounting that gives a full and correct account of the receipts and disbursements of all the ward's property over which the guardian had control, and a statement of the property on hand at the end of the emergency temporary guardianship.

(2) If the emergency temporary guardian is a guardian of the person, the final report shall summarize the activities of the guardian with regard to residential placement, medical condition, mental health and rehabilitative services, and the social condition of the ward to the extent of the authority granted to the emergency temporary guardian.

(3) If the emergency temporary guardian becomes the successor guardian of the property or person of the ward, the final report must satisfy the requirements of, and shall serve as, the initial report of the guardian of the property or person of the ward, as the case may be, as set forth in rule 5.690.

Committee Notes

Rule History

2007 Revision: New rule.

2015 Revision: Amended subdivision (b) to conform to statutory changes in section 744.3031(2), Florida Statutes. Committee notes revised.

20__ Revision: Committee notes revised to reflect renumbering of section 744.344(4) to section 744.2005, Florida Statutes. Updated statutory references.

Statutory References

§ 744.3031, Fla. Stat. Emergency temporary guardianship.

§ ~~744.344(4)~~744.2005, Fla. Stat. Order of appointment.

Rule References

Fla. Prob. R. 5.600 Oath.

Fla. Prob. R. 5.690 Initial guardianship report.

**RULE 5.670. TERMINATION OF GUARDIANSHIP ON CHANGE OF
DOMICILE OF RESIDENT WARD**

(a) Petition for Discharge. The Florida guardian may file a petition for discharge when the domicile of a resident ward has changed to a foreign jurisdiction, the foreign court having jurisdiction over the ward at the ward's new domicile has appointed a foreign guardian, and the foreign guardian has qualified and posted a bond in the amount required by the foreign court.

(b) Contents of Petition. The petition for discharge shall state:

- (1) that the grounds set forth in subdivision (a) have occurred;
- (2) that the guardian has fully administered the Florida guardianship; and
- (3) the amount of compensation to be paid to the guardian and to the attorneys, accountants, or other agents employed by the guardian.

(c) Final Report. The Florida guardian of the property shall file a final report showing receipts, disbursements, amounts reserved for unpaid and anticipated costs and fees, and other relevant financial information from the date of the previous annual accounting, and a list of the assets to be turned over to the foreign guardian.

(d) Notice. The Florida guardian of the property shall publish a notice as required by law, which shall state:

- (1) the name of the ward;
- (2) the file number of the guardianship;
- (3) the designation and address of the court;
- (4) the name and address of the guardian and the guardian's attorney;
- (5) the name and address of the foreign guardian and the foreign guardian's attorney, if any;

(6) the date of first publication;

(7) that a petition for discharge has been filed upon the grounds of change of domicile of the ward;

(8) the date the guardian will apply for discharge;

(9) that the jurisdiction of the ward will be transferred to the foreign jurisdiction;

(10) that any objection shall be in writing and shall state with particularity each item to which the objection is directed and the grounds on which the objection is based;

(11) that any objection to the final report or the petition for discharge shall be filed within the later of 30 days from the date of service of the petition for discharge or the date of first publication of the notice; and

(12) that within 90 days after filing of the objection, a notice of hearing thereon shall be served or the objection is abandoned.

(e) Service. A copy of the petition for discharge and of the notice of petition for discharge shall be served on the foreign guardian and such other persons as the court may direct.

(f) Objections. Objections shall be in the form and be filed within the time set forth in the notice of petition for discharge. A copy of the objections shall be served by the objector on the Florida guardian and the foreign guardian.

(g) Disposition of Objections. Any interested person may set a hearing on the objections. Notice of the hearing shall be served on the Florida guardian, the foreign guardian, and any other interested persons. If a notice of hearing on the objections is not served within 90 days of filing of the objections, the objections will be deemed abandoned.

(h) Discharge. The Florida guardian may not be discharged until all objections have been withdrawn, abandoned, or judicially resolved. After all objections have been withdrawn, abandoned, or judicially resolved, if the court is satisfied that the Florida guardian has faithfully discharged the duties of the guardianship and the interests of the ward are protected, and the Florida guardian

of the property has delivered the assets of the ward to the foreign guardian, the court shall enter an order of discharge.

Committee Notes

Rule History

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

1984 Revision: Adds 30-day requirement for filing objections. Editorial changes and Committee notes revised.

1988 Revision: Editorial change in (c). First and last sentences of (d) deleted and clarifying word added.

1989 Revision: Prior rule adopted as temporary emergency rule.

1991 Revision: Substantial revision of entire rule to harmonize with procedure for discharge of guardian under rule 5.680 and to conform to section 744.524, Florida Statutes.

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

2007 Revision: Subdivision (i) deleted because right of waiver is substantive. Committee notes revised.

2008 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

20__ Revision: Updated statutory references. Committee notes revised.

Statutory References

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

§ 744.102(8), (9), Fla. Stat. Definitions.

§ ~~744.201~~744.1096, Fla. Stat. Domicile of ward.

§ ~~744.202~~744.1097, Fla. Stat. Venue.

§ ~~744.2025~~744.1098, Fla. Stat. Change of ward's residence.

§ 744.524, Fla. Stat. Termination of guardianship on change of domicile of resident ward.

§ 744.531, Fla. Stat. Order of discharge.

Rule References

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

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.680 Termination of guardianship.

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

RULE 5.710. REPORTS OF PUBLIC GUARDIAN

The public guardian, as the guardian of a ward, shall file:

- (a) an initial report as required by law;
- (b) annual guardianship reports, which shall include the dates of quarterly visits to the ward, as required by law;
- (c) a report within 6 months of his or her appointment as guardian of a ward, which shall also be filed with the executive director of the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians, stating:
 - (1) the public guardian's efforts to locate a family member or friend, other person, bank, or corporation to act as guardian of the ward; and
 - (2) the ward's potential to be restored to capacity;
- (d) an annual report, filed with the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians, by September 1 for the preceding fiscal year, on the operations of the office of public guardian; and
- (e) a report of an independent audit by a qualified certified public accountant, to be filed with the ~~Statewide Public Guardianship Office~~ of Public and Professional Guardians every 2 years.

Committee Notes

Rule History

1987 Revision: This is a new rule and was promulgated to establish procedures to accommodate the Public Guardian Act. See § 744.701, et seq., Fla. Stat. See also Fla. Prob. R. 5.560.

1989 Revision: Prior rule adopted as temporary emergency rule.

1991 Revision: Editorial changes.

1992 Revision: Citation form changes in committee notes.

2007 Revision: Rule extensively amended to specify reports a public guardian is required to file.

2010 Revision: Editorial change in (e).

20__ Revision: Subdivisions (c), (d), and (e) amended to reflect the name change of the agency to the Office of Public and Professional Guardians. Committee notes revised to reflect the repeal of Part IX of Chapter 744, Florida Statutes.

Statutory Reference

§§ ~~744.701–744.709~~744.2001–744.2109, Fla. Stat. Public Guardianship Act.

Rule Reference

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