

Guardian Advocacy Information Handbook

For Use In The THIRTEENTH JUDICIAL CIRCUIT HILLSBOROUGH COUNTY, FLORIDA

Materials prepared by:



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HILLSBOROUGH COUNTY GUARDIAN ADVOCATE INFORMATION¹

Hillsborough County Clerk
Of Court; Probate Division:

Phone: 813-276-8100

Where to file your paperwork:
(in person is recommended)

Brandon location: 311 Pauls Drive
Downtown: 800 E. Twiggs Street, 1st Floor,
Customer Service Center
Plant City: 301 N. Michigan Ave.
Ruskin: 410 30th St., S.E.

Mailing address to use after
Initial paperwork filed:

P.O. Box 3360, Tampa, FL 33601-3360

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 their child. To obtain guardian advocacy over an individual, the person with a developmental disability must have a disorder or syndrome that is attributable to intellectual disability (IQ below 70), cerebral palsy, autism, spina bifida, Prader-Willi syndrome, Down syndrome, Phelan-McDermid syndrome; that manifests before the age of 18; and 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 having to have an examining committee appointed to determine that the individual is incompetent. Why is this necessary? The Florida legislature has recognized that a person with a developmental disability may not be presumed incapacitated solely by reason of his or her acceptance in nonresidential services or admission to residential care, and may not be denied the full exercise of all legal rights guaranteed to citizens of this state and of the United States. (Florida Statute, Section 393.12(1)(a)).

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 is not able to make the necessary decisions relating to daily life activities (where to live, financial decisions, educational decisions, etc.). During any Guardian Advocate proceedings the Court will appoint an attorney for the person with a developmental

¹ The information in these materials is for Hillsborough County residents only. Counties vary as to how procedures are handled, such as the wording of the forms, criminal background checks and the types of forms filed. **Additionally, if you are going to file these forms on your own, court staff function under certain service limitations. For example, they can assist you administratively and procedurally but are not able to act as your lawyer or give you legal advice. PLEASE ALSO NOTE THAT FORMS MAY CHANGE FROM YEAR TO YEAR, AND YOU SHOULD CHECK WITH THE HILLSBOROUGH COUNTY CLERK OF COURT FOR THE MOST UP-TO-DATE FORMS.**

disability to represent the developmentally disabled person and ensure their best interest is protected.

The Guardian Advocate is responsible for only those duties approved by the Judge and listed in the Court Order. The process of becoming a Guardian Advocate of the person does not require the hiring of an attorney, unless there are assets involved. In other words, if the child only has social security benefits or other government payee programs, no attorney is needed.

Please be advised that, if you are seeking to retain rights over the person with the developmental disability's rights to contract, seek or retain employment, sue or defend lawsuits, or manage his/her property, these are property rights (not rights over the person like the ability to determine residency, social environment, health care/treatment) Hillsborough County courts do currently require you to have an attorney to represent you. Additionally, if the child has assets such as a pending law suit, an estate inheritance, or other income or assets coming to them, the parent (or other person) must file to become Guardian Advocate of the person AND THE property, and in that case, an attorney must be hired. The Court can expand the description of property rights by Petition and Order.

Background Check Requirements and who may NOT serve as Guardian Advocate:

Florida Statute Section 744.3135 allows the court to require a non-professional Guardian Advocate to submit, at their own expense, to an investigation of the Guardian Advocate's credit history and to a level 2 background screening prior to being appointed to serve as Guardian Advocate. In Hillsborough County (remember, counties are different in how they handle this), the Court only requires the proposed Guardian Advocate to submit a Credit Report which can be obtained for free from www.creditkarma.com or www.annualcreditreport.com. The credit report must be a full credit report taken within the last six months prior to filing for the proceeding from one of the three credit agencies. In Hillsborough County, the court will run a criminal background check based on the information submitted in the proposed Guardian Advocate's application.

Those persons who may NOT be appointed as a Guardian Advocate include: Any person who has been convicted of a felony; suffers from any incapacity or illness that makes them incapable of discharging duties of a Guardian Advocate, or is otherwise unsuitable to perform the duties of a Guardian Advocate; 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); any person who has been found guilty of, regardless of adjudication, or entered a plea of no contest to any offense enumerated in Florida Statute, Section 435.14, or under any similar statute of another jurisdiction; any person who provides substantial services to the proposed Ward in a professional or business capacity, or is a creditor of the proposed Ward; any person who is an employee of any person, agency, government, or corporation that provides services 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; and any provider of

health care services to the proposed Ward, whether direct or indirect, unless the Court specifically finds there is no conflict of interest with the proposed Ward's best interests.

Other Relevant Links and Information

- Florida Statutes
 - Guardian Advocate Statute
 - http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0393/Sections/0393.12.html

The Step-by-Step Process of Becoming a Guardian Advocate:

Step One: Complete Necessary Paperwork And File With The Court

Please note that neither the Court nor the staff will help you fill out any of these documents. Do not ask them to help you fill this out as they cannot provide legal advice to you. Also, the instructions may not match up with the actual forms if the Court later adds forms to the packet – so pay attention to the titles of the Forms as those rarely change.

- ☐ Application for Appointment as Guardian Advocate (Form A)
 - *This includes basic information about the person requesting to be appointed Guardian Advocate of the person with developmental disabilities such as name, address, phone number, date of birth, education, employment, etc..*
- ☐ Application for Appointment as Co-Guardian Advocate (Print Form A again) – *each person wanting to be a Guardian Advocate must complete and sign this form.*
- ☐ Application for Determination of Civil Indigent Status (Form B)
 - *if your child cannot afford the filing fees and court appointed attorney fee, then you will need to fill this out. This needs to be answered as if it is the child's assets, income, etc., but the parent is the Petitioner and the one signing as the Affiant. An applicant (the child) is considered indigent if his/her income is equal to or below 200% of the federal poverty guidelines. There is a presumption that the applicant is not indigent if he/she owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000. You can also download this form from the Hillsborough County Clerk of Court website (separately from the GA forms packet).*
- ☐ Waiver and Consent to Appointment of Guardian/Co-Guardian (Form C)
 - *signed by the parent not being appointed Guardian Advocate; use only if both parents are not going to serve as co-Guardians. If the other parent has died, you will need to provide a copy of his/her death certificate and use Notice of Filing (Form O) to go with death certificate. If there are adult siblings of the adult disabled child, they will also have to sign a Waiver and Consent.*
- ☐ Petition for Appointment of Guardian (or Co-Guardian) Advocate of the Person (Form D)
 - *The Petition **must** state the following:*
 - *Name, age, present address of individual filing petition and their respective relationship to the person with the developmental disability.*
 - *Name, age, county of residence and present address of the person with the developmental disability.*
 - *State the names and addresses of the non-petitioning parent and the adult siblings.*
 - *State why the person filing the petition feels a Guardian Advocate is necessary.*
 - *Include specific, factual information*

- *State specific areas where the person lacks decision-making ability*
- *Specify the legal disabilities as defined in Florida Statute §393.063(9) (check the box for the applicable disability).*
- *State the name of the proposed Guardian and Co-Guardian Advocate (if applicable) and the relationship to the person with the developmental disability.*
- *State any relationship the proposed Guardian Advocate and Co-Guardian Advocate (if applicable) has or had with any provider of health services, residential services or other services to the person with the developmental disability.*
- *Pursuant to Probate Rule 5.649(a)(7), the petition must state whether the petitioner has knowledge, information or belief that the person with a developmental disability has created an advanced directive or a durable power of attorney.*
- *Complete and sign the Guardian Education (if required) and Background Check Requirement. These forms confirm the petitioner is aware they must submit to a complete background screening (FL Statute §744.3135) and complete the education requirement (if not waived) prior to appointment.*
- ***Make sure to fill in all the blanks or put "N/A" if not applicable.***
- ☐ **Report of Healthcare Professional (Form E)**
 - *Guardian advocate must submit a report from a physician, nurse practitioner, psychologist, or can submit school records, individual education plan (IEP), or other professional report which documents the condition and needs of the person with the developmental disability. The written report must list one of the disabilities as listed in Florida Statute §393.063(9). If you do not have a report to submit, you can give this form to the healthcare provider to complete.*
- ☐ **Oath of Guardian Advocate (Form F)**
 - *Must be signed in front of a notary by each person seeking to be Guardian Advocate and ensures that the proposed Guardian Advocate will faithfully perform his or her duties if selected and certifies that all the information presented to the Court in this proceeding is true.*
- ☐ **Oath of Co-Guardian Advocate (Print Form F again) – each person wanting to be a Guardian Advocate must sign one of these forms in front of a notary.**
- ☐ **Credit report of Guardian Advocate**
 - *Each proposed Guardian Advocate must submit a Credit Report which can be obtained for free from www.creditkarma.com or www.annualcreditreport.com. The credit report must be a full credit report taken within the last six months prior to filing for the proceeding from one of the three credit agencies.*
- ☐ **Notice of Confidential Filing Information (Form G)**
 - *You must file this to notify the Clerk of any confidential information that is in the forms you fill out. This includes Social security numbers, bank account information, health record information, etc. Make sure to check which documents have confidential information in them.*
- ☐ **Notice of Petition to Appoint Guardian Advocate/Co-Guardian Advocate(s) Under 393.12, Florida Statutes (Form H)**
 - *If both parents are going to serve as co-Guardians, then this only needs to be read to the person with the disability. If one parent is not serving as Guardian, and the parent has not signed the Waiver and Consent form, this also needs to be mailed by certified mail to that parent (or next of kin if parents are no longer alive). Next of kin means those persons who would be heirs of the Ward, including parents, siblings, or children of the Ward.*
- ☐ **Notice of Hearing Before General Magistrate (Form I)**
 - *This form must be served on the court appointed attorney, the Ward and any other interested parties to notify them of the location, date and time of the hearing.*

- ☐ Order Appointing Guardian Advocate (Form J)
 - *You must fill this out completely – the Court will sign the Order only if completed correctly. This explains the Ward’s developmental disability, explains which rights the Ward lacks decision-making ability in, and states which of those rights are being given to the guardian advocate to exercise on behalf of the Ward.*
- ☐ Letters of Guardian Advocacy (Form K)
 - *You must fill this out completely – the Court will sign the Letters only if completed correctly. This is the paperwork that the Guardian Advocate must produce when presenting him/herself as the appointed Guardian Advocate and when making decisions for the Ward. This (and the Order Appointing Guardian Advocate) should be kept in a safe location and the Guardian Advocate should carry copies when performing services for the Ward.*
- ☐ Initial Plan (Form L)
 - *This must be filed within 60 days of being appointed as the Guardian Advocate. The initial plan 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. Additionally, the Initial Plan must include any expected physical and mental examinations, if necessary to determine the Ward’s medical and mental health treatment needs.*
- ☐ Annual Plan (Form M)
 - *This must be filed every year within 90 days from the anniversary date of being appointed as Guardian Advocate. This plan 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.*

Miscellaneous Forms/Information (Not required; use only if applicable)

- ☐ Application for Appointment as Standby Guardian Advocate (Form N)
 - *This form asks for basic information about the person wanting to be Standby Guardian Advocate, however, this person does not need to submit to any screening, education requirements, or background check until such time as the Guardian Advocate can no longer serve due to death or disability, and then the Standby Guardian Advocate must ask the Court to be appointed.*
- ☐ Standby Guardian’s Joinder in Petition (Form O)
- ☐ Notice of Filing (Form P)
 - *(to be used when filing death certificate of parent, doctor’s report or any document that does not already have the Case Style at top of page).*

Change of Guardian Contact Info/Ward Residence

- *Pursuant to Hillsborough County Court Administrative Order S-2017-012, all guardians must promptly advise the court, via written notice filed with the clerk, of any change of his or her name, address, telephone number, or e-mail address. The notice requirements in the Florida Probate Rules must be complied with at all times. See also, Florida Probate Rule 5.060. This can be found at <http://www.fljud13.org/CourtPrograms/ElderJusticeCenter/Forms.aspx>. Look for Request to Change Contact Information under “Other Useful Forms”.*

**BE SURE TO MAKE COPIES OF EVERYTHING YOU FILE WITH THE COURT
AGAIN, PLEASE NOTE THAT NEITHER THE COURT NOR THE STAFF WILL HELP YOU FILL OUT
THIS PAPERWORK. DO NOT ASK THEM TO HELP YOU FILL THIS OUT AS THEY CANNOT**

PROVIDE LEGAL ADVICE TO YOU. IF YOU ARE UNABLE TO FILL OUT THE PAPERWORK ON YOUR OWN, YOU SHOULD SEEK THE ADVICE OF AN ATTORNEY.

Step Two: Notice To Parties (Needed only if you do not have Consent and Waiver of Parent or Next of Kin)

- ☐ You must send the pleadings by certified mail to all next of kin (who do not sign a Waiver & Consent). If both parents are alive and have consented or signed to be co-Guardians, you do not need to send to anyone else. Next of kin may also be adult siblings or grandparents, if there are no parents.
- ☐ What to send?
 - Consent and waiver letter (tell them why you are doing this and why this is important)
 - Include copy of the Petition for Appointment of Guardian Advocate
 - If it is the parent of the child, include a consent and waiver for them to sign and return to you so you can file with the court.
- ☐ Send by certified mail, return receipt requested so you can prove to the court that you mailed the pleadings to them (in case they do not respond)
- ☐ If you cannot get the parent or other next of kin to give you a Consent and Waiver, and have to mail to them by certified mail, file the consents with the court when you receive them; if you do not receive consents, you must wait for the end of the “notice period” (20 days from the date you have proof the certified mail was received).
- ☐ File proof of service with the Court once the 20 days has passed. You must wait out this period before the court will allow you to schedule a hearing date.

Step Three: Call the Clerk’s office to confirm that:

- ☐ The file was opened and Case Number assigned (you may already have received the case number when you went to the courthouse to file your paperwork)
- ☐ Confirm the court has everything they need so that you can schedule the hearing – the court has “everything” when you have submitted everything correctly – the Petition, the credit report, affidavit of indigency, etc.). **Again, please remember that, although Court staff they can assist you administratively and procedurally, they cannot act as your lawyer nor can they give you legal advice.**
- ☐ Find out which Magistrate Judge is assigned to the case, and confirm their phone number and name of the Magistrate Judge’s assistant. You will be provided this information through Orders that the court signs appointing the Magistrate Judge.
- ☐ The Court will appoint an attorney to represent the developmentally disabled person. He/she will need to meet with the developmentally disabled person prior to the hearing. If the attorney does not contact you within 10 days of being appointed, you should call his/her office to find out when they will meet with your child.
 - Also, ask the Court Appointed Attorney if he/she is waiving the appearance of your child – if he/she says “yes” then your child does not have to come with you to the hearing; if he/she says “no”, then you must bring your child to the hearing

- ☐ The Clerk will send the file to the Magistrate Judge who is handling your file ONCE EVERYTHING HAS BEEN FILED CORRECTLY.
- ☐ It is your responsibility to file all paperwork correctly and to clear a hearing date and time with Judge's Judicial Assistant and you must also coordinate the hearing time with the court-appointed attorney.
- ☐ Once the hearing date is cleared with the Judicial Assistant and the court-appointed attorney, you must prepare a Notice of Petition to Appoint Guardian Advocate (Form G), mail it to all parties and file it with the Clerk of Court.

Step Four: What is next?

- ☐ Submit your proposed letters to the Clerk and to the Court Appointed Attorney at least one week before the hearing (or ask the Judge's Assistant the Judge's preference);
- ☐ 3 days before the hearing, call the Judicial Assistant and confirm the file is ready for the hearing and the proposed Letters are in the file (If you previously submitted them).
- ☐ You will also need to be sure to provide the Judicial Assistant with envelopes and postage for the Orders and Letters to be mailed to you, the Court Appointed Attorney, and the Ward.

Step Five: Attend the Hearing

- ☐ Confirm the date and time of the hearing as well as the location – since March, 2020, the Hillsborough County Guardianship Advocacy hearings have been held via Zoom. This may be subject to change at any time.
- ☐ Plan to wear clothes that are business casual to the hearing (even if it is by Zoom).
- ☐ The Magistrate Judge's assistant will let you know the date of the Zoom hearing – you should plan to get on the Zoom call AT LEAST 5 minutes prior to the hearing and the assistant will let you into the Zoom hearing when the judge is ready.
- ☐ The court appointed attorney will reach out to you prior to the hearing to speak to you about the case/your child.
- ☐ You should have your driver's license ready to place up to the camera to show the judge who you are.

HOW TO ACT IN THE COURTROOM/Zoom call:

1. The Magistrate Judge will announce the case and then ask you to introduce yourself for the record (all Guardian Advocacy court proceedings are recorded).
2. You will then briefly explain that you wish to be appointed as the guardian advocate for your child.
3. The Magistrate Judge may ask you some questions about the documents you filed or your child.
4. The Magistrate Judge may then ask the court appointed attorney some questions.
5. If the Magistrate Judge is going to grant your request, they will ask you for the proposed letters and you should have either provided those to them via mail prior to the hearing or send them to the Judge promptly after the hearing.

- a. If there is missing information or the Magistrate Judge needs something further from you, they will then explain what else is needed in order to proceed.
- b. The Court will sign an Order that states the powers, duties, and responsibilities of the Guardian Advocate.
- c. The person with the developmental disability retains all legal rights except those which the Court gives to the Guardian Advocate.

AFTER THE HEARING

1. The Magistrate Judge will sign a Recommendation Report which the Probate Judge will review.
2. The Judge will then sign the letters and orders thereby appointing you as the Guardian Advocate. This usually comes the same time as the Recommendation Report.
3. The process of receiving the letters and orders may take a few weeks. Once you receive the signed, conformed copies, you will need to obtain certified copies of the letters.
 - a. "Conformed" means it will have the date that the judge signed the Letters and Orders, but it may not have their actual signature.
 - b. "Certified" copy has the actual signature and date the letters and Orders were signed, and is certified by the Clerk of Court to be an actual copy of what the judge signed. You may need a certified copy of the letters to show to your child's school, doctors or a financial institution.
 - c. If you are going in person to obtain the certified copies, bring cash to pay for them.
4. You must file an Initial Plan (Form K) within 60 days from the date the Judge signed the Order Appointing Guardian Advocate.

You are now the Guardian Advocate for your child!

But don't forget: You must also file an annual plan with the Court every year within 90 days of the anniversary date of the appointment as Guardian Advocate. The Court will tell you the dates these need to be filed in the Order Approving the Initial Plan (which you may not receive until the following year).