FLORIDA PROBATE RULES

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CITATIONS TO OPINIONS ADOPTING OR AMENDING RULES

ORIGINAL ADOPTION, effective 1-1-68: 201 So. 2d 409.

OTHER OPINIONS:

Effective Date:	Citation	Description
1-1-76:	324 So.2d 38.	Complete revision (temporary rules).
7-1-77:	344 So.2d 828.	Complete revision.
1-1-81:	387 So.2d 949.	Four-year-cycle revision. Amended 5.020, 5.040, 5.340, 5.345, 5.400, 5.440, 5.520, 5.540, 5.550, 5.560, 5.570, 5.630, 5.660, 5.690; added 5.205.
1-1-85:	458 So.2d 1079.	Four-year-cycle revision. Amended 5.020–5.040, 5.080, 5.110, 5.150, 5.170, 5.180, 5.210, 5.230, 5.240–5.270, 5.340–5.420, 5.440, 5.460–5.490, 5.510–5.560, 5.600, 5.620, 5.660, 5.670; deleted 5.280, 5.290, 5.410, 5.450, 5.500, 5.570; added 5.041, 5.042, 5.065, 5.395, 5.401, 5.405, 5.406.
1-1-85:	460 So.2d 906.	Amended 5.340.
12-23-87:	517 So.2d 675.	Amended 5.540, 5.560; added 5.710.
1-1-89:	531 So.2d 1261.	Four-year-cycle revision. Amended 5.015, 5.025, 5.042, 5.050, 5.080, 5.110, 5.160, 5.180, 5.205–5.240, 5.270, 5.340, 5.360, 5.400, 5.405–5.420, 5.440, 5.490, 5.510, 5.620, 5.630, 5.650–5.670, 5.690; deleted 5.190, 5.390, 5.540, 5.590; added 5.122, 5.171, 5.201, 5.235, 5.275, 5.346, 5.355, 5.385, 5.386, 5.475, 5.495.
10-1-89:	551 So.2d 452.	Amended 5.015, 5.550, 5.560, 5.610–5.660, 5.680–5.700; added 5.590, 5.800.
10-1-91:	584 So.2d 964.	Amended 5.010, 5.040, 5.050, 5.240, 5.550, 5.560, 5.590–5.630, 5.650–5.680, 5.700–5.800; amended and renumbered 5.690 to 5.695; deleted 5.495; added 5.540, 5.541, 5.555, 5.635, 5.690, 5.696, 5.697, 5.705, 5.900.
1-1-93:	607 So.2d 1306.	Four-year-cycle revision. Amended 5.025, 5.120, 5.200, 5.240, 5.260, 5.310, 5.346, 5.400, 5.470, 5.690, 5.695, 5.900; added 5.496, 5.636.
1-1-97:	683 So.2d 78.	Four-year-cycle revision. Amended 5.040, 5.041, 5.080, 5.100, 5.180, 5.210, 5.235, 5.240, 5.346, 5.370, 5.400, 5.401, 5.405, 5.406, 5.470, 5.560, 5.590, 5.680.
1-1-01:	778 So.2d 272.	Four-year-cycle revision. Amended 5.015, 5.040, 5.041, 5.065, 5.100, 5.110, 5.555, 5.560, 5.705.
10-11-01:	807 So.2d 622, 816 So.2d 1095.	Amended 5.025, 5.340, 5.360; added 5.365.
5-2-02, applicable to	824 So.2d 849.	Amended 5.080, 5.200, 5.205, 5.210, 5.240, 5.310, 5.340, 5.345, 5.346, 5.385, 5.405, 5.440,

Effective Date:	Citation	Description
decedents dying after December 31, 2001:		5.510, 5.530; deleted 5.070, 5.520; added 5.215, 5.216, 5.241, 5.341, 5.404.
6-19-03, applicable to decedents dying after December 31, 2001:	848 So.2d 1069.	Two-year-cycle revision. Amended 5.122, 5.205, 5.240, 5.385, 5.430, 5.496; added 5.342.
1-1-04:	848 So.2d 1069.	Two-year-cycle revision. Amended 5.555, 5.680; added 5.407, 5.552.
10-1-04:	887 So.2d 1090.	Amended 5.697.
1-1-06:	912 So.2d 1178.	Two-year-cycle revision. Amended 5.040, 5.041, 5.042, 5.240, 5.241, 5.270, 5.345, 5.346, 5.360, 5.400, 5.404, 5.475, 5.496, 5.530, 5.620; added 5.402, 5.403, 5.498, 5.499, 5.625.
2-1-07:	948 So.2d 735.	Amended 5.180, 5.550, 5.552, 5.555, 5.560, 5.625, 5.630, 5.636, 5.660, 5.680, 5.695; added 5.646, 5.647, 5.685, 5.720, 5.725.
7-12-07:	964 So.2d 140.	Amended 5.015, 5.240, 5.241; added 5.648.
1-1-08:	959 So.2d 1170.	Three-year-cycle revision. Amended 5.040, 5.041, 5.200, 5.210, 5.241, 5.490, 5.496, 5.498, 5.499, 5.530, 5.650, 5.670, 5.697, 5.710; added 5.095, 5.645.
7-10-08:	986 So.2d 576.	Amended 5.015, 5.030, 5.040, 5.050, 5.120, 5.540, 5.541, 5.620, 5.625, 5.640, 5.650, 5.660, 5.680, 5.720; added 5.649, 5.681.
1-1-11:	50 So.3d 578.	Three-year cycle review. Amended 5.020, 5.030, 5.040, 5.041, 5.060, 5.110, 5.200, 5.205, 5.210, 5.235, 5.260, 5.330, 5.340, 5.346, 5.360, 5.405, 5.406, 5.440, 5.470, 5.496, 5.696, 5.710, 5.725.
1-1-11:	51 So.3d 1146.	Amended 5.201, 5.260, 5.360 and created 5.3425.
7-7-11:	67 So.3d 1035.	Amended 5.260.
9-28-11:	73 So.3d 205.	Amended 5.025, 5.240.
10-1-11:	78 So.3d 1045.	Amended 5.200, 5.210, 5.530.
9-1-12:	102 So.3d 505.	Amended 5.030, 5.040, 5.041, 5.060, 5.120. 5.200, 5.340, 5.342, 5.350, 5.355, 5.360, 5.370, 5.380, 5.385, 5.386, 5.400, 5.401, 5.402, 5.403, 5.405, 5.406, 5.407, 5.430, 5.440, 5.460, 5.470, 5.475. 5.496, 5.498, 5.499, 5.510, 5.530, 5.620, 5.630, 5.650, 5.660, 5.670, 5.680, 5.690. 5.695, 5.696, 5.700.
10-1-12:	95 So.3d 96.	Amended 5.042.
4-1-13:	102 So.3d 451.	Adopted 5.043.
11-27-13:	131 So.3d 717.	Amended 5.240 and 5.260.

Effective Date:	Citation	Description
1-1-14:	123 So.3d 31.	Amended: 5.060, 5.110, 5.230, 5.395, 5.400, 5.404, 5.530, 5.649, 5.660, 5.681, 5.696. Adopted 5.2405.
4-22-14:	139 So.3d 875.	Amended: 5.120, 5.200, 5.210, 5.385, 5.405, 5.406, 5.407, 5.530, 5.550, 5.555, 5.560, 5.590, 5.636, 5.646.
11-6-14:	150 So.3d 1100.	Amended 5.590.
12-17-15:	181 So.3d 480.	Amended 5.240, 5.310, 5.648, 5.695, 5.705.
9-15-16:	200 So.3d 761.	Amended 5.050; 5.560; 5.646; 5.648; 5.670, 5.710.
1-1-17:	199 So.3d 835.	Amended 5.040, 5.041, 5.042, 5.080, 5.345, 5.346, 5.550, 5.560, 5.620, 5.690, 5.696.
9-7-17:	226 So.3d 245.	Amended 5.550, 5.695.
9-27-18:	253 So.3d 983.	Amended 5.025.
9-3-20:	301 So.3d 859.	Amended 5.550, 5.560, 5.649, 5.900. Adopted 5.901, 5.902, 5.903, 5.904, 5.905, 5.906, 5.910.
9-24-20:	415 So.3d 1055.	Adopted 5.920.
12-31-20:	309 So.3d 196.	Amended 5.040, 5.065, 5.240, 5.550, 5.555, 5.560, 5.630, 5.850. Adopted 5.425.
1-1-20:	287 So.3d 492.	Amended 5.020, 5.040, 5.200, 5.240, 5.241, 5.275, 5.320, 5.360, 5.407, 5.470, 5.490, 5.499, 5.636, 5.649, 5.681, 5.695, 5.900.
1-16-20:	288 So.3d 565.	Amended 5.015, 5.043, 5.120, 5.200, 5.210, 5.215, 5.230.
12-31-20:	309 So.3d 196.	Amended 5.040, 5.065, 5.240, 5.550, 5.555, 5.560, 5.630, 5.850. Adopted 5.425.
10-28-21:	344 So.3d 940.	Amended 5.030, 5.040, 5.041, 5.042, 5.043, 5.060, 5.080, 5.120, 5.200, 5.210, 5.340, 5.342, 5.350, 5.355, 5.360, 5.370, 5.380, 5.385, 5.386, 5.400, 5.401, 5.402, 5.403, 5.405, 5.406, 5.407, 5.430, 5.440, 5.460, 5.470, 5.475, 5.490, 5.496, 5.498, 5.499, 5.510, 5.530, 5.550, 5.555, 5.560, 5.590, 5.620, 5.630, 5.636, 5.646, 5.650, 5.660, 5.670, 5.680, 5.690, 5.695, 5.696, 5.700.
11-4-21:	334 So.3d 562.	Amended 5.020, 5.200, 5.320, 5.340, 5.402, 5.403, 5.404, 5.405, 5.555.
10-1-22:	346 So.3d 1105.	Amended 5.080.
4-1-23:	356 So.3d 224.	Amended 5.040, 5.330. Adopted 5.930.
12-14-23:	376 So.3d 598.	Amended 5.630, 5.649, 5.904, 5.905, 5.906, 5.920. Adopted 5.631.
9-5-24:	393 So.3d 178.	Amended 5.240, 5.241, 5.550, 5.681, and 5.905.
10-1-24:	390 So.3d 624.	Amended 5.025, 5.340, 5.405.
1-1-25:	397 So.3d 993.	Amended 5.320 and 5.550.
2-27-25:	403 So.3d 219.	Amended 5.240, 5.241, and 5.550.
7-1-25:	406 So.3d 926.	Amended 5.040, 5.499, and 5.904.
8-28-25:	417 So.3d 265.	Amended 5.920.
10-1-25:	417 So.3d 283.	Amended 5.405.

Effective Date:	Citation	Description
1-1-26:	421 So.3d 422.	Amended 5.010.
7-16-26:	2026 WL 2053005.	Amended 5.025, 5.425, 5.530.
10-1-26:	434 So.3d 697.	Amended 5.025, 5.122, 5.200, 5.320, and 5.470.
10-1-26:	434 So.3d 1007.	5.030, 5.040, 5.041, 5.043, 5.060, 5.120, 5.340, 5.342, 5.350, 5.355, 5.360, 5.370, 5.380, 5.385, 5.386, 5.400, 5.401, 5.402, 5.403, 5.405, 5.406, 5.407, 5.430, 5.440, 5.460, 5.475, 5.490, 5.496, 5.498, 5.499, 5.50, 5.530, 5.620, 5.631, 5.650, 5.660, 5.670, 5.680, 5.690, 5.695.

NOTE TO USERS: Rules in this pamphlet are current through 434 So.3d 1007. Subsequent amendments, if any, can be found at www.floridasupremecourt.org/decisions/rules.shtml. The Florida Bar also updates the rules on its website at www.FloridaBar.org (on the homepage click “Rules Updates”).

PART I — GENERAL

RULE 5.010. SCOPE

These rules govern the procedure in all probate and guardianship proceedings and will be known as the Florida Probate Rules and may be cited as Fla. Prob. R. Part I applies to all proceedings. Part II applies to probate alone, Part III applies to guardianship alone, Part IV applies to expedited judicial intervention concerning medical treatment procedures, and Part V provides forms. The Florida Rules of Civil Procedure apply only as provided in these rules.

Committee Notes

Rule History

1975 Revision: These rules shall govern the procedures to be followed in all matters pending on or commenced after January 1, 1976, including procedures for the enforcement of substantive rights that have vested before that date. See section 731.011, Florida Statutes.

1977 Revision: The changes in these rules shall take effect on July 1, 1977.

1988 Revision: In the opinion reported at 460 So. 2d 906, the Florida Supreme Court directed the Probate and Guardianship Rules Committee to study the statutes and attempt to identify those portions of the Florida Probate Code, the Florida Guardianship Law, and other statutes that contained procedural provisions. When those procedural provisions were identified, the committee was charged to promulgate rules incorporating those procedures.

The committee has reviewed the statutes and has found a substantial measure of procedure that was contained only in the statutes for which there were no corresponding rules. The committee also determined that much of the procedure in the statutes already had a rule counterpart.

New rules added, or prior rules amended, in 1988 to add procedural matters previously found only in the statutes are rules 5.050, 5.122, 5.171, 5.180, 5.201, 5.235, 5.270, 5.275, 5.355, 5.360, 5.385, 5.386, 5.400, 5.440, 5.475, 5.490, and 5.510. With only one exception (see rule 5.050), the only portion of the statutes that has been reviewed in detail, and for which rules have been created, is the Florida Probate Code. Other portions of the statutes mentioned in the opinion cited above remain for the next cycle of this committee to review.

As the committee wrote rules to transfer the statutory procedure into these rules, an attempt was made to write the rule without changing the meaning of the statute. It was not possible or advisable to use the exact wording of the statute in some instances, and in those instances the committee rewrote the statutory language in the format used in the rules generally. Even under those circumstances, the committee attempted to transfer the entire procedural portion of the statute without changing its meaning. Where it was specifically intended in a few instances to add to existing statutory procedure, that fact is noted in the relevant committee note. The committee felt strongly that it would be detrimental to the orderly process of estate probate and related procedures if a rule specified a different procedure than was specified in the related statute, even though the statute must, under the Florida Constitution, yield to the rule when there is a conflict.

The committee, through the proper channels in The Florida Bar (initially, the Probate Law Committee of the Real Property, Probate and Trust Law Section), intends to ask the legislature to repeal those portions of the statutes that are procedural when there are similar rules already in place, or when similar new rules are added by this opinion. It is the opinion of the committee that continuing to maintain procedure in the statutes when there is a rule specifying that procedure is detrimental to the orderly process of the court and the public that it serves, especially when, over time, the statute and the rule may diverge.

Although the supreme court has adopted these recommended rules, it has not specifically determined that all of the provisions of the statutes that were procedural have now been adopted as a rule. This is a continuing project for the committee and although these new rules and changes represent a substantial transition of procedure into the rules, the committee does not suggest that the transition is complete. The court is not precluded from examining any particular statute or rule in the context of a particular actual dispute.

1991 Revision: Rule revised to reflect addition of new Part IV dealing with expedited judicial intervention concerning medical treatment procedures.

1992 Revision: In 1989, the Florida Legislature enacted a comprehensive revision to Florida's guardianship law. In response, the Florida Supreme Court appointed an ad hoc committee to recommend temporary rules of procedure for the new law. In an opinion at 551 So. 2d 452 (Fla. 1989), the court adopted the temporary rules recommended by the ad hoc committee, to replace Part III of the then-existing Florida Probate Rules, effective October 1, 1989. In its opinion, the court also directed the Florida Probate Rules Committee to review the new laws and, on a priority basis, to recommend permanent rules of procedure.

The committee reviewed the Florida Guardianship Law enacted in 1989, as well as revisions to the law enacted in 1990, and presented its rule recommendations to the court in 1991. The court, in an opinion at 584 So. 2d 964, adopted the recommendations with minor exceptions, to be effective October 1, 1991.

In 1990, the court also rendered its opinion in In re Guardianship of Browning, 568 So. 2d 4 (Fla. 1990), regarding a person's right to refuse life-prolonging medical procedures. In that decision, the court directed the committee to recommend a rule to provide for expedited judicial intervention. In response, the committee created a new Part IV of these rules and recommended rule 5.900, which was adopted by the court, with minor changes, in its opinion at 584 So. 2d 964, effective October 1, 1991.

The committee continued its efforts to review the Florida Probate Code and to promulgate or amend rules regarding any procedural portions of those statutes. As a result of those efforts, as well as the efforts described above, the committee recommended amendments to rules 5.010, 5.025, 5.040, 5.050, 5.200, 5.240, 5.310, 5.346, 5.400, 5.470, 5.550, 5.560, 5.590, 5.600, 5.610, 5.620, 5.630, 5.640, 5.650, 5.660, 5.670, 5.680, 5.695, 5.700, 5.710, and 5.800; creation of new rules 5.496, 5.540, 5.541, 5.555, 5.635, 5.636, 5.690, 5.696, 5.697, 5.705, and 5.900; and deletion of rule 5.495. In addition, the committee recommended editorial changes in virtually all the rules so that they would conform stylistically to one another and to all other rules promulgated by the supreme court.

2003 Revision: The committee has promulgated numerous changes in the rules and in the committee notes to many of the rules, in response to legislative amendments that deleted procedural aspects of a number of statutes in the Florida Probate Code, including deletion and re-titling of some statutes. See Ch. 2001-226, Laws of Fla.

2025 Revision: Rule amended to reference Part V of the Florida Probate Rules. Committee notes revised.

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040(a)(3)(B) Notice.

Fla. Prob. R. 5.050 Transfer of proceedings.

Fla. Prob. R. 5.080 Discovery and subpoena.

Fla. Prob. R. 5.230(e) Commission to prove will.

Fla. R. App. P. 9.800 Uniform citation system.

RULE 5.015. GENERAL DEFINITIONS

(a) General. The definitions and rules of construction stated or referred to in sections 1.01 and 393.12, Florida Statutes, and chapters 731, 732, 733, 734, 735, 736, 738, 739, and 744, Florida Statutes, as amended from time to time, shall apply to these rules, unless otherwise defined in these rules.

(b) Specific Definitions. When used in these rules

(1) "certified copy" means a copy of a document signed and verified as a true copy by the officer to whose custody the original, whether in paper or electronic form, is entrusted;

(2) "formal notice" means notice under rule 5.040(a);

(3) "informal notice" means notice under rule 5.040(b);

(4) "judge" means a judge of the circuit court, including any judge elected, appointed, substituted, or assigned to serve as judge of the court;

(5) "guardian advocate" means a person appointed for a person with a developmental disability pursuant to section 393.12, Florida Statutes;

(6) "guardian" means a person appointed pursuant to chapter 744, Florida Statutes, or a guardian advocate unless a rule indicates otherwise;

(7) "ward" means an individual for whom a guardian is appointed.

Committee Notes

Rule History

1977 Revision: No change in rule. Correction of typographical error in committee note.

This is intended to simplify drafting of these rules and should be liberally construed. See Fla. Prob. R. 5.190 and 5.540 and also §§ 731.201 and 744.102, Fla. Stat.

1988 Revision: Rule was expanded due to deletion of rule 5.190. Committee notes expanded. Citation form changes in rule and committee notes.

1992 Revision: Citation form changes in rule and committee notes.

2000 Revision: Subdivision (b)(2) amended to delete outdated reference to rule 5.550(c).

2007 Revision: Subdivision (a) amended to add reference to chapter 736, Florida Statutes, which was added to the statutes effective July 1, 2007 and which replaces deleted chapter 737, and to add reference to chapter 739, Florida Statutes, which was added effective July 1, 2005. Committee notes revised.

2008 Revision: Subdivision (a) amended to add reference to section 393.12, Florida Statutes, which governs guardian advocates for persons with developmental disabilities. As provided by section 744.102(11), the term "guardian advocate" as used in the Florida Guardianship Law and these rules does not include a guardian advocate appointed for a person determined to lack capacity to consent to treatment under section 394.4598, Florida Statutes. Subdivisions (b)(5) through (b)(7) added to reflect 2008 amendments to section 393.12, Florida Statutes. Committee notes revised.

2020 Revision: Subdivision (b)(1) amended to reference electronic original documents consistent with section 732.526, Florida Statutes. Committee notes revised.

Statutory References

§ 1.01, Fla. Stat. Definitions.

§ 393.063, Fla. Stat. Definitions.

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

§ 731.201, Fla. Stat. General definitions.

§ 732.526, Fla. Stat. Probate.

§ 736.0103, Fla. Stat. Definitions.

§ 738.102, Fla. Stat. Definitions.

§ 739.102, Fla. Stat. Definitions.

§ 744.102, Fla. Stat. Definitions.

RULE 5.020. PLEADINGS; VERIFICATION; MOTIONS

(a) Forms of Pleading. Pleadings shall be signed by the attorney of record, and by the pleader when required by these rules. All technical forms of pleadings are abolished. No defect of form impairs substantial rights, and no defect in the statement of jurisdictional facts actually existing renders any proceeding void.

(b) Petition. A petition shall contain a short and plain statement of the relief sought, the grounds therefor, and the jurisdiction of the court where the jurisdiction has not already been shown.

(c) Motions. Any other application to the court for an order shall be by written motion, unless made orally during a hearing or trial. The motion shall state with particularity the grounds therefor and shall set forth the relief or order sought.

(d) Rehearing. A motion for rehearing of any order or judgment shall be served not later than 15 days after the date of filing the order or judgment with the clerk as shown on the face of the order or judgment.

(e) Verification. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement:

"Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief."

Committee Notes

The time for determining when a motion for rehearing must be served has been clarified in view of *Casto v. Casto*, 404 So. 2d 1046 (Fla. 1981).

Rule History

1977 Revision: Editorial change (rule) and expansion of committee note. Subdivisions (a), (b), and (d) substantially the same as subdivisions (a), (b), and (f) of prior rule 5.030. Subdivision (c) taken from section 731.104, Florida Statutes. For adversary proceedings see new rule 5.025. Notice of administration is not a pleading within the meaning of this rule.

1980 Revision: Subdivisions (c) and (d) have been redesignated as (e) and (f). New subdivisions (c) and (d) are added to provide for the use of motions in probate proceedings other than adversary proceedings and to specifically authorize a procedure for rehearing.

1984 Revision: Minor editorial changes. Subdivision (f) of prior rule has been deleted as it is now covered under the adversary rules.

1988 Revision: Editorial change in caption of (a). Committee notes revised. Citation form change in committee notes.

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

2003 Revision: Committee notes revised.

2008 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

2019 Revision: Subdivision (d) amended to change the deadline for service of a motion for rehearing from 10 to 15 days after the specified event to conform to 2013 amendments to the Florida Rule of Civil Procedure 1.530. Committee notes revised.

Statutory References

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

§ 731.104, Fla. Stat. Verification of documents.

§ 731.201, Fla. Stat. General definitions.

§ 733.202, Fla. Stat. Petition.

§ 733.604(1), Fla. Stat. Inventories and accountings; public records exemptions.

§ 733.901, Fla. Stat. Final discharge.

§ 735.203, Fla. Stat. Petition for summary administration.

§ 744.104, Fla. Stat. Verification of documents.

§ 744.3085, Fla. Stat. Guardian advocates.

§ 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.

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.200 Petition for administration.

Fla. Prob. R. 5.205(b) Filing evidence of death.

Fla. Prob. R. 5.320 Oath of personal representative.

Fla. Prob. R. 5.330 Execution by personal representative.

Fla. Prob. R. 5.350 Continuance of unincorporated business or venture.

Fla. Prob. R. 5.370(a) Sales of real property where no power conferred.

Fla. Prob. R. 5.405(b) Proceedings to determine homestead status of real property.

Fla. Prob. R. 5.530 Summary administration.

Fla. Prob. R. 5.550 Petition to determine incapacity.

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

Fla. Prob. R. 5.600 Oath.

Fla. Prob. R. 5.649 Guardian advocate.

Fla. R. Civ. P. 1.530 Motions for new trial and rehearing; amendments of judgment.

RULE 5.025. ADVERSARY PROCEEDINGS

(a) Specific Adversary Proceedings. The following proceedings are adversary proceedings unless otherwise ordered by the court:

(1) to remove or surcharge a personal representative;

(2) to remove or surcharge a guardian;

(3) to obtain an injunction or temporary injunction under section 825.1035, Florida Statutes;

(4) to probate a lost or destroyed will, or later-discovered will;

(5) to determine beneficiaries;

(6) to contest the validity of a will;

(7) for revocation of probate of a will;

(8) to construe, reform, or modify a will;

(9) to cancel a devise;

(10) to partition property for the purposes of distribution;

(11) to determine pretermitted status or pretermitted share;

(12) to determine amount of elective share;

(13) to determine elective share contribution; and

(14) to enforce the authority of a personal representative under section 733.612, Florida Statutes.

(b) Declared Adversary Proceedings. Other proceedings may be declared adversary by service on interested persons of a separate declaration that the proceeding is adversary.

(1) If served by the petitioner, the declaration must be served with the petition to which it relates.

(2) If served by the respondent, the declaration and a written response to the petition must be served at the earlier of:

(A) within 20 days after service of the petition, or

(B) before the hearing date on the petition.

(3) When the declaration is served by a respondent, the petitioner must promptly serve formal notice on all other interested persons.

(c) Adversary Status by Order. The court may determine any proceeding to be an adversary proceeding at any time.

(d) Notice and Procedure in Adversary Proceedings.

(1) Petitioner must serve formal notice, except as provided in proceedings under section 825.1035, Florida Statutes.

(2) After service of formal notice, the proceedings, as nearly as practicable, must be conducted similarly to suits of a civil nature, including entry of defaults. The Florida Rules of Civil Procedure govern, except for rule 1.525.

(3) The court on its motion or on motion of any interested person may enter orders to avoid undue delay in the main administration.

(4) If a proceeding is already commenced when an order is entered determining the proceeding to be adversary, it must thereafter be conducted as an adversary proceeding. The order must require interested persons to serve written defenses, if any, within 20 days from the date of the order. It is not necessary to re-serve the petition except as ordered by the court.

(5) When the proceedings are adversary, the caption of subsequent pleadings, as an extension of the probate caption, must include the name of the first petitioner and the name of the first respondent.

Committee Notes

The court on its initiative or on motion of any party may order any proceeding to be adversary or nonadversary or enter any order that will avoid undue delay. The personal representative would be an interested person in all adversary proceedings. A prescribed form for the caption is provided that will facilitate the clerk's and the court's ability to segregate such adversary proceeding from other adversary proceedings and from the main probate file:

Court
Case #

In Re Estate of John B. Jones	)
	)
Julia Jones,	)
	)
Petitioner,	)
	)
v.	)
	)
Harold Jones, as Personal Representative, et al.,	)
	)
Respondents.	)

Rule History

1975 Revision: New rule. 324 So. 2d 38.

1977 Revision: Editorial changes to (a)(1).

1984 Revision: Extensive changes, committee notes revised and expanded.

1988 Revision: Changes in (a) add proceedings to remove a guardian and to surcharge a guardian to the list of specific adversary proceedings and delete proceedings to determine and award the elective share from the list. Change in (b)(4) clarifies on whom the petitioner must serve formal notice. Editorial change in (d)(2) and (d)(5). Committee notes revised. Citation form changes in committee notes.

1992 Revision: Deletion of (b)(3) as unnecessary. Former (b)(4) renumbered as new (b)(3). Committee notes revised. Citation form changes in committee notes.

2001 Revision: Change in (a) to add determination of amount of elective share and contribution as specific adversary proceedings. Committee notes revised.

2003 Revision: Committee notes revised.

2008 Revision: Committee notes revised.

2011 Revision: Subdivision (a) revised to add "reform a will, modify a will" and "determine pretermitted status." Subdivision (d)(2) modified to insure that an award of attorneys' fees in a probate or guardianship proceeding follows the law and procedures established for such proceedings, rather than the law and procedures for civil proceedings. See Amendments to the Florida Family Law Rules of Procedure (Rule 12.525), 897 So. 2d 467 (Fla. 2005). Editorial changes to conform to the court's guidelines for rules submissions as set forth in Administrative Order AOSC06-14. Committee notes revised.

2018 Revision: Subdivisions (a) and (d)(1) amended to reference section 825.1035, Florida Statutes. Committee notes revised.

2024 Revision: Subdivision (a) amended to create new subdivisions (a)(1)–(a)(13) and to include in the list of specific adversary proceedings those proceedings that contest the validity of a will. Committee notes revised.

2026 Revision: Subdivision (a) amended to add proceedings to enforce the authority of a personal representative under section 733.612. Committee notes revised.

2026 Revision: Grammatical amendment to subdivision (d)(2). Committee notes revised.

Statutory References

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

§ 655.933, Fla. Stat. Access by fiduciaries.

§ 655.936, Fla. Stat. Delivery of safe-deposit box contents or property held in safekeeping to personal representative.

§§ 732.201–732.2155, Fla. Stat. Elective share of surviving spouse.

§ 732.301, Fla. Stat. Pretermitted spouse.

§ 732.302, Fla. Stat. Pretermitted children.

§ 732.507, Fla. Stat. Effect of subsequent marriage, birth, adoption, or dissolution of marriage.

§§ 732.6005–732.611, Fla. Stat. Rules of construction.

§ 732.615, Fla. Stat. Reformation to correct mistakes.

§ 732.616, Fla. Stat. Modification to achieve testator's tax objectives.

§ 733.105, Fla. Stat. Determination of beneficiaries.

§ 733.107, Fla. Stat. Burden of proof in contests; presumption of undue influence.

§ 733.109, Fla. Stat. Revocation of probate.

§ 733.207, Fla. Stat. Establishment and probate of lost or destroyed will.

§ 733.208, Fla. Stat. Discovery of later will.

§ 733.212, Fla. Stat. Notice of administration; filing of objections.

§ 733.504, Fla. Stat. Removal of personal representative; causes for removal.

§ 733.505, Fla. Stat. Jurisdiction in removal proceedings.

§ 733.506, Fla. Stat. Proceedings for removal.

§ 733.5061, Fla. Stat. Appointment of successor upon removal.

§ 733.603, Fla. Stat. Personal representative to proceed without court order.

§ 733.609, Fla. Stat. Improper exercise of power; breach of fiduciary duty.

§ 733.612, Fla. Stat. Transactions authorized for the personal representative; exceptions.

§ 733.619(2), (4), Fla. Stat. Individual liability of personal representative.

§ 733.814, Fla. Stat. Partition for purpose of distribution.

§ 744.3085, Fla. Stat. Guardian advocates.

§ 744.474, Fla. Stat. Reasons for removal of guardian.

§ 744.477, Fla. Stat. Proceedings for removal of a guardian.

§ 825.1035, Fla. Stat. Injunction for protection against exploitation of a vulnerable adult.

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.270 Revocation of probate.

Fla. Prob. R. 5.360 Elective share.

Fla. Prob. R. 5.365 Petition for dower.

Fla. Prob. R. 5.440 Proceedings for removal.

Fla. Prob. R. 5.649 Guardian advocate.

Fla. Prob. R. 5.660 Proceedings for removal of guardian.

Fla. Prob. R. 5.681 Restoration of rights of person with developmental disability.

Fla. R. Civ. P. 1.140 Defenses.

Fla. R. Civ. P. 1.160 Motions.

Fla. R. Civ. P. 1.200 Pretrial procedure.

Fla. R. Civ. P. 1.280 General provisions governing discovery.

Fla. R. Civ. P. 1.290 Depositions before action or pending appeal.

Fla. R. Civ. P. 1.310 Depositions upon oral examination.

Fla. R. Civ. P. 1.340 Interrogatories to parties.

Fla. R. Civ. P. 1.380 Failure to make discovery; sanctions.

RULE 5.030. ATTORNEYS

(a) Required; Exception. Every guardian and every personal representative, unless the personal representative remains the sole interested person, must be represented by an attorney admitted to practice in Florida. A guardian or personal representative who is an attorney admitted to practice in Florida may represent himself or herself as guardian or personal representative. A guardian advocate is not required to be represented by an attorney unless otherwise required by law or the court.

(b) Limited Appearance without Court Order. An attorney of record for an interested person in a proceeding governed by these rules must be the attorney of record in all other proceedings in the administration of the same estate or guardianship, except service of process in an independent action on a claim, unless at the time of appearance the attorney files a notice specifically limiting the attorney's appearance only to the particular proceeding or matter in which the attorney appears. At the conclusion of that proceeding or matter, the attorney's role terminates on the attorney filing notice of

completion of limited appearance and serving the notice on the client and other interested persons.

(c) Withdrawal or Limited Appearance with Court Order. An attorney of record may withdraw or limit the attorney's appearance with approval of the court, after filing a motion setting forth the reasons and serving the motion on the client and other interested persons.

Committee Notes

The appearance of an attorney in an estate is a general appearance unless (i) specifically limited at the time of such appearance or (ii) the court orders otherwise. This rule does not affect the right of a party to employ additional attorneys who, if members of The Florida Bar, may appear at any time.

Rule History

1975 Revision: Subdivision (a) is same as prior rule 5.040 with added provision for withdrawal of attorney similar to Florida Rule of Appellate Procedure 2.3(d)(2). Subdivision (b) reflects ruling in case of *State ex rel. Falkner v. Blanton*, 297 So. 2d 825 (Fla. 1974).

1977 Revision: Editorial change requiring filing of petition for withdrawal and service of copy upon interested persons. Editorial change in citation forms in rule and committee note.

1984 Revision: Minor editorial changes and addition of subdivision (c). Committee notes expanded.

1988 Revision: Editorial changes and order of subdivisions rearranged. Committee notes expanded. Citation form changes in committee notes.

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

2003 Revision: Committee notes revised.

2005 Revision: Committee notes revised.

2006 Revision: Committee notes revised.

2008 Revision: Subdivision (a) amended to reflect that a guardian advocate may not be required to be represented by an attorney in some instances. Committee notes revised.

2010 Revision: Subdivision (b) and (c) amended to clarify the procedure for termination of an attorney's representation of an interested person either with or without court order.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

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

§ 731.301, Fla. Stat. Notice.

§ 733.106, Fla. Stat. Costs and attorney's fees.

§ 733.212, Fla. Stat. Notice of administration; filing of objections.

§ 733.6175, Fla. Stat. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.

§ 744.108, Fla. Stat. Guardian's and attorney's fees and expenses.

§ 744.3085, Fla. Stat. Guardian advocates.

Rule References

Fla. Prob. R. 5.041(b) Service of pleadings and papers.

Fla. Prob. R. 5.110(b), (c) Resident agent.

Fla. R. Gen. Prac. & Jud. Admin. 2.505 Attorneys.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

Fla. R. App. P. 9.440 Attorneys.

RULE 5.040. NOTICE

(a) Formal Notice.

(1) *Procedure for Formal Notice.* When formal notice is given, the pleading or motion must be served on interested persons, together with a notice requiring the person served to serve written defenses on the person giving notice within 20 days after service of the notice, exclusive of the day of service, and to file the original of the written defenses with the clerk of the court either before service or immediately after service, and notifying the person served that failure to serve written defenses as required may result in a judgment or order for the relief demanded in the pleading or motion, without further notice.

(2) *Effect of Service of Formal Notice.* After service of formal notice, informal notice of any hearing on the pleading or motion must be served on interested persons, provided that if no written defense is served within 20 days after service of formal notice on an interested person, the pleading or motion may be considered ex parte as to that person, unless the court orders otherwise.

(3) *Manner of Service of Formal Notice.*

(A) If an attorney has appeared for the interested person under the Florida Rules of General Practice and Judicial Administration or the Florida Probate Rules, formal notice must be served on the person by delivery to the attorney in conformity with the requirements of Florida Rule of General Practice and Judicial Administration 2.516.

(B) If an attorney has not appeared for the interested person under the Florida Rules of General Practice and

Judicial Administration or the Florida Probate Rules, formal notice must be served in the following manner:

(i) by sending a copy by any commercial delivery service requiring a signed receipt or by any form of mail requiring a signed receipt;

(ii) as provided in the Florida Rules of Civil Procedure for service of process;

(iii) as otherwise provided by Florida law for service of process; or

(iv) by first-class mail when only in rem or quasi in rem relief is sought against a person if:

a. registered or certified mail service to the addressee requiring a signed receipt is unavailable and if delivery by commercial delivery service requiring a signed receipt is also unavailable;

b. delivery under subdivision (a)(3)(B)(i) is attempted and is refused by the addressee; or

c. delivery under subdivision (a)(3)(B)(i) is attempted and is unclaimed after notice to the addressee by the delivering entity.

(4) *Persons to be Served.* Service of formal notice under (a)(3)(B)(i) and (a)(3)(B)(iv) must be made on the following:

(A) service on an interested person who has filed a request for notice must be made by delivery to the interested person at the address given in the request for notice;

(B) service on an incapacitated person or a person with a developmental disability must be made by delivery:

(i) to the person at the person's usual place of abode; and

(ii) to the person's legal guardian at the legal guardian's usual place of abode or regular place of business or, if the person does not have a legal guardian, to the person having care or custody of the person at the person's usual place of abode or regular place of business;

(C) service on a minor whose disabilities of nonage are not removed must be made by delivery to the persons designated to accept service of process on a minor under chapter 48, Florida Statutes, at the minor's usual place of abode or regular place of business;

(D) service on any other individual must be made by delivery to the individual at the individual's usual place of abode or to any person authorized to receive service of a summons on behalf of the individual as provided in chapter 48, Florida Statutes; or

(E) service on a corporation or other business entity must be made by delivery to the corporation or other business entity as provided in chapter 48, Florida Statutes.

(5) *Completion of Service.* Service of formal notice under subdivision (a)(3)(B)(i) will be complete on receipt by the person to whom delivery is made. Service of formal notice under subdivision (a)(3)(B)(ii) will be complete as provided in the Florida Rules of Civil Procedure for service of process. Service of formal notice under subdivision (a)(3)(B)(iii) will be complete as provided by Florida law for service of process. Service of formal notice under subdivision (a)(3)(B)(iv) will be complete upon mailing.

(6) *Proof of Service.* Proof of service under subdivision (a)(3)(B) must be by verified statement of the person serving formal notice and there must be attached to the verified statement the receipt signed by the person to whom delivery was made or other evidence satisfactory to the court that delivery was made. If service is obtained under subdivision (a)(3)(B)(iv), the verified statement must state the basis for service by first-class mail, the date of mailing, and the address to which the first-class mail was sent, and

evidence of delivery is not required. Proof of service under subdivisions (a)(3)(B)(ii) or (a)(3)(B)(iii) must be made as provided by Florida law for service of process.

(b) Informal Notice. When informal notice of a petition or other proceeding is required or permitted, it must be served as provided in rule 5.041.

(c) "Notice" Defined. In these rules, the Florida Probate Code, and the Florida Guardianship Law "notice" means informal notice unless formal notice is specified.

(d) Formal Notice Optional. Formal notice may be given instead of informal notice at the option of the person giving notice unless the court orders otherwise. When formal notice is given instead of informal notice, formal notice must be given to all interested persons entitled to notice. When formal notice is given instead of informal notice, that notice does not modify any time period otherwise specified by statute or these rules.

(e) In the Manner Provided for Service of Formal Notice. If a document is served in the manner provided for service of formal notice under subdivision (a)(3)(B), service is completed as provided in subdivision (a)(5) and proof of service must be in the manner set forth in subdivision (a)(6).

Committee Notes

Formal notice is the method of service used in probate proceedings and the method of service of process for obtaining in rem jurisdiction over the person's interest in the estate property. The court does not acquire personal jurisdiction over a person by service of formal notice. "The manner provided for service of formal notice" is as provided in rule 5.040(a)(3).

Informal notice is the method of service of notice given to interested persons entitled to notice when formal notice is not given or required.

Reference in this rule to the terms “mail” or “mailing” refers to use of the United States Postal Service.

Rule History

1975 Revision: Implements section 731.301, Florida Statutes.

1977 Revision: Reference to elisor.

1980 Revision: Editorial changes. Clarification of time for filing defenses after formal notice. Authorizes court to give relief to delinquent respondent from ex parte status; relief from service on numerous persons; allows optional use of formal notice.

1984 Revision: Editorial changes. Eliminates deadline for filing as opposed to serving defenses after formal notice; defines procedure subsequent to service of defenses after formal notice; new requirements for service of formal notice on incompetents and corporations; defines when service of formal notice is deemed complete; provisions relating to method of service of informal notice transferred to new rules 5.041 and 5.042; eliminates waiver of notice by will.

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

1991 Revision: Subdivision (b) amended to define informal notice more clearly.

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

1996 Revision: Subdivision (a) amended to permit service of formal notice by commercial delivery service to conform to 1993 amendment to section 731.301(1), Florida Statutes. Editorial changes.

2001 Revision: Editorial changes in subdivision (a)(3)(A) to clarify requirements for service of formal notice.

2003 Revision: Committee notes revised.

2005 Revision: Subdivision (a)(3)(A) amended to delete requirement of court approval of commercial delivery service.

2006 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2007 Revision: New subdivision (a)(3)(A)(iv) inserted in response to *Cason ex rel. Saferight v. Hammock*, 908 So. 2d 512 (Fla. 5th DCA 2005), and subsequent subdivisions renumbered accordingly. Committee notes revised.

2008 Revision: Subdivision (a)(3)(A)(iii) revised to include "person with a developmental disability." Committee notes revised.

2010 Revision: Subdivision (d) amended to clarify that the optional use of formal notice when only informal notice is required does not modify any time period otherwise specified by statute or rule. Committee notes revised.

2012 Revision: Subdivision (b) revised to reflect amendment to rule 5.041.

2016 Revision: Subdivision (e) created to specify when service in the manner provided for service of formal notice is completed. Committee notes revised.

2019 Revision: Subdivision (a) reformatted for easier reading and corrected syntax. Subdivision (a)(3)(D) amended to provide for service by first-class mail when only in rem or quasi in rem relief is sought under certain circumstances. Committee notes revised.

2020 Revision: Committee notes amended.

2023 Revision: Subdivision (a)(6) is amended to note evidence of formal notice is not required when sent by first-class mail. Subdivision (e) is amended to refer to subdivision (a)(5). Committee notes revised.

2025 Revision: Subdivision (a)(3) is amended to permit e-service of formal notice on represented interested persons. Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 1.01(3), Fla. Stat. Definitions.

ch. 48, Fla. Stat. Process and service of process.

ch. 49, Fla. Stat. Constructive service of process.

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

§ 731.105, Fla. Stat. In rem proceeding.

§ 731.201(18), (22), Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 731.302, Fla. Stat. Waiver and consent by interested person.

§ 733.212, Fla. Stat. Notice of administration; filing of objections.

§ 733.2123, Fla. Stat. Adjudication before issuance of letters.

§ 733.502, Fla. Stat. Resignation of personal representative.

§ 733.613, Fla. Stat. Personal representative's right to sell real property.

§ 733.6175, Fla. Stat. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.

§ 733.901, Fla. Stat. Final discharge.

ch. 743, Fla. Stat. Disability of nonage of minors removed.

§ 744.106, Fla. Stat. Notice.

§ 744.301, Fla. Stat. Natural guardians.

§ 744.3085, Fla. Stat. Guardian advocates.

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

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

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

§ 744.441, Fla. Stat. Powers of guardian upon court approval.

§ 744.447, Fla. Stat. Petition for authorization to act.

§ 744.477, Fla. Stat. Proceedings for removal of a guardian.

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.030 Attorneys.

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

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.180 Waiver and consent.

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

Fla. Prob. R. 5.649 Guardian advocate.

Fla. Prob. R. 5.681 Restoration of rights of person with developmental disability.

Fla. R. Gen. Prac. & Jud. Admin. 2.505 Attorneys.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

Fla. R. Civ. P. 1.070 Process.

Fla. R. Civ. P. Form 1.902 Summons.

RULE 5.041. SERVICE OF PLEADINGS AND DOCUMENTS

(a) Service. Unless the court orders otherwise, every petition or motion for an order determining rights of an interested person, and every other pleading or document filed in the particular proceeding which is the subject matter of such petition or motion, except applications for witness subpoenas, must be served on interested persons as set forth in Florida Rule of General Practice and Judicial Administration 2.516 unless these rules, the Florida Probate Code, or the Florida Guardianship Law provides otherwise.

(b) Interested Persons. No service need be made on interested persons against whom a default has been entered, or against whom the matter may otherwise proceed ex parte, unless a new or additional right or demand is asserted. For purposes of this rule an interested person is deemed a party under rule 2.516.

(c) Minors. If the interested person is a minor whose disabilities of nonage are not removed, and who is not represented by an attorney, then service must be on the persons designated to accept service of process on a minor under chapter 48, Florida Statutes.

Committee Notes

Derived from Florida Rule of Civil Procedure 1.080. Regulates the service of pleadings and documents in proceedings on petitions or motions for determination of rights. It is not applicable to every pleading and document served or filed in the administration of a guardianship or decedent's estate.

Rule History

1984 Revision: New rule. Subdivision (c) is same as former rule 5.040(d).

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

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

1996 Revision: Subdivision (b) amended to allow service to be made by facsimile. Committee notes revised.

2000 Revision: Subdivision (b) amended to clarify requirements for service of pleadings and papers. Subdivision (e) amended to clarify date of filing. Editorial changes in subdivision (f).

2003 Revision: Committee notes revised.

2005 Revision: Changes in subdivisions (b) and (f) to clarify service requirements, and editorial changes in (e).

2006 Revision: Committee notes revised.

2007 Revision: Provisions regarding service on a minor added in subdivision (b) in response to *Cason ex rel. Saferight v. Hammock*, 908 So. 2d 512 (Fla. 5th DCA 2005). Committee notes revised.

2008 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

2012 Revision: Portions of subdivision (b) and all of subdivisions (d), (e), (f), and (g) deleted in response to creation of Rule 2.516 of the Rules of General Practice and Judicial Administration. Committee notes revised.

2016 Revision: Committee notes revised.

2026 Revision: Rule was divided into 3 subdivisions. Committee notes revised.

Statutory References

ch. 39, Fla. Stat. Proceedings relating to children.

ch. 48, Fla. Stat. Process and service of process.

ch. 61, Fla. Stat. Dissolution of marriage; support; time-sharing.

ch. 63, Fla. Stat. Adoption.

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

§ 731.201, Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 733.212, Fla. Stat. Notice of administration; filing of objections.

§ 733.2123, Fla. Stat. Adjudication before issuance of letters.

§ 733.705(2), (4), Fla. Stat. Payment of and objection to claims.

ch. 743, Fla. Stat. Disability of nonage of minors removed.

§ 744.3085, Fla. Stat. Guardian advocates.

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

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

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

§ 744.447, Fla. Stat. Petition for authorization to act.

ch. 751, Fla. Stat. Temporary custody of minor children by extended family.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.030 Attorneys.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.150(c) Order requiring accounting.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.240(a) Notice of administration.

Fla. Prob. R. 5.340(d) Inventory.

Fla. Prob. R. 5.550 Petition to determine incapacity.

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

Fla. Prob. R. 5.649 Guardian advocate.

Fla. Prob. R. 5.681 Restoration of rights of person with developmental disability.

Fla. R. Civ. P. 1.080 Service of pleadings and documents.

Fla. R. Gen. Prac. & Jud. Admin. 2.505 Attorneys.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.042. TIME

(a) Computation. Computation of time shall be governed by Florida Rule of General Practice and Judicial Administration 2.514.

(b) Enlargement. When an act is required or allowed to be done at or within a specified time by these rules, by order of court, or by notice given thereunder, for cause shown the court at any time in its discretion

(1) with or without notice, may order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) on motion made and notice, after the expiration of the specified period, may permit the act to be done when failure to act was the result of excusable neglect. The court under this rule may not extend the time for serving a motion for rehearing or enlarge any period of time governed by the Florida Rules of Appellate Procedure.

(c) Service for Hearings. A copy of any written petition or motion which may not be heard ex parte and a copy of the notice of the hearing thereon shall be served a reasonable time before the time specified for the hearing.

(d) Additional Time After Service by Mail or E-mail. Florida Rule of General Practice and Judicial Administration 2.514(b) shall apply to the computation of time following service, except for documents served by formal notice or in the manner provided for service of formal notice.

Committee Notes

This rule is derived from Florida Rule of Civil Procedure 1.090.

Rule History

1984 Revision: New rule.

1988 Revision: Editorial changes in (a) and (b). Subdivision (a) enlarged to include closing of the clerk's office as a legal holiday. In *Clara P. Diamond, Inc. v. Tam-Bay Realty, Inc.*, 462 So. 2d 1168 (Fla. 2d DCA 1984), the Second District Court of Appeal suggested that Florida Rule of Civil Procedure 1.090(b) be clarified to leave no question that the court may not extend the time for rehearing, appeal, or petition for certiorari regardless of whether a request to enlarge the time therefor was made before the expiration of the time allowed. Because the format of rule 5.042(b) was substantially the

same as the format of rule 1.090(b), subdivision (b) is amended to conform for the sake of clarity. Committee notes revised.

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

2003 Revision: Committee notes revised.

2005 Revision: Subdivision (d) amended to clarify exception to mailing rule for service of formal notice and service in the manner provided for service of formal notice. Committee notes revised.

2008 Revision: Committee notes revised.

2012 Revision: Subdivision (a) revised to refer to Rule 2.514 and delete duplicative provisions. Subdivision (d) revised to incorporate service by e-mail and the filing and service of documents, rather than papers. Committee notes revised.

2016 Revision: Subdivision (d) revised to clarify that Florida Rule of General Practice and Judicial Administration 2.514(b) does not apply if a document is served by formal notice or in the manner provided for service of formal notice. Committee notes revised.

Statutory References

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

§ 683.01, Fla. Stat. Legal holidays.

§ 731.301, Fla. Stat. Notice.

§ 732.107, Fla. Stat. Escheat.

§ 732.2135, Fla. Stat. Time of election; extensions; withdrawal.

§ 732.402, Fla. Stat. Exempt property.

§ 732.901, Fla. Stat. Production of wills.

§ 733.104, Fla. Stat. Suspension of statutes of limitation in favor of the personal representative.

§ 733.212, Fla. Stat. Notice of administration; filing of objections.

§ 733.2121, Fla. Stat. Notice to creditors; filing of claims.

§ 733.701, Fla. Stat. Notifying creditors.

§ 733.702, Fla. Stat. Limitations on presentation of claims.

§ 733.705, Fla. Stat. Payment of and objection to claims.

§ 733.710, Fla. Stat. Limitations on claims against estates.

§ 733.816, Fla. Stat. Disposition of unclaimed property held by personal representatives.

§ 744.3085, Fla. Stat. Guardian advocates.

Rule References

Fla. Prob. R. 5.040(a)(1) Notice.

Fla. Prob. R. 5.150 Order requiring accounting.

Fla. Prob. R. 5.240 Notice of administration.

Fla. Prob. R. 5.241 Notice to creditors.

Fla. Prob. R. 5.340(a)–(b) Inventory.

Fla. Prob. R. 5.345 Accountings other than personal representatives' final accountings.

Fla. Prob. R. 5.395 Notice of federal estate tax return.

Fla. Prob. R. 5.400 Distribution and discharge.

Fla. Prob. R. 5.649 Guardian advocate.

Fla. Prob. R. 5.681 Restoration of rights of person with developmental disability.

Fla. Prob. R. 5.700 Objection to guardianship reports.

Fla. R. Civ. P. 1.090 Time.

Fla. R. Gen. Prac. & Jud. Admin. 2.514 Computing and extending time.

RULE 5.043. DEPOSIT OF WILLS AND CODICILS

Notwithstanding any rule to the contrary, and unless the court orders otherwise, any original executed will or codicil, including but not limited to an electronic will, deposited with the court must be retained by the clerk in its original form and must not be destroyed or disposed of by the clerk for 20 years after submission regardless of whether the will or codicil has been permanently recorded as defined by Florida Rule of General Practice and Judicial Administration 2.430.

Committee Notes

2012 Adoption. Florida Rule of General Practice and Judicial Administration 2.525 requires that all documents be filed with the court electronically. Although the Florida Statutes direct deposit of a will, rather than the filing of the will, the committee believes that original wills and codicils should be retained in their original form longer than other documents filed with the court due to the unique evidentiary aspects of the actual document. These unique aspects could be lost forever if the original document were converted to electronic form and the original destroyed.

Rule History

2012 Revision: New Rule.

2020 Revision: Added reference to deposit of electronic wills consistent with section 732.526, Florida Statutes. Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 731.201(16), (40), Fla. Stat. General definitions.

§ 732.526, Fla. Stat. Probate.

§ 732.901, Fla. Stat. Production of wills.

Rule References

Fla. R. Gen. Prac. & Jud. Admin. 2.430 Retention of court records.

Fla. R. Gen. Prac. & Jud. Admin. 2.525 Filing.

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 744.1097(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

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.

§ 744.1096, Fla. Stat. Domicile of ward.

§ 744.1097, Fla. Stat. Venue.

§ 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 5.060. REQUEST FOR NOTICES AND COPIES OF PLEADINGS

(a) Request. Any interested person who desires notice of proceedings in the estate of a decedent or ward may file a separate written request for notice of further proceedings, designating the interested person's residence and post office address. When the interested person's residence or post office address changes, a new designation of the change must be filed in the proceedings. A person filing the request, or address change, must serve a copy on the attorney for the personal representative or guardian, and include a certificate of service.

(b) Notice and Copies. A party filing a request must be served thereafter by the moving party with notice of further proceedings and with copies of subsequent pleadings and documents as long as the party is an interested person.

Committee Notes

Rule History

1975 Revision: This rule substantially incorporates the provisions of prior rule 5.060 except that now a copy of the request shall be mailed by the clerk only to the attorney for the personal representative or guardian. Even though a request under this rule has not been made, informal notice as provided in rule 5.040(b)(3) may still be required.

1977 Revision: Editorial and citation form change in committee note.

1980 Revision: Caveat, the personal representative may want to give notice to parties even though not required, for example, where an independent action has been filed on an objected claim.

1988 Revision: Captions added to subdivisions. Committee notes expanded. Citation form changes in committee notes.

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

2003 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2013 Revision: Subdivisions (a) and (b) revised to reflect service of documents, rather than papers. Subdivision (a) revised to shift responsibility for service of the request from the clerk to the interested person making the request for notice and copies. Editorial changes to conform to the court's guidelines for rule submissions as set forth in AOSC06-14.

2026 Revision: Committee notes revised.

Statutory References

§ 731.201, Fla. Stat. General definitions.

§ 733.604, Fla. Stat. Inventories and accountings; public records exemptions.

Rule References

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.340 Inventory.

Fla. Prob. R. 5.341 Estate information.

RULE 5.065. NOTICE OF CIVIL ACTION OR ANCILLARY ADMINISTRATION

(a) Civil Action. A personal representative and a guardian shall file a notice when a civil action has been instituted by or against the personal representative or the guardian. The notice shall contain:

(1) the names of the parties;

(2) the style of the court and the case number;

(3) the county and state where the proceeding is pending;

(4) the date of commencement of the proceeding; and

(5) a brief statement of the nature of the proceeding.

(b) Ancillary Administration. The domiciliary personal representative shall file a notice when an ancillary administration has commenced, which notice shall contain:

(1) the name and residence address of the ancillary personal representative; and

(2) the information required in subdivisions (a)(2), (3), and (4) above.

(c) Copies Exhibited. A copy of the initial pleading may be attached to the notice. To the extent an attached initial pleading states the required information, the notice need not restate it.

Committee Notes

This rule reflects a procedural requirement not founded on a statute or rule.

Rule History

1984 Revision: New rule.

1988 Revision: Committee notes expanded.

1992 Revision: Editorial change. Citation form changes in committee notes.

2000 Revision: Subdivision (b) amended to eliminate requirement to set forth nature and value of ancillary assets.

2020 Revision: Statutory references amended.

2021 Revision: Statutory references amended.

Statutory References

§ 733.612(20), Fla. Stat. Transactions authorized for the personal representative; exceptions.

§ 744.441(1)(k), Fla. Stat. Powers of guardian upon court approval.

RULE 5.080. DISCOVERY AND SUBPOENA

(a) Adoption of Civil Rules. The following Florida Rules of Civil Procedure shall apply in all probate and guardianship proceedings:

(1) Rule 1.280, general provisions governing discovery.

(2) Rule 1.290, depositions before action or pending appeal.

(3) Rule 1.300, persons before whom depositions may be taken.

(4) Rule 1.310, depositions upon oral examination.

(5) Rule 1.320, depositions upon written questions.

(6) Rule 1.330, use of depositions in court proceedings.

(7) Rule 1.340, interrogatories to parties.

(8) Rule 1.350, production of documents and things and entry upon land for inspection and other purposes.

(9) Rule 1.351, production of documents and things without deposition.

(10) Rule 1.360, examination of persons.

(11) Rule 1.370, requests for admission.

(12) Rule 1.380, failure to make discovery; sanctions.

(13) Rule 1.390, depositions of expert witnesses.

(14) Rule 1.410, subpoena.

(b) Limitations and Costs. In order to conserve the assets of the estate, the court has broad discretion to limit the scope and the place and manner of the discovery and to assess the costs, including attorneys' fees, of the discovery against the party making it or against 1 or more of the beneficiaries of the estate or against the ward in such proportions as the court determines, considering, among other factors, the benefit derived therefrom.

(c) Application. It is not necessary to have an adversary proceeding under rule 5.025 to utilize the rules adopted in subdivision (a) above. Any interested person may utilize the rules adopted in subdivision (a).

Committee Notes

Subdivision (b) is not intended to result in the assessment of costs, including attorney's fees, in every instance in which discovery is sought. Subdivision (c) is not intended to overrule the holdings in *In re Estate of Shaw*, 340 So. 2d 491 (Fla. 3d DCA 1976), and *In re Estate of Posner*, 492 So. 2d 1093 (Fla. 3d DCA 1986).

Rule History

1975 Revision: This rule is the same as prior rule 5.080, broadened to include guardianships and intended to clearly permit the use of discovery practices in nonadversary probate and guardianship matters.

1977 Revision: Editorial change in citation form in committee note.

1984 Revision: Florida Rules of Civil Procedure 1.290, 1.300, 1.351, and 1.410 have been added.

1988 Revision: Subdivision (a)(15) deleted as duplicative of rule 5.070 Subpoena. Editorial change in (b). Citation form change in committee notes.

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

1996 Revision: Reference to rule 1.400 eliminated because of deletion of that rule from the Florida Rules of Civil Procedure. Editorial change.

2002 Revision: Reference to rule 1.410 transferred to subdivision (a) from former rule 5.070. Subdivision (b) amended to give court discretion to assess attorneys' fees. Subdivision (c) added. Committee notes revised.

2006 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2016 Revision: Florida Rule of Civil Procedure 1.451 has been added to subdivision (a). Committee notes revised.

Statutory References

§ 731.201(23), Fla. Stat. General definitions.

§ 733.106, Fla. Stat. Costs and attorney's fees.

§ 744.105, Fla. Stat. Costs.

§ 744.108, Fla. Stat. Guardian's and attorney's fees and expenses.

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. R. Gen. Prac. & Jud. Admin. 2.535 Court reporting.

RULE 5.095. GENERAL AND SPECIAL MAGISTRATES

(a) General Magistrates. The court may appoint general magistrates as the court finds necessary. General magistrates shall be members of The Florida Bar and shall continue in office until removed by the court. The order making an appointment shall be recorded. Each general magistrate shall take the oath required of officers by the Florida Constitution. The oath shall be recorded before the magistrate begins to act.

(b) Special Magistrates. The court may appoint members of The Florida Bar as special magistrates for any particular service required by the court. Special magistrates shall be governed by all laws and rules relating to general magistrates, except special magistrates shall not be required to make oath unless specifically required by the court. For good cause shown, the court may appoint a person other than a member of The Florida Bar as a special magistrate.

(c) Reference. No referral shall be made to a magistrate without the consent of the parties. When a referral is made to a magistrate, either party may set the action for hearing before the magistrate.

(d) General Powers and Duties. Every magistrate shall act under the direction of the court. Process issued by a magistrate shall be directed as provided by law. All grounds for disqualification of a judge shall apply to magistrates.

(e) Bond. When not otherwise provided by law, the court may require magistrates who are appointed to dispose of real or personal property to give bond and surety conditioned for the proper payment of all money that may come into their hands and for the due performance of their duties. The bond shall be made payable to the State of Florida and shall be for the benefit of all persons aggrieved by any act of the magistrate.

(f) Hearings. Hearings before any magistrate may be held in the county where the action is pending or at any other place by order of the court for the convenience of the witnesses or the parties. The magistrate shall assign a time and place for proceedings as soon as reasonably possible after a referral is made and give notice to all parties. If any party fails to appear, the magistrate may proceed ex parte or may continue the hearing to a future day, with notice to the absent party. The magistrate shall proceed with reasonable diligence and the least practicable delay. Any party may apply to the court for an order directing the magistrate to accelerate the proceedings and to make a report promptly. Evidence shall be taken in writing or by electronic recording by the magistrate or by some other person under the magistrate's authority in the magistrate's presence and shall be filed with the magistrate's report. The magistrate may examine and take testimony from the parties and their witnesses under oath on all matters contained in the referral and may require production of all books, papers, writings, vouchers, and other documents applicable to those matters. The magistrate shall admit only evidence that would be admissible in court. The magistrate may take all actions concerning evidence that may be taken by the court. All parties accounting before a magistrate shall bring in their accounts in the form of accounts payable and receivable, and any other parties who are not satisfied with the account may examine the accounting party orally or by interrogatories or deposition as the magistrate directs. All depositions and documents that have been taken or used previously in the action may be used before the magistrate.

(g) Magistrate's Report. The magistrate's report shall contain a description of the matters considered and the magistrate's conclusion and any recommendations. No part of any statement of facts, account, charge, deposition, examination, or answer used before the magistrate shall be recited.

(h) Filing Report; Notice; Exceptions. The magistrate shall file the report and serve copies on the parties. The parties may serve exceptions to the report within 10 days from the time it is served on them. If no exceptions are filed within that period, the court shall take appropriate action on the report. All timely filed exceptions shall be heard on reasonable notice by either party.

(i) Application of Rule. This rule shall not apply to the appointment of magistrates for the specific purpose of reviewing guardianship inventories, accountings, and plans as otherwise governed by law and these rules.

Committee Notes

Rule History

2007 Revision: This rule, patterned after Florida Rule of Civil Procedure 1.490, is created to implement the use of magistrates in probate and guardianship proceedings other than those specifically addressed in rule 5.697.

Rule References

Fla. Prob. R. 5.697 Magistrates' review of guardianship inventories, accountings, and plans.

Fla. R. Civ. P. 1.490 Magistrates.

RULE 5.100. RIGHT OF APPEAL

Appeal of final orders and discretionary appellate review of non-final orders are governed by the Florida Rules of Appellate Procedure.

Committee Notes

For purposes of appellate review, the service of a motion for rehearing postpones rendition of final orders only. A motion for rehearing of a non-final order does not toll the running of the time to seek review of that order.

Rule History

1975 Revision: Same as prior rule 5.100 with editorial changes.

1977 Revision: Citation form change in committee note.

1988 Revision: Committee notes expanded. Citation form changes in rule and committee notes.

1992 Revision: Editorial changes. Citation form changes in committee notes.

1996 Revision: Superseded by Florida Rule of Appellate Procedure 9.110(a)(2).

2000 Revision: Rewritten because former rule was superseded. Revisions to committee notes to amend text and to include cross-references to other rules.

2003 Revision: Committee notes revised.

Rule References

Fla. Prob. R. 5.020(d) Pleadings; verifications; motions.

Fla. R. App. P. 9.020(h) Definitions.

Fla. R. App. P. 9.110(a)(2), (b) Appeal proceedings to review final orders of lower tribunals and orders granting new trial in jury and non-jury cases.

Fla. R. App. P. 9.130(b) Proceedings to review non-final orders and specified final orders.

RULE 5.110. ADDRESS DESIGNATION FOR PERSONAL REPRESENTATIVE OR GUARDIAN; DESIGNATION OF RESIDENT AGENT AND ACCEPTANCE

(a) Address Designation of Personal Representative or Guardian. Before letters are issued, the personal representative or guardian must file a designation of street address, and mailing address. If the personal representative or guardian is an individual, the designation must also include the individual's residence address. The personal representative or guardian must notify the court of any change in its residence address, street address, or mailing address within 20 days of the change.

(b) Designation of Resident Agent. Before letters are issued, a personal representative or guardian must file a designation of resident agent for service of process or notice, and the acceptance by the resident agent. A designation of resident agent is not required if a personal representative or guardian is (1) a corporate fiduciary having an office in Florida, or (2) a Florida Bar member who is a resident of and has an office in Florida. The designation must contain the name, street address, and mailing address of the resident agent. If the resident agent is an individual who is not an attorney, the designation must also include the individual's residence address.

(c) Residency Requirement. A resident agent, other than a member of The Florida Bar who is a resident of Florida, must be a resident of the county where the proceedings are pending.

(d) Acceptance by Resident Agent. The resident agent must sign a written acceptance of designation.

(e) Incorporation in Other Pleadings. The designation of the address of the personal representative or guardian, the designation of resident agent, or acceptance may be incorporated in the petition for administration, the petition for appointment of guardian, or the personal representative's or guardian's oath.

(f) Effect of Designation and Acceptance. The designation of and acceptance by the resident agent shall constitute consent to service of process or notice on the agent and shall be sufficient to bind the personal representative or guardian:

(1) in its representative capacity in any action; and

(2) in its personal capacity only in those actions in which the personal representative or guardian is sued personally for claims arising from the administration of the estate or guardianship.

(g) Successor Agent. If the resident agent dies, resigns, or is unable to act for any other reason, the personal representative or guardian must appoint a successor agent within 10 days after receiving notice that such event has occurred.

Committee Notes

Rule History

1977 Revision: Change in committee note to conform to statutory renumbering. Substantially the same as prior rule 5.210, except that under prior rule, designation was required to be filed within 10 days after letters issued.

1984 Revision: Captions added to subdivisions. New subdivision (b) added. Requires filing acceptance at the same time as filing designation. Committee notes revised.

1988 Revision: Change in (c) to clarify that the personal representative, if a member of The Florida Bar, may not also serve as resident agent for service of process or notice. Citation form change in committee notes.

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

2000 Revision: Extensive editorial changes to rule. Rule reformatted for clarity and revised to permit an attorney serving as

resident agent to designate a business address in lieu of a residence address.

2003 Revision: Committee notes revised.

2008 Revision: Committee notes revised.

2010 Revision: Subdivision (a) amended to require the personal representative or guardian to notify the court of any change of address to facilitate timely communication with the personal representative or guardian.

2013 Revision: Subdivision (b) amended to limit to individuals the requirement that the guardian or personal representative provide a designation of residence address, excluding corporate fiduciaries. Editorial changes to conform to the court's guidelines for rules submissions as set forth in AOSC06-14.

Rule References

Fla. Prob. R. 5.200 Petition for administration.

Fla. Prob. R. 5.320 Oath of personal representative.

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

Fla. Prob. R. 5.649 Guardian advocate.

RULE 5.120. ADMINISTRATOR AD LITEM AND GUARDIAN AD LITEM

(a) Appointment.

(1) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interests of an incapacitated person, an unborn or unascertained person, a minor or any other person otherwise under a legal disability, a person with a developmental disability, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate.

(2) When it is necessary that the estate of a decedent or a ward be represented in any probate or guardianship proceeding and:

(A) there is no personal representative of the estate or guardian of the ward;

(B) the personal representative or guardian is or may be interested adversely to the estate or ward, or is enforcing the personal representative's or guardian's own debt or claim against the estate or ward; or

(C) the necessity arises otherwise, the court may appoint an administrator ad litem or a guardian ad litem, as the case may be, without bond or notice for that particular proceeding.

(3) If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(4) The administrator ad litem or guardian ad litem must file an oath to discharge all duties faithfully and on the filing must be qualified to act. No process need be served on the administrator ad litem or guardian ad litem, but such person must appear and defend as directed by the court.

(b) Petition. The petition for appointment of a guardian ad litem must state to the best of petitioner's information and belief:

(1) the initials and residence address of each minor, person with a developmental disability, or incapacitated person and year of birth of each minor who has an interest in the proceedings;

(2) the name and address of any guardian appointed for each minor, person with a developmental disability, or incapacitated person;

(3) the name and residence address of any living natural guardians or living natural guardian having legal custody of

each minor, person with a developmental disability, or incapacitated person;

(4) a description of the interest in the proceedings of each minor, person with a developmental disability, or incapacitated person; and

(5) the facts showing the necessity for the appointment of a guardian ad litem.

(c) Notice. Within 10 days after appointment, the petitioner must serve conformed copies of the petition for appointment of a guardian ad litem and order to any guardian, or if there is no guardian, to the living natural guardians or the living natural guardian having legal custody of the minor, person with a developmental disability, or incapacitated person.

(d) Report. The guardian ad litem must serve any written report or finding of the guardian ad litem's investigation and answer filed in the proceedings, petition for compensation and discharge, and the notice of hearing on the petition to any guardian, or in the event that there is no guardian, to the living natural guardians or the living natural guardian having legal custody of the minor, person with a developmental disability, or incapacitated person.

(e) Service of Petition and Order. Within 10 days after appointment, the petitioner for an administrator ad litem must serve the petition for appointment and order to the attorney of record of each beneficiary and to each known beneficiary not represented by an attorney of record.

(f) Enforcement of Judgments. When an administrator ad litem or guardian ad litem recovers any judgment or other relief, it must be enforced as other judgments. Execution issues in favor of the administrator ad litem or guardian ad litem for the use of the estate or ward and the money collected must be paid to the personal representative or guardian, or as otherwise ordered by the court.

(g) Claim of Personal Representative. The fact that the personal representative is seeking reimbursement for claims against the decedent paid by the personal representative does not require appointment of an administrator ad litem.

Committee Notes

Rule History

1977 Revision: Editorial change in (a) limiting application of rule to probate and guardianship proceedings. In (b) the petition for appointment of a guardian need not be verified. Deletion of (g) as being substantive rather than procedural and changing former (h) to new (g). Change in committee note to conform to statutory renumbering.

This rule implements sections 731.303(5), 733.308, and 744.391, Florida Statutes, and includes some of the provisions of prior rule 5.230.

1988 Revision: Editorial changes; captions added to paragraphs. Citation form changes in committee notes.

1992 Revision: Addition of phrase in subdivision (a) to conform to 1992 amendment to section 731.303(5), Florida Statutes. Editorial changes. Committee notes revised. Citation form changes in committee notes.

2003 Revision: Committee notes revised.

2006 Revision: Committee notes revised.

2008 Revision: Subdivisions (a), (b), (c), and (d) amended to include persons with a developmental disability. Committee notes revised.

2012 Revision: The phrase “deliver or mail” in subdivisions (c), (d), and (e) has been replaced with the word “serve” to comply with other rules relating to service of pleadings and documents. Committee notes revised.

2014 Revision: Amends subdivision (b)(1) to conform to Florida Rule of General Practice and Judicial Administration 2.425. Committee notes revised.

2020 Revision: Committee notes revised. Citation form changes in committee notes.

2026 Revision: Subdivision (a) reorganized. Committee notes revised.

Statutory References

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

§ 731.303, Fla. Stat. Representation.

§ 733.308, Fla. Stat. Administrator ad litem.

§ 733.708, Fla. Stat. Compromise.

§ 744.3025, Fla. Stat. Claims of minors.

§ 744.3085, Fla. Stat. Guardian advocates.

§ 744.387, Fla. Stat. Settlement of claims.

§ 744.391, Fla. Stat. Actions by and against guardian or ward.

§ 744.446, Fla. Stat. Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty.

§ 985.43, Fla. Stat. Predisposition reports; other evaluations.

§ 985.441, Fla. Stat. Commitment.

§ 985.455, Fla. Stat. Other dispositional issues.

Rule References

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

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

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

RULE 5.122. CURATORS

(a) Petition for Appointment. The petition for appointment of a curator must be verified and must contain:

(1) the petitioner's name, address, and interest, if any, in the estate;

(2) the decedent's name, address, date and place of death, and state and county of domicile;

(3) the names and addresses of the persons apparently entitled to letters of administration and any known beneficiaries;

(4) the nature and approximate value of the assets;

(5) a statement showing venue;

(6) a statement as to why a curator should be appointed; and

(7) the name and address of any proposed curator.

The court may appoint a curator sua sponte.

(b) Appointment. Before letters of curatorship are issued, the curator must file a designation of resident agent and acceptance, and an oath, as is required for personal representatives under these rules. The court must issue letters of curatorship that state the entitlement of the curator to possess or control all or part of the decedent's property, which the court may enforce through contempt proceedings.

(c) Notice. Formal notice must be given to the person apparently entitled to letters, if any. If it is likely that the decedent's property will be wasted, destroyed, or removed beyond the jurisdiction of the court and if the appointment of a curator would

be delayed by giving notice, the court may appoint a curator without notice.

(d) Powers. By order, the court may authorize the curator to perform any duty or function of a personal representative, including publication and service of notice to creditors, or if a will has been admitted, service of notice of administration. The order must state whether a curator is granted the authority by the court to address any demand filed under rules 5.240 and 5.241.

(e) Inventory and Accounting. The curator must file an inventory within 30 days after issuance of letters of curatorship. When the personal representative is appointed, the curator must account for and deliver all estate assets in the curator's possession to the personal representative within 30 days after issuance of letters of administration.

(f) Petition to Reconsider. If a curator has been appointed without notice, any interested party who did not receive notice may, at any time, petition to reconsider the appointment.

(g) Subject to Other Provisions. Curators are subject to the provisions of these rules and other applicable law concerning personal representatives.

Committee Notes

This rule implements of the procedure found in section 733.501, Florida Statutes, as amended in 1997 and 2001. The rule has been modified, in part, to reflect the addition of new rule 5.241 regarding notice to creditors. Because the fundamental concern of curatorship is protection of estate property, the procedure facilitates speed and flexibility while recognizing due process concerns. It is not intended that this rule change the effect of the statute from which it has been derived, but the rule has been reformatted to conform to the structure of these rules. Furthermore, the Committee does not intend to create a new procedure, except that subdivision (d) specifies certain acts that the court may authorize the curator to perform. This specificity of example, while not

included in the statute, is not intended to limit the authorized acts to those specified in the rule. The appointment of a curator without notice is tantamount to a temporary injunction. Thus, due process considerations suggest an expedited hearing to reconsider the appointment of a curator by any interested party who did not receive notice.

Practitioners should refer to the letters of curatorship to ensure that a curator has been granted the authority by the court to act in a specific capacity.

Rule History

1988 Revision: New rule.

1992 Revision: Editorial changes. Citation form changes in committee notes.

2003 Revision: Extensive changes to rule to clarify procedure for appointment of curator. Committee notes revised.

2026 Revision: Subdivision (d) amended to require that the order state whether a curator is granted the authority by the court to address any demand filed under rules 5.240 and 5.241. Committee notes revised.

Statutory References

§ 732.2211, Fla. Stat. Demands or disputes; statute of repose.

§ 733.402, Fla. Stat. Bond of fiduciary; when required; form.

§ 733.501, Fla. Stat. Curators.

Rule Reference

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.240 Notice of administration.

Fla. Prob. R. 5.241 Notice to creditors.

RULE 5.150. ORDER REQUIRING ACCOUNTING

(a) Accountings Required by Statute. When any personal representative or guardian fails to file an accounting or return required by statute or rule, the court on its own motion or on the petition of an interested person shall order the personal representative or guardian to file the accounting or return within 15 days from the service on the personal representative or guardian of the order, or show cause why he or she should not be compelled to do so.

(b) Accountings Not Required by Statute. On the petition of an interested person, or on its own motion, the court may require the personal representative or guardian to file an accounting or return not otherwise required by statute or rule. The order requiring an accounting or return shall order the personal representative or guardian to file the accounting or return within a specified time from service on the personal representative or guardian of the order, or show cause why he or she should not be compelled to do so.

(c) Service. A copy of the order shall be served on the personal representative or guardian and the personal representative's or guardian's attorney.

Committee Notes

The court on its motion or on petition of an interested person may require a personal representative or guardian to file an accounting or return not otherwise required by statute.

Rule History

1977 Revision: Change in committee notes.

1984 Revision: Extensive editorial changes. Committee notes revised and expanded.

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

2003 Revision: Committee notes revised.

2008 Revision: Committee notes revised.

Statutory References

§ 38.22, Fla. Stat. Power to punish contempts.

§ 38.23, Fla. Stat. Contempts defined.

§ 393.12(2)(h), Fla. Stat. Capacity; appointment of guardian advocate.

§ 733.5036, Fla. Stat. Accounting and discharge following resignation.

§ 733.508, Fla. Stat. Accounting and discharge of removed personal representatives upon removal.

§ 733.901, Fla. Stat. Final discharge.

ch. 738, Fla. Stat. Principal and income.

§ 744.3085, Fla. Stat. Guardian advocates.

§ 744.367, Fla. Stat. Duty to file annual guardianship report.

§ 744.3678, Fla. Stat. Annual accounting.

§ 744.3685, Fla. Stat. Order requiring guardianship report; contempt.

§ 744.369, Fla. Stat. Judicial review of guardianship reports.

§ 744.467, Fla. Stat. Resignation of guardian.

§ 744.511, Fla. Stat. Accounting upon removal.

§ 744.517, Fla. Stat. Proceedings for contempt.

§ 744.521, Fla. Stat. Termination of guardianship.

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

§ 744.527, Fla. Stat. Final reports and applications for discharge; hearing.

Rule References

Fla. Prob. R. 5.649 Guardian advocate.

Fla. Prob. R. 5.650 Resignation or disqualification of guardian; appointment of successor.

Fla. Prob. R. 5.660 Proceedings for removal of guardian.

Fla. Prob. R. 5.670 Termination of guardianship on change of domicile of resident ward.

Fla. Prob. R. 5.680 Termination of guardianship.

Fla. Prob. R. 5.681 Restoration of rights of person with developmental disability.

Fla. Prob. R. 5.695 Annual guardianship report.

Fla. Prob. R. 5.696 Annual accounting.

Fla. Prob. R. 5.697 Magistrates' review of guardianship accountings and plans.

RULE 5.160. PRODUCTION OF ASSETS

On the petition of an interested person, or on its own motion, the court may require any personal representative or guardian to produce satisfactory evidence that the assets of the estate are in the possession or under the control of the personal representative or guardian and may order production of the assets in the manner and for the purposes directed by the court.

Committee Notes

Rule History

1977 Revision: Change in committee notes.

1984 Revision: Minor editorial changes. Committee notes revised.

1988 Revision: Editorial changes.

1992 Revision: Editorial changes. Committee notes revised.

Statutory Reference

§ 744.373, Fla. Stat. Production of property.

RULE 5.170. EVIDENCE

In proceedings under the Florida Probate Code and the Florida Guardianship Law the rules of evidence in civil actions are applicable unless specifically changed by the Florida Probate Code, the Florida Guardianship Law, or these rules.

Committee Notes

Rule History

1977 Revision: New rule.

1984 Revision: To further clarify the intent of the rule to incorporate the provisions of the Florida Evidence Code (chapter 90, Florida Statutes) when not in conflict with the Florida Probate Code or Florida Guardianship Law, or rules applicable to these particular proceedings.

1992 Revision: Citation form changes in committee notes.

2003 Revision: Committee notes revised.

Statutory References

ch. 90, Fla. Stat. Florida Evidence Code.

§ 733.107, Fla. Stat. Burden of proof in contests; presumption of undue influence.

RULE 5.171. EVIDENCE OF DEATH

In a proceeding under these rules, the following shall apply:

(a) Death Certificate. An authenticated copy of a death certificate issued by an official or agency of the place where the death purportedly occurred or by an official or agency of the United States is prima facie proof of the fact, place, date, and time of death and the identity of the decedent.

(b) Other Records. A copy of any record or report of a governmental agency, domestic or foreign, that a person is dead, alive, missing, detained, or, from the facts related, presumed dead is prima facie evidence of the status, dates, circumstances, and places disclosed by the record or report.

(c) Extended Absence. A person who is absent from the place of that person's last known domicile for a continuous period of 5 years and whose absence is not satisfactorily explained after diligent search and inquiry is presumed dead. The person's death is presumed to have occurred at the end of the period unless there is evidence establishing that death occurred earlier.

Committee Notes

This rule represents a rule implementation of the procedure found in section 731.103, Florida Statutes. It is not intended to change the effect of the statute from which it was derived but has been reformatted to conform with the structure of these rules. It is not intended to create a new procedure or modify an existing procedure, except that additional language has been added which was not in the statute, to permit issuance of a death certificate by an official or agency of the United States. An example would be such a certificate issued by the Department of State or the Department of Defense.

Rule History

1988 Revision: New rule.

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

Statutory References

§ 731.103, Fla. Stat. Evidence as to death or status.

§ 744.521, Fla. Stat. Termination of guardianship.

Rule References

Fla. Prob. R. 5.205 Filing evidence of death.

Fla. Prob. R. 5.680 Termination of guardianship.

RULE 5.180. WAIVER AND CONSENT

(a) Manner of Execution. A waiver or consent as authorized by law shall be in writing and signed by the person executing the waiver or consent.

(b) Contents. The waiver or consent shall state:

(1) the person's interest in the subject of the waiver or consent;

(2) if the person is signing in a fiduciary or representative capacity, the nature of the capacity;

(3) expressly what is being waived or consented to; and

(4) if the waiver pertains to compensation, language declaring that the waiving party has actual knowledge of the amount and manner of determining the compensation and, in addition, either:

(A) that the party has agreed to the amount and manner of determining that compensation and waives any objection to payment; or

(B) that the party has the right to petition the court to determine the compensation and waives that right.

(c) Filing. The waiver or consent shall be filed.

Committee Notes

One person who serves in two fiduciary capacities may not waive or consent to the person's acts without the approval of those whom the person represents. This rule represents a rule implementation of the procedure found in section 731.302, Florida Statutes.

Rule History

1977 Revision: Extends right of waiver to natural guardian; clarifies right to waive service of notice of administration.

1984 Revision: Extends waiver to disclosure of compensation and distribution of assets. Committee notes revised.

1988 Revision: Procedure from section 731.302, Florida Statutes, inserted as new (1)(f), and a new requirement that the waiver be in writing has been added. Editorial changes. Committee notes expanded. Citation form changes in committee notes.

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

1996 Revision: Addition of specific fee waiver disclosure requirements found in § 733.6171(9), Florida Statutes, and expanded to cover all fees. Committee notes revised.

2003 Revision: Committee notes revised.

2006 Revision: Rule extensively amended to remove references to interested persons' right to waive or consent, which is governed by section 731.302, Florida Statutes, and to address manner of execution and contents of waiver. Committee notes revised.

Statutory References

§ 731.302, Fla. Stat. Waiver and consent by interested person.

§ 731.303, Fla. Stat. Representation.

§ 733.6171, Fla. Stat. Compensation of attorney for the personal representative.

PART II — PROBATE

RULE 5.200. PETITION FOR ADMINISTRATION

The petition for administration must be verified by the petitioner and must contain:

(a) a statement of the interest of the petitioner, the petitioner's name and address, and the name and office address of the petitioner's attorney;

(b) the name and last known address of the decedent, last 4 digits of the decedent's social security number, date and place of death of the decedent, and state and county of the decedent's domicile;

(c) so far as is known, the names and addresses of the surviving spouse, if any, the beneficiaries and their relationship to the decedent and the year of birth of any beneficiaries who are minors;

(d) a statement showing venue;

(e) the priority, under section 733.301, Florida Statutes, of the person whose appointment as the personal representative is sought, whether or not any other person has equal or higher preference, and if so, their name and whether they will be served with formal notice, and a statement that the person is qualified to serve under the laws of Florida;

(f) a statement whether domiciliary or principal proceedings are pending in another state or country, if known, and the name

and address of the foreign personal representative and the court issuing letters;

(g) a statement of the approximate value and nature of the assets;

(h) in an intestate estate, a statement that after the exercise of reasonable diligence the petitioner is unaware of any unrevoked wills or codicils, or if the petitioner is aware of any unrevoked wills or codicils, a statement why the wills or codicils are not being probated;

(i) in a testate estate, a statement identifying all unrevoked wills and codicils being presented for probate, and a statement that the petitioner is unaware of any other unrevoked wills or codicils or, if the petitioner is aware of any other unrevoked wills or codicils, a statement why the other wills or codicils are not being probated;

(j) in a testate estate, a statement that the original of the decedent's last will is in the possession of the court or accompanies the petition, or that an authenticated copy of a will deposited with or probated in another jurisdiction or that an authenticated copy of a notarial will, the original of which is in the possession of a foreign notary, accompanies the petition; and

(k) a statement that the personal representative seeking appointment is qualified to serve under the laws of Florida as a business entity under section 733.305, Florida Statutes, or, if an individual, that the person is qualified to serve under the laws of Florida, including:

(1) whether the person has been convicted of a felony;

(2) whether the person has been convicted in any state or foreign jurisdiction of abuse, neglect, or exploitation of an elderly person or a disabled adult, as those terms are defined in section 825.101, 825.102, and 825.103, Florida Statutes;

(3) that the person is mentally and physically able to perform the duties of a personal representative;

(4) that the person is 18 years of age or older; and

(5) whether the person is a resident of Florida and, if not a resident, a statement of the person's relationship to the decedent in accordance with section 733.304, Florida Statutes.

Committee Notes

Rule History

1977 Revision: Addition to (b)(5) to require an affirmative statement that the person sought to be appointed as personal representative is qualified to serve. Committee note expanded to include additional statutory references.

Substantially the same as section 733.202, Florida Statutes, and implementing sections 733.301 through 733.305, Florida Statutes.

1988 Revision: Editorial changes. Committee notes revised.

1992 Revision: Addition of phrase in subdivision (b) to conform to 1992 amendment to section 733.202(2)(b), Florida Statutes. Reference to clerk ascertaining the amount of the filing fee deleted in subdivision (g) because of repeal of sliding scale of filing fees. The remaining language was deemed unnecessary. Editorial changes. Committee notes revised. Citation form changes in committee notes.

2002 Revision: Addition of phrases in subdivision (j) to add references to wills probated in Florida where the original is in the possession of a foreign official. Editorial changes. Committee notes revised.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2007 Revision: Editorial changes in (h) and (i).

2010 Revision: Editorial change in (e) to clarify reference to Florida Probate Code.

2011 Revision: Subdivision (b) amended to limit listing of decedent's social security number to last four digits.

2012 Revision: Committee notes revised.

2014 Revision: Subdivision (c) amended to conform to Florida Rule of General Practice and Judicial Administration 2.425. Committee notes revised.

2019 Revision: Subdivision (e) amended to require a statement identifying any other person who has equal or higher preference than the petitioner for the appointment of a personal representative under section 733.301, Florida Statutes. Subdivision (k) adopted to require a statement of the specific facts that show the petitioner's qualifications to serve as personal representative under sections 733.303 and 733.304, Florida Statutes.

2020 Revision: Committee notes revised. Citation form changes in committee notes.

2021 Revision: Subdivision (k) amended to require a statement as to whether the personal representative seeking appointment has been convicted of abuse, neglect, or exploitation of an elderly or disabled adult.

2026 Revision. Statutory references in subdivision (k)(2) updated. Committee notes revised.

Statutory References

§ 731.201(23), Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 732.522, Fla. Stat. Method and place of execution.

§ 732.526, Fla. Stat. Probate.

§ 733.202, Fla. Stat. Petition.

§ 733.301, Fla. Stat. Preference in appointment of personal representative.

§ 733.302, Fla. Stat. Who may be appointed personal representative.

§ 733.303, Fla. Stat. Persons not qualified.

§ 733.304, Fla. Stat. Nonresidents.

§ 733.305, Fla. Stat. Trust companies and other corporations and associations.

§ 825.101, Fla. Stat. Definitions.

§ 825.102, Fla. Stat. Abuse, aggravated abuse, and neglect of an elderly person or disabled adult; penalties.

§ 825.103, Fla. Stat. Exploitation of an elderly person or disabled adult; penalties.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.201 Notice of petition for administration.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

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

RULE 5.201. NOTICE OF PETITION FOR ADMINISTRATION

(a) Petitioner Entitled to Preference of Appointment. Except as may otherwise be required by these rules or the Florida Probate Code, no notice need be given of the petition for administration or the issuance of letters when it appears that the petitioner is entitled to a preference of appointment as personal representative.

(b) Petitioner Not Entitled to Preference. Before letters shall be issued to any person who is not entitled to preference, formal notice must be served on all known persons qualified to act as personal representative and entitled to preference equal to or greater than the applicant, unless those entitled to preference waive it in writing.

(c) Service of Petition by Formal Notice. If the petitioner elects or is required to serve formal notice of the petition for administration prior to the issuance of letters, a copy of the will offered for probate must be attached to the notice.

Committee Notes

This rule represents a rule implementation of the procedure formerly found in section 733.203(2), Florida Statutes, which was repealed as procedural in 2001.

Rule History

1988 Revision: New rule.

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

2003 Revision: Committee notes revised.

2010 Revision: Subdivision (c) added to require service of a copy of the will offered for probate. This requirement was included in section 733.2123, Florida Statutes, but was removed in 2010

because it was deemed to be a procedural requirement. Committee notes revised. Editorial changes.

Statutory References

§ 731.301, Fla. Stat. Notice.

§ 733.212, Fla. Stat. Notice of administration; filing of objections.

§ 733.2123 Fla. Stat. Adjudication before issuance of letters.

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.200 Petition for administration.

RULE 5.205. FILING EVIDENCE OF DEATH

(a) Requirements for Filing. A copy of an official record of the death of a decedent shall be filed by the personal representative, if any, or the petitioner in each of the following proceedings and at the times specified:

(1) Administration of decedent's estate: not later than 3 months following the date of the first publication of the notice to creditors.

(2) Ancillary proceedings: not later than 3 months following the date of first publication of notice to creditors.

(3) Summary administration: at any time prior to entry of the order of summary administration.

(4) Disposition without administration: at the time of filing the application for disposition without administration.

(5) Determination of beneficiaries: at any time prior to entry of the final judgment determining beneficiaries.

(6) Determination of protected homestead: at any time prior to entry of the final judgment determining protected homestead status of real property.

(7) Probate of will without administration: at any time prior to entry of the order admitting will to probate.

(b) Waiver. On verified petition by the personal representative, if any, or the petitioner the court may enter an order dispensing with this rule, without notice or hearing.

(c) Authority to Require Filing. The court may, without notice or hearing, enter an order requiring the personal representative, if any, or the petitioner to file a copy of an official record of death at any time during the proceedings.

Committee Notes

A short form certificate of death, which does not disclose the cause of death, should be filed.

Rule History

1980 Revision: This rule is intended to provide a uniform procedure for filing an official record of death in any judicial or statutory proceeding upon the death of a decedent. The court may, upon ex parte application, waive compliance with this rule or require filing at any stage in the proceedings.

1984 Revision: Captions and minor editorial changes. Committee notes revised.

1988 Revision: Editorial and substantive changes. Adds (a)(8) to require filing when will is admitted to probate without administration of the estate or an order disposing of property. Committee notes revised.

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

2002 Revision: Replaces “homestead” with “protected homestead” in (a)(7) to conform to addition of term in section 731.201(29), Florida Statutes. Committee notes revised.

2003 Revision: Revises subdivision (a)(1) to change notice of administration to notice to creditors. Deletes subdivision (a)(3) referring to family administration, and renumbers subsequent subdivisions. Committee notes revised.

2010 Revision: Committee notes revised.

Statutory References

§ 28.222(3)(g), Fla. Stat. Clerk to be county recorder.

§ 382.008(6), Fla. Stat. Death and fetal death registration.

§ 731.103, Fla. Stat. Evidence as to death or status.

§ 733.2121, Fla. Stat. Notice to creditors; filing of claims.

Rule References

Fla. Prob. R. 5.042(a) Time.

Fla. Prob. R. 5.171 Evidence of death.

Fla. Prob. R. 5.241 Notice to creditors.

RULE 5.210. PROBATE OF WILLS WITHOUT ADMINISTRATION

(a) Petition and Contents. A petition to admit a decedent’s will to probate without administration shall be verified by the petitioner and shall contain:

(1) a statement of the interest of the petitioner, the petitioner’s name and address, and the name and office address of the petitioner’s attorney;

(2) the name and last known address of the decedent, last 4 digits of the decedent's social security number, date and place of death of the decedent, and state and county of the decedent's domicile;

(3) so far as is known, the names and addresses of the surviving spouse, if any, the beneficiaries and their relationships to the decedent, and the name and year of birth of any who are minors;

(4) a statement showing venue;

(5) a statement whether domiciliary or principal proceedings are pending in another state or country, if known, and the name and address of the foreign personal representative and the court issuing letters;

(6) a statement that there are no assets subject to administration in Florida;

(7) a statement identifying all unrevoked wills and codicils being presented for probate and a statement that the petitioner is unaware of any other unrevoked wills or codicils or, if the petitioner is aware of any other unrevoked wills or codicils, a statement why the other wills or codicils are not being probated; and

(8) a statement that the original of the decedent's last will is in the possession of the court or accompanies the petition, or that an authenticated copy of a will deposited with or probated in another jurisdiction or that an authenticated copy of a notarial will, the original of which is in the possession of a foreign notary, accompanies the petition.

(b) Service. The petitioner shall serve a copy of the petition on those persons who would be entitled to service under rule 5.240.

(c) Objections. Objections to the validity of the will shall follow the form and procedure set forth in these rules pertaining to

revocation of probate. Objections to the venue or jurisdiction of the court shall follow the form and procedure set forth in the Florida Rules of Civil Procedure.

(d) Order. An order admitting the will to probate shall include a finding that the will has been executed as required by law.

Committee Notes

Examples illustrating when a will might be admitted to probate are when an instrument (such as a will or trust agreement) gives the decedent a power exercisable by will, such as the power to appoint a successor trustee or a testamentary power of appointment. In each instance, the will of the person holding the power has no legal significance until admitted to probate. There may be no assets, creditors' issues, or other need for a probate beyond admitting the will to establish the exercise or non-exercise of such powers.

Rule History

1975 Revision: Proof of will may be taken by any Florida circuit judge or clerk without issuance of commission.

1984 Revision: This rule has been completely revised to set forth the procedure for proving all wills except lost or destroyed wills and the title changed. The rule requires an oath attesting to the statutory requirements for execution of wills and the will must be proved before an order can be entered admitting it to probate. Former rules 5.280, 5.290, and 5.500 are included in this rule. Committee notes revised.

1988 Revision: Editorial and substantive changes. Change in (a)(3) to clarify which law determines validity of a notarial will; change in (a)(4) to clarify requirement that will of a Florida resident must comply with Florida law; adds new subdivision (b) to set forth required contents of petition for probate of will; moves former (b) to (c). Committee notes expanded; citation form change in committee notes.

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

1996 Revision: Subdivision (a)(4) changed to allow authenticated copies of wills to be admitted to probate if the original is filed or deposited in another jurisdiction.

2002 Revision: Substantial revision to the rule setting forth the requirements of a petition to admit a will to probate when administration is not required. Self proof of wills is governed by the Florida Statutes. Former subdivision (a)(4) amended and transferred to new rule 5.215. Former subdivision (a)(5) amended and transferred to new rule 5.216.

2003 Revision: Committee notes revised.

2007 Revision: Existing text redesignated as subdivision (a) and editorial change made in (a)(7). New subdivisions (b) and (c) added to provide for service of the petition and the procedure for objections consistent with the procedures for probate of a will with administration. Committee notes revised.

2010 Revision: Subdivision (b) amended to reflect that service of the petition to admit a decedent's will to probate without administration shall be served on the persons who would be entitled to service of the notice of administration in a formal administration as set forth in rule 5.240. New subdivision (d) added to provide that any order admitting the decedent's will to probate without administration contain a finding that the will was executed as required by law. Committee notes revised.

2011 Revision: Subdivision (a)(2) amended to limit listing of decedent's social security number to last four digits.

2014 Revision: Subdivision (a)(3) amended to conform to Fla. R. Gen. Prac. & Jud. Admin. 2.425. Committee notes revised.

Statutory References

§ 731.201, Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 732.502, Fla. Stat. Execution of wills.

§ 732.503, Fla. Stat. Self-proof of will.

§ 733.103, Fla. Stat. Effect of probate.

§ 733.201, Fla. Stat. Proof of wills.

§ 733.202, Fla. Stat. Petition.

§ 733.204, Fla. Stat. Probate of a will written in a foreign language.

§ 733.205, Fla. Stat. Probate of notarial will.

§ 733.206, Fla. Stat. Probate of will of resident after foreign probate.

§ 733.207, Fla. Stat. Establishment and probate of lost or destroyed will.

§ 734.104, Fla. Stat. Foreign wills; admission to record; effect on title.

Rule References

Fla. Prob. R. 5.015 General definitions.

Fla. Prob. R. 5.020 Pleadings, verification; motions.

Fla. Prob. R. 5.205(a)(7) Filing evidence of death.

Fla. Prob. R. 5.215 Authenticated copy of will.

Fla. Prob. R. 5.216 Will written in foreign language.

Fla. Prob. R. 5.230 Commission to prove will.

Fla. Prob. R. 5.240 Notice of administration.

Fla. Prob. R. 5.270 Revocation of probate.

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

RULE 5.215. AUTHENTICATED COPY OF WILL

An authenticated copy of a will may be admitted to probate if the original could be admitted to probate in Florida.

Committee Notes

Rule History

2002 Revision: New rule, derived from former rule 5.210(a)(4).

2003 Revision: Committee notes revised.

Statutory References

§ 733.205, Fla. Stat. Probate of notarial will.

§ 733.206, Fla. Stat. Probate of will of resident after foreign probate.

§ 734.102, Fla. Stat. Ancillary administration.

§ 734.1025, Fla. Stat. Nonresident decedent's testate estate with property not exceeding $50,000 in this state; determination of claims.

§ 734.104, Fla. Stat. Foreign wills; admission to record; effect on title.

Rule References

Fla. Prob. R. 5.200 Petition for administration.

Fla. Prob. R. 5.210 Probate of wills without administration.

Fla. Prob. R. 5.470 Ancillary administration.

Fla. Prob. R. 5.475 Ancillary administration, short form.

RULE 5.216. WILL WRITTEN IN FOREIGN LANGUAGE

A will written in a foreign language being offered for probate shall be accompanied by a true and complete English translation. In the order admitting the foreign language will to probate, the court shall establish the correct English translation. At any time during administration, any interested person may have the correctness of the translation redetermined after formal notice to all other interested persons.

Committee Notes

Rule History

2002 Revision: New rule, derived from former rule 5.210(a)(5) and section 733.204(2), Florida Statutes.

Statutory Reference

§ 733.204, Fla. Stat. Probate of a will written in a foreign language.

RULE 5.230. COMMISSION TO PROVE WILL

(a) Petition. On petition the court may appoint a commissioner to take the oath of any person qualified to prove the will under Florida law. The petition must set forth the date of the will and the place where it was executed, if known; the names of the witnesses and address of the witness whose oath is to be taken; and the name, title, and address of the proposed commissioner.

(b) Commission. The commission must be directed to a person who is authorized to administer an oath by the laws of Florida, the United States of America, or the state or country where the witness may be found, and it shall empower the commissioner to take the oath of the witness to prove the will and shall direct the commissioner to certify the oath and file the executed commission, copy of the will, oath of the witness, and certificate of commissioner. An oath of the commissioner is not required.

(c) Mailing or Delivery. The petitioner or the petitioner's attorney must cause the commission, together with a copy of the will, the oath, and the certificate of commissioner, to be mailed or delivered to the commissioner.

(d) Filing. The executed commission, copy of the will, oath of the witness, and certificate of commissioner must be filed.

Committee Notes

Rule History

1975 Revision: Substantially the same as prior rule 5.130(a) and (b) and carries forward prior procedures as to a matter upon which Florida Probate Code is silent.

1984 Revision: This rule has been completely changed to set forth the procedure for the issuance and return of a commission. The rule has been broadened to allow anyone authorized by Florida Statutes or by the U.S. Code to be a commissioner as well as those authorized by the state or country where the witness resides.

The rule now provides that the petitioner or his attorney shall forward the commission to the commissioner. The rule also contemplates that a Florida notary may be appointed as commissioner to take the proof of a witness outside the State of Florida. Committee notes revised and expanded.

1988 Revision: Editorial and substantive changes. Change in (a) to provide that the commissioner may take the oath of not only the attesting witness to the will but also the oath of any other person qualified to prove the will; change in (c) to permit copies other than photographic copies to be furnished to the commissioner, and to permit delivery of documents in a manner other than by mailing; change in (d) to require the filing of documents with the court. Committee notes revised. Citation form changes in rule and committee notes.

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

2003 Revision: Committee notes revised.

2013 Revision: Subdivision (e) deleted because it duplicates subdivision (d) in Rule 5.240. Committee notes revised. Editorial changes to conform to the court's guidelines for rules submissions as set forth in AOSC06-14.

Statutory References

§ 92.50, Fla. Stat. Oaths, affidavits, and acknowledgments; who may take or administer; requirements.

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

§ 733.201, Fla. Stat. Proof of wills.

§ 22 U.S.C. § 4215 Notarial acts, oaths, affirmations, affidavits, and depositions; fees.

Rule References

Fla. Prob. R. 5.050 Transfer of proceedings.

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

RULE 5.235. ISSUANCE OF LETTERS, BOND

(a) Appointment of Personal Representative. After the petition for administration is filed and the will, if any, is admitted to probate:

(1) the court shall appoint the person entitled and qualified to be personal representative;

(2) the court shall determine the amount of any bond required. The clerk may approve the bond in the amount determined by the court; and

(3) any required oath or designation of, and acceptance by, a resident agent shall be filed.

(b) Issuance of Letters. Upon compliance with all of the foregoing, letters shall be issued to the personal representative.

(c) Bond. On petition by any interested person or on the court's own motion, the court may waive the requirement of filing a bond, require a personal representative or curator to give bond, increase or decrease the bond, or require additional surety.

Committee Notes

This rule represents a rule implementation of the procedure formerly found in sections 733.401 and 733.403(2), Florida Statutes, both of which were repealed in 2001. It is not intended to change the effect of the statutes from which it was derived but has been reformatted to conform with the structure of these rules. It is not intended to create a new procedure or modify an existing procedure.

Rule History

1988 Revision: New rule.

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

1996 Revision: Mandate in subdivision (a)(2) prohibiting charge of service fee by clerk deleted. Statutory references added.

2003 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

Statutory References

§ 28.24(19), Fla. Stat. Service charges by clerk of the circuit court.

§ 28.2401, Fla. Stat. Service charges in probate matters.

§ 733.402, Fla. Stat. Bond of fiduciary; when required; form.

§ 733.403, Fla. Stat. Amount of bond.

§ 733.405, Fla. Stat. Release of surety.

§ 733.501, Fla. Stat. Curators.

Rule References

Fla. Prob. R. 5.110 Address designation for personal representative or guardian; designation of resident agent and acceptance.

Fla. Prob. R. 5.122 Curators.

Fla. Prob. R. 5.320 Oath of personal representative.

RULE 5.240. NOTICE OF ADMINISTRATION

(a) Service. The personal representative must promptly serve the notice of administration on the following persons who are known to the personal representative and who were not previously served under section 733.2123, Florida Statutes:

(1) the decedent's surviving spouse;

(2) all beneficiaries;

(3) a trustee of any trust described in section 733.707(3), Florida Statutes, and each qualified beneficiary of the trust as defined in section 736.0103, Florida Statutes, if each trustee is also a personal representative of the estate; and

(4) persons who may be entitled to exempt property in the manner provided for service of formal notice. The personal representative may similarly serve a copy of the notice on any devisee under another will or heirs or others who claim or may claim an interest in the estate.

(b) Contents. The notice must state:

(1) the name of the decedent, the file number of the estate, the designation and address of the court in which the proceedings are pending, whether the estate is testate or intestate, and, if testate, the date of the will and any codicils;

(2) the name and address of the personal representative and the name and address of the personal representative's attorney, and that the fiduciary lawyer-client privilege in section 90.5021, Florida Statutes, applies with respect to the personal representative and any attorney employed by the personal representative;

(3) that any interested person on whom a copy of the notice of administration is served must file, on or before the date that is 3 months after the date of service of the notice of administration on that person any objection that challenges the validity of the will, the venue, or the jurisdiction of the court. The 3-month time period may only be extended for estoppel based on a misstatement by the personal representative regarding the time period within which an objection must be filed. The time period may not be extended for any other reason, including affirmative representation, failure to disclose information, or misconduct by the personal representative or any other person. Unless sooner barred by section 733.212(3), Florida Statutes, all objections to the validity of a will, venue, or the jurisdiction of the court must be filed no later than the earlier of the entry of an order of final discharge of the personal representative, or 1 year after service of the notice of administration;

(4) the persons who may be entitled to exempt property under section 732.402, Florida Statutes, will be deemed to have waived their rights to claim that property as exempt property unless a petition for determination of exempt property is filed by such persons or on their behalf on or before the later of the date that is 4 months after the date of service of the notice of administration on such persons or the date that is 40 days after the date of termination of any proceedings involving the construction,

admission to probate, or validity of the will or involving any other matter affecting any part of the exempt property;

(5) that an election to take an elective share must be filed on or before the earlier of the date that is 6 months after the date of service of the notice of administration on the surviving spouse, an agent under chapter 709, Florida Statutes, or a guardian of the property of the surviving spouse; or the date that is 2 years after the date of the decedent's death;

(6) that, under certain circumstances and by failing to contest the will, the recipient of the notice of administration may be waiving the recipient's right to contest the validity of a trust or other writing incorporated by reference into a will; and

(7) that the personal representative or curator has no duty to discover whether any property held at the time of the decedent's death by the decedent or the decedent's surviving spouse is property to which the Florida Uniform Disposition of Community Property Rights at Death Act as described in sections 732.216-732.228, Florida Statutes, applies, or may apply, unless a written demand is made by the surviving spouse or a beneficiary as specified under section 732.2211, Florida Statutes. The written demand must be filed with the clerk.

(c) Copy of Will. Unless the court directs otherwise, the personal representative of a testate estate must, on written request, furnish a copy of the will and all codicils admitted to probate to any person on whom the notice of administration was served.

(d) Objections. Objections to the validity of the will must follow the form and procedure set forth in these rules pertaining to revocation of probate. Objections to the venue or jurisdiction of the court must follow the form and procedure set forth in the Florida Rules of Civil Procedure.

(e) Waiver of Service. For the purpose of determining deadlines established by reference to the date of service of the notice of administration in cases in which service has been waived,

service on a person who has waived notice is deemed to occur on the date the waiver is filed.

Committee Notes

Rule History

1977 Revision: Former subdivision (c) is deleted as being substantive rather than procedural.

1984 Revision: Editorial changes; new requirement to file proof of publication; new requirements as to form of objections to will and qualifications of personal representative. Committee notes revised.

1988 Revision: The obligation to mail notice of administration to all known or reasonably ascertainable creditors has been added to comply with the dictates of *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 108 S. Ct. 1340, 99 L. Ed. 2d 565 (1988).

This rule does not require sending notice of administration to creditors in estates where the time for filing claims has expired before the effective date of this rule. However, no opinion is offered whether such claims are barred by the provisions of section 733.702, Florida Statutes.

Committee notes revised. Citation form changes in committee notes.

1991 Revision: Subdivision (a) modified to make it consistent with recent changes to sections 733.212 and 733.702, Florida Statutes. Those statutes were amended to comply with the dictates of *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 108 S. Ct. 1340, 99 L. Ed. 2d 565 (1988). For the same reason, subdivision (e) was eliminated.

1992 Revision: Former subdivision (e) revised and reinstated to emphasize need for personal representative to determine all known or reasonably ascertainable creditors. Editorial changes; committee notes revised; citation form changes in committee notes.

1996 Revision: Subdivision (a) amended to require service of notice of administration on trustees of certain revocable trusts as defined by Florida statute. Editorial changes.

2002 Revision: Procedures for notifying creditors are now governed by new rule 5.241. Committee notes revised.

2003 Revision: Change in title of (a) to reflect elimination of publication of notice. Committee notes revised.

2005 Revision: Subdivision (a)(3) amended to make it consistent with 2003 change to section 733.212(1)(c), Florida Statutes, regarding when service on trust beneficiaries is required, and clarifying editorial change made in (a). New subdivision (b)(5) added regarding notice to file election to take elective share. Committee notes revised.

2007 Revision: Subdivision (a)(3) amended to replace reference to "beneficiary" with "qualified beneficiary" and to change reference from former section 737.303(4)(b) to new section 736.0103(14), which defines that term. Subdivision (b)(5) amended to delete the reference to the surviving spouse filing the election as another person can file the election on behalf of the surviving spouse. New subdivision (e) added to provide a deadline for objection by a person who waives service. Committee notes revised.

2011 Revision: Subdivision (b)(2) amended to conform to amendment to section 732.212, Florida Statutes, relating to attorney-client privilege for fiduciary and their attorneys. Editorial changes to conform to the court's guidelines for rules submissions as set forth in Administrative Order AOSC06-14. Statutory references to section 732.402, Florida Statutes, added. Committee Notes revised.

2013 Revision: Updated statutory reference in subdivision (a)(3). Committee notes revised.

2015 Revision: Subdivisions (b)(3) and (d) amended to conform to amendments to section 733.212, Florida Statutes, relating to the removal of the requirement to object to the qualifications of a

personal representative within this statutory framework due to other statutory amendments. The 2011 Revision contains a scrivener's error and it should reference section 733.212, Florida Statutes, as opposed to section 732.212, Florida Statutes.

2019 Revision: For clarity purposes, subdivisions (b)(2), (b)(3), (b)(4), and (b)(5) amended for consistency with section 733.212, Florida Statutes, relating to the contents of a notice of administration. Subdivision (b)(5) amended to replace the term "attorney-in-fact" with "agent" to reflect 2011 enactment of section 709.2102(1), Florida Statutes.

2020 Revisions: Subdivision (b)(6) was created to conform to an amendment to section 733.212, Florida Statutes, that requires the Notice of Administration include a notice of a potential waiver of rights by failing to contest the will.

2024 Revision: Subdivision (b)(7) was created to conform to an amendment to section 733.212, Florida Statutes, which requires the Notice of Administration include a notice that the personal representative has no duty to determine if property is subject to the Florida Uniform Disposition of Community Property Rights at Death Act. Committee notes revised.

Statutory References

§ 709.2102(1), Fla. Stat. Definitions.

§ 731.201(23), Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 731.302, Fla. Stat. Waiver and consent by interested person.

§ 732.2135, Fla. Stat. Time of election; extensions; withdrawal.

§ 732.402, Fla. Stat. Exempt property.

§ 732.5165, Fla. Stat. Effect of fraud, duress, mistake, and undue influence.

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

§ 733.109, Fla. Stat. Revocation of probate.

§ 733.212, Fla. Stat. Notice of administration; filing of objections.

§ 733.2123, Fla. Stat. Adjudication before issuance of letters.

§ 733.302, Fla. Stat. Who may be appointed personal representative.

§ 733.303, Fla. Stat. Persons not qualified.

§ 733.305, Fla. Stat. Trust companies and other corporations and associations.

§ 733.504, Fla. Stat. Removal of personal representative; causes for removal.

§ 733.506, Fla. Stat. Proceedings for removal.

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.050 Transfer of proceedings.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.270 Revocation of probate.

Fla. Prob. R. 5.440 Proceedings for removal.

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

RULE 5.2405. SERVICE OF NOTICE OF ADMINISTRATION ON PERSONAL REPRESENTATIVE

(a) Date Notice of Administration is Considered Served on Person who is Personal Representative. Unless service of the

notice of administration is waived pursuant to Rule 5.240(e), when a person who is entitled to service of the notice of administration pursuant to Rule 5.240(a) is also a personal representative, the notice of administration shall be deemed served upon the person on the earliest of the following dates:

(1) the date on which the person acknowledges in writing receipt of the notice of administration;

(2) the date on which the notice of administration is first served on any other person entitled to service of the notice of administration (or the first among multiple persons entitled to service); or

(3) the date that is 30 days after the date letters of administration are issued.

(b) Date Other Notices are Considered Served on Person who is Personal Representative. When a person who is entitled to service of notice under these rules or the Florida Probate Code (other than the notice of administration) is also a personal representative, any notice shall be deemed as having been served on the personal representative on the earliest of the following dates:

(1) the date on which the person acknowledges in writing receipt of the notice;

(2) the date on which the notice is required to be served by the personal representative under these rules or the Florida Probate Code; or,

(3) the date on which the notice is first served by the personal representative on any other person entitled to service of the same notice.

Committee Notes

This rule is intended to address situations in which the personal representative is also an interested person in an estate,

but claims that he or she has not received the notice of administration, despite the personal representative being required to serve the notice. The receipt of the notice of administration can trigger time limits for the person receiving the notice with regard to certain rights, such as the right to claim an elective share.

Rule History

2013 Revision: New rule.

Statutory References

§ 731.201(23), Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 731.302, Fla. Stat. Waiver and consent by interested person.

§ 732.2135, Fla. Stat. Time of election; extensions; withdrawal.

§ 732.5165, Fla. Stat. Effect of fraud, duress, mistake, and undue influence.

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

§ 733.109, Fla. Stat. Revocation of probate.

§ 733.212, Fla. Stat. Notice of administration; filing of objections.

§ 733.2123, Fla. Stat. Adjudication before issuance of letters.

§ 733.302, Fla. Stat. Who may be appointed personal representative.

§ 733.303, Fla. Stat. Persons not qualified.

§ 733.305, Fla. Stat. Trust companies and other corporations and associations.

§ 733.504, Fla. Stat. Removal of personal representative; causes for removal.

§ 733.506, Fla. Stat. Proceedings for removal.

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.050 Transfer of proceedings.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.270 Revocation of probate.

Fla. Prob. R. 5.440 Proceedings for removal of personal representative.

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

RULE 5.241. NOTICE TO CREDITORS

(a) Publication and Service. Unless creditors' claims are otherwise barred by law, the personal representative must promptly publish a notice to creditors and serve the notice on all creditors of the decedent who are reasonably ascertainable and, if required by law, on the Agency for Health Care Administration. Service of the notice must be either by informal notice, or in the manner provided for service of formal notice at the option of the personal representative. Service on one creditor by a chosen method will not preclude service on another creditor by another method.

(b) Contents.

(1) The notice to creditors must contain the name of the decedent, the file number of the estate, the designation and address of the court, the name and address of the personal representative and of the personal representative's attorney, and the date of first publication of the notice to creditors. The notice requires all creditors to file all claims against the estate with the court, within the time provided by law.

(2) The notice must state that the personal representative or curator has no duty to discover whether any property held at the time of the decedent's death by the decedent or the decedent's surviving spouse is property to which the Florida Uniform Disposition of Community Property Rights at Death Act as described in sections 732.216-732.228, Florida Statutes, applies, or may apply, unless a written demand is made by a creditor as specified under section 732.2211, Florida Statutes. The written demand must be filed with the clerk.

(c) Method of Publication and Proof. Publication must be made as required by law. The personal representative must file proof of publication with the court within 45 days after the date of first publication of the notice to creditors.

(d) Statement Regarding Creditors. Within 4 months after the date of the first publication of notice to creditors, the personal representative must file a verified statement that diligent search has been made to ascertain the name and address of each person having a claim against the estate. The statement must indicate the name and address of each person at that time known to the personal representative who has or may have a claim against the estate and whether such person was served with the notice to creditors or otherwise received actual notice of the information contained in the notice to creditors, provided that the statement need not include persons who have filed a timely claim or who were included in the personal representative's proof of claim.

(e) Service of Death Certificate. If service of the notice on the Agency for Health Care Administration is required, it must be accompanied by a copy of the death certificate.

Committee Notes

It is the committee's opinion that the failure to timely file the proof of publication of the notice to creditors will not affect time limitations for filing claims or objections.

On April 19, 1988, the United States Supreme Court decided *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 108 S. Ct. 1340, 99 L. Ed. 2d 565. This case substantially impacted the method for handling (and barring) creditors' claims. This case stands for the proposition that a creditor may not be barred by the usual publication if that creditor was actually known to or reasonably ascertainable by the personal representative, and the personal representative failed to give notice to the creditor by mail or other means as certain to ensure actual notice. Less than actual notice in these circumstances would deprive the creditor of due process rights under the 14th Amendment to the U.S. Constitution. Probably actual notice of the death (as in the case of a hospital where the decedent died as a patient) without notice of the institution of probate proceedings is not sufficient.

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested persons of the pendency of the proceeding and afford them an opportunity to present their claims.

The steps to be taken by a personal representative in conducting a diligent search for creditors depends, in large measure, on how familiar the personal representative is with the decedent's affairs. Therefore, the committee believes it is inappropriate to list particular steps to be taken in each estate, since the circumstances will vary from case to case.

The statement required by this rule is not intended to be jurisdictional but rather to provide evidence of satisfaction (or lack thereof) of the due process requirements.

Rule History

2002 Revision: New rule to implement procedures consistent with new section 733.2121, Florida Statutes.

2003 Revision: Committee notes revised.

2005 Revision: Subdivision (a) amended to clarify approved methods of service on creditors. Committee notes revised.

2007 Revision: New subdivision (e) added to require service of a copy of the decedent's death certificate on the Agency for Health Care Administration, as is now required by section 733.2121(3)(d), Florida Statutes.

2019 Revision: Subdivision (e) amended to clarify that a copy of a death certificate suffices.

2024 Revision: Subdivision (b)(2) was created to conform to an amendment to section 733.2121, Florida Statutes, which requires the notice to creditors to include a notice that the personal representative has no duty to determine if property is subject to the Florida Uniform Disposition of Community Property Rights at Death Act. Committee notes revised.

Statutory References

ch. 50, Fla. Stat. Legal and official advertisements.

§ 731.301, Fla. Stat. Notice.

§ 733.2121, Fla. Stat. Notice to creditors; filing of claims.

§ 733.702, Fla. Stat. Limitations on presentation of claims.

§ 733.703, Fla. Stat. Form and manner of presenting claim.

§ 733.704, Fla. Stat. Amendment of claims.

§ 733.705, Fla. Stat. Payment of and objection to claims.

§ 733.708, Fla. Stat. Compromise.

Rule Reference

Fla. Prob. R. 5.490 Form and manner of presenting claim.

RULE 5.260. CAVEAT; PROCEEDINGS

(a) Filing. Any creditor or interested person other than a creditor may file a caveat with the court. The caveat of an interested person, other than a creditor, may be filed before or after the death of the person for whom the estate will be, or is being, administered. The caveat of a creditor may be filed only after the person's death.

(b) Contents. The caveat shall contain the name of the person for whom the estate will be, or is being, administered, the last 4 digits of the person's social security number or year of birth, if known, a statement of the interest of the caveator in the estate, and the name and specific mailing address of the caveator.

(c) Resident Agent of Caveator; Service. If the caveator is not a resident of Florida, the caveator must file a designation of the name and specific mailing address and residence address of a resident in the county where the caveat is filed as the caveator's agent for service of notice. The written acceptance by the person appointed as resident agent must be filed with the designation or included in the caveat. The designation and acceptance shall constitute the consent of the caveator that service of notice upon the designated resident agent shall bind the caveator. If the caveator is represented by an attorney admitted to practice in Florida who signs the caveat, it shall not be necessary to designate a resident agent under this rule.

(d) Filing After Commencement. If at the time of the filing of any caveat the decedent's will has been admitted to probate or letters of administration have been issued, the clerk must promptly notify the caveator in writing of the date of issuance of letters and the names and addresses of the personal representative and the personal representative's attorney.

(e) Creditor. When letters of administration issue after the filing of a caveat by a creditor, the clerk must promptly notify the caveator, in writing, advising the caveator of the date of issuance of letters and the names and addresses of the personal representative and the personal representative's attorney, unless notice has

previously been served on the caveator. A copy of any notice given by the clerk, together with a certificate of the mailing of the original notice, must be filed in the estate proceedings.

(f) Other Interested Persons; Before Commencement. After the filing of a caveat by an interested person other than a creditor, the court must not admit a will of the decedent to probate or appoint a personal representative without service of formal notice on the caveator or the caveator's designated agent. A caveator is not required to be served with formal notice of its own petition for administration.

Committee Notes

Caveat proceedings permit a decedent's creditor or other interested person to be notified when letters of administration are issued. Thereafter, the caveator must take appropriate action to protect the caveator's interests.

This rule treats the creditor caveator differently from other caveators.

An attorney admitted to practice in Florida who represents the caveator may sign the caveat on behalf of the client.

Rule History

1977 Revision: Carried forward prior rule 5.150.

1984 Revision: Changes in (a), (b), and (d) are editorial. Change in (c) eliminates resident agent requirement for Florida residents and for nonresidents represented by a Florida attorney. Service on the attorney binds caveator. Former (e) is now subdivisions (e) and (f) and treats creditor caveator differently from other interested persons. Change in (f) requires formal notice. Committee notes revised.

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

1992 Revision: Addition of language in subdivision (b) to implement 1992 amendment to section 731.110(2), Florida Statutes. Editorial changes. Citation form changes in committee notes.

2003 Revision: Committee notes revised.

2010 Cycle Report Revision: Subdivision (c) amended to clarify that a state agency filing a caveat need not designate an agent for service of process, and to provide that a caveator who is not a resident of the county where the caveat is filed must designate either a resident of that county or an attorney licensed and residing in Florida as the caveator's agent. Editorial changes in (d) and (e). Committee notes revised.

2010 Out-of-Cycle Report Revision: Subdivisions (a) and (b) amended to conform with statutory changes. Subdivision (c) amended to read as it existed prior to SC10-171 (35 FLW S482) due to a subsequent legislative amendment (Chapter 2010-132, § 3, Laws of Fla.). Editorial changes in (d), (e), and (f). Committee notes revised.

2011 Revision: Subdivision (b) amended to replace language removed in 2010 out-of-cycle revision, to replace term "decedent" with "person for whom the estate will be, or is being, administered," and to limit listing of a social security number to the last four digits and a date of birth to the year of birth.

2013 Revision: Subdivision (f) is updated to provide that a caveator is not required to be served with formal notice of its own petition for administration. Committee notes revised.

Statutory Reference

§ 731.110, Fla. Stat. Caveat; proceedings.

Rule Reference

Fla. Prob. R. 5.040(a) Notice.

RULE 5.270. REVOCATION OF PROBATE

(a) Petition and Contents. A petition for revocation of probate shall state the interest of the petitioner in the estate and the facts constituting the grounds on which revocation is demanded.

(b) Continued Administration. Pending the determination of any issue for revocation of probate, the personal representative shall proceed with the administration of the estate as if no revocation proceeding had been commenced, except that no distribution may be made to beneficiaries in contravention of the rights of those who, but for the will, would be entitled to the property disposed of.

Committee Notes

This rule represents a rule implementation of the procedure found in section 733.109(2), Florida Statutes. It is not intended to change the effect of the statute from which it was derived but has been reformatted to conform with the structure of these rules. It is not intended to create a new procedure or modify an existing procedure. The committee believes that subsections (1) and (3) of the statute are substantive, and have therefore not been included. Further, this rule revises subdivision (b) of the prior similar rule to track the language in the statute from which it was derived.

Rule History

1984 Revision: Extensive changes. Committee notes revised.

1988 Revision: Language of subdivision (b) of the rule rewritten to track the statute more closely. Committee notes expanded. Citation form change in committee notes.

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

2003 Revision: Committee notes revised.

2005 Revision: “Beneficiaries” substituted for “devisees” in subdivision (b) to conform language to section 733.109(2), Florida Statutes.

2007 Revision: Committee notes revised.

Statutory References

§ 731.201(23), Fla. Stat. General definitions.

§ 732.5165, Fla. Stat. Effect of fraud, duress, mistake, and undue influence.

§ 733.109, Fla. Stat. Revocation of probate.

§ 733.212, Fla. Stat. Notice of administration; filing of objections.

§ 733.2123, Fla. Stat. Adjudication before issuance of letters.

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.240 Notice of administration.

RULE 5.275. BURDEN OF PROOF IN WILL CONTESTS

(a) In all proceedings contesting the validity of a will, the burden shall be upon the proponent of the will to establish prima facie its formal execution and attestation. Thereafter, the contestant shall have the burden of establishing the grounds on which the probate of the will is opposed or revocation sought.

(b) In any transaction or event to which the presumption of undue influence applies, the presumption shifts the burden of proof under sections 90.301–90.304, Florida Statutes.

Committee Notes

This rule implements the procedure found in section 733.107, Florida Statutes, and the public policy against abuse of fiduciary or confidential relationships.

Rule History

1988 Revision: New rule.

1992 Revision: Citation form changes in committee notes.

2003 Revision: Committee notes revised.

2019 Revision: Adopts subdivision (b) and revises the committee note to reflect that change.

Statutory References

§ 90.301, Fla. Stat. Presumption defined; inferences.

§ 90.302, Fla. Stat. Classification of rebuttable presumptions.

§ 90.303, Fla. Stat. Presumption affecting the burden of producing evidence defined.

§ 90.304, Fla. Stat. Presumption affecting the burden of proof defined.

§ 733.107, Fla. Stat. Burden of proof in contests; presumption of undue influence.

RULE 5.310. DISQUALIFICATION OF PERSONAL REPRESENTATIVE; NOTIFICATION

Any time a personal representative who was qualified to act at the time of appointment, knows that he or she would not be qualified for appointment if application for appointment were then made, the personal representative shall promptly file and serve on all interested persons a notice stating:

(a) the reason(s) the personal representative would not be qualified for appointment if application for appointment were then made and the date on which the disqualifying event occurred; and

(b) that any interested person may file a petition to remove the personal representative within 30 days after the date on which such notice is served.

Committee Notes

Notification under this rule or section 733.3101(2), Florida Statutes, does not automatically affect the authority of the personal representative to act. The personal representative may resign or interested persons or the court must act to remove the personal representative.

Rule History

1975 Revision: This is same as old rule 5.220 and old section 732.47(3), Florida Statutes. The rule sets forth the imperative need for timely action and the inherent responsibility of a fiduciary to effect orderly succession. It further implies the inherent jurisdiction of the court to control by judicial overview the succession.

1977 Revision: Citation form change in committee note.

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

1992 Revision: Editorial changes to clarify rule. Committee notes revised. Citation form changes in committee notes.

2002 Revision: Rule amended to implement procedures found in section 733.3101, Florida Statutes. Committee notes revised.

2015 Revision: Rule amended to conform to amendment to section 733.3101, Florida Statutes, which modifies the substance and procedure for the disqualification of a personal representative. Citation revised in committee notes. Committee notes revised.

Statutory References

§ 731.301, Fla. Stat. Notice.

§ 733.302, Fla. Stat. Who may be appointed personal representative.

§ 733.303, Fla. Stat. Persons not qualified.

§ 733.3101, Fla. Stat. Personal representative not qualified.

§ 733.502, Fla. Stat. Resignation of personal representative.

§ 733.504, Fla. Stat. Removal of personal representative; causes for removal.

§ 733.505, Fla. Stat. Jurisdiction in removal proceedings.

§ 733.506, Fla. Stat. Proceedings for removal.

Rule References

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.430 Resignation of personal representative.

Fla. Prob. R. 5.440 Proceedings for removal.

RULE 5.320. OATH OF PERSONAL REPRESENTATIVE

Before the granting of letters of administration, the prospective personal representative must file an oath to faithfully administer the estate of the decedent.

(a) Oath of Personal Representative; Entity. For a trust company, corporation, association, or other entity, the oath must also contain a statement that the personal representative is authorized and qualified to serve under section 733.305, Florida Statutes. The oath must substantially comply with the following form.

[CAPTION]

OATH OF PERSONAL REPRESENTATIVE

STATE OF _____
COUNTY OF _____

I, _____, (affiant), state under oath that:

1. I am _____ of _____, a:

_____ Trust company incorporated under the laws of Florida;

_____ State banking corporation authorized and qualified to exercise fiduciary powers in Florida under section 733.305, Florida Statutes;

_____ State savings corporation authorized and qualified to exercise fiduciary powers in Florida under section 733.305, Florida Statutes;

_____ National banking association authorized and qualified to exercise fiduciary powers in Florida under section 733.305, Florida Statutes; or

_____ Federal savings and loan association authorized and qualified to exercise fiduciary powers in Florida under section 733.305, Florida Statutes;

and I am authorized to make this oath on behalf of the entity.

2. The entity's place of business is _____ and post office address is _____.

3. The entity will faithfully administer the estate of the decedent according to law.

4. The entity will promptly file and serve a notice on all interested persons at any time the entity would not be qualified for appointment and will include the reason the entity would not then be qualified and the date on which the disqualifying event occurred.

5. The entity will file and serve a notice within 20 days on all interested persons, in the event there is a change in the entity's place of business or mailing address.

_____
Affiant

Sworn to (or affirmed) and subscribed before me by means of _ _____ physical presence or _____ online notarization, this _____ day of _____, 20_, by _____ (name of person making statement).

_____
Signature of Notary
Public—State of Florida
(Print, Type, or Stamp
Commissioned
Name of Notary Public)

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

(b) Oath of Personal Representative; Individual. For an individual, the oath must also contain a statement that the personal representative has reviewed the statutes relating to the requirements for appointment as personal representative, that the personal representative is qualified to serve, and that the personal representative has a continuing duty to file and serve a notice on the occurrence of an event that would disqualify the personal representative. If the petition is verified by the prospective personal representative individually, the oath may be incorporated in the petition or in the designation of resident agent. The oath for an individual must substantially comply with the following form:

[CAPTION]

OATH OF PERSONAL REPRESENTATIVE

STATE OF _____
COUNTY OF _____

I, _____, (affiant), state under oath that:

1. I am qualified within the provisions of sections 733.302, 733.303, and 733.304, Florida Statutes, to serve as personal representative of the estate of _____, deceased. I have reviewed the statutes and understand the qualifications. Under penalties of perjury, I certify that the following statements are true:

a. I am 18 years of age or older.

b. I have never been convicted of a felony.

c. I have never been convicted in any state or foreign jurisdiction of abuse, neglect, or exploitation of an elderly person or a disabled adult, as those terms are defined in sections 825.101, 825.102, and 825.103, Florida Statutes.

d. I am mentally and physically able to perform the duties of personal representative.

e. I am a resident of the State of Florida, or, if I am not a resident of the State of Florida, I am:

___ a legally adopted child or adoptive parent of the decedent;

___ related by lineal consanguinity to the decedent; a spouse or a brother, sister, uncle, aunt, nephew, or niece of the decedent, or someone related by lineal consanguinity to any such person; or

___ the spouse of a person otherwise qualified under 1 of the provisions above.

2. I will faithfully administer the estate of the decedent according to law.

3. My place of residence is _____, and my post office address is _____.

4. I will promptly file and serve a notice on all interested persons at any time I know that I would not be qualified for appointment and will include the reason I would not then be qualified and the date on which the disqualifying event occurred.

5. I will file and serve a notice within 20 days on all interested persons, in the event there is a change in my residence address, street address, or mailing address.

_____
Affiant

Sworn to (or affirmed) and subscribed before me by means of _____ physical presence or _____ online notarization, this _____ day of _____, 20__, by _____ (name of person making statement).

_____
Signature of Notary Public—State of Florida (Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

Committee Notes

It is contemplated the oath may be signed concurrently with the petition for administration and will be valid even if it predates the order appointing the personal representative.

Rule History

1977 Revision: No change in rule. Change in committee note to conform to statutory renumbering.

This rule establishes the uniform requirement for an oath of faithful performance of fiduciary duties within the permissiveness of section 733.401(1)(d), Florida Statutes. Should be taken together with new rule 5.110, Resident Agent.

1988 Revision: Committee notes expanded. Citation form changes in committee notes.

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

2003 Revision: Committee notes revised.

2019 Revision: Amended the rule to conform the oath to statutory changes and to provide a proposed form for the oath of personal representative. The oath is expanded to address the qualifications and continuing duties of the personal representative.

2021 Revision: Form Oath amended to require a statement that the personal representative has never been convicted of abuse, neglect, or exploitation of an elderly or disabled adult and to revise notary block for compliance with revised section 117.05, Florida Statutes.

2024 Revision: Rule was amended to distinguish between the oath requirements for corporate and individual personal representatives. Committee notes revised.

2026 Revision: Subdivision (b) amended to correct statutory references. Committee notes revised.

Statutory References

§ 733.302, Fla. Stat. Who may be appointed personal representative.

§ 733.303, Fla. Stat. Persons not qualified.

§ 733.304, Fla. Stat. Nonresidents.

§ 733.305, Fla. Stat. Trust companies and other corporations and associations.

§ 733.3101, Fla. Stat. Personal representative not qualified.

§ 825.101, Fla. Stat. Definitions.

§ 825.102, Fla. Stat. Abuse, aggravated abuse, and neglect of an elderly person or disabled adult; penalties.

§ 825.103, Fla. Stat. Exploitation of an elderly person or disabled adult; penalties.

Rule References

Fla. Prob. R. 5.110 Address designation for personal representative or guardian; designation of resident agent and acceptance.

Fla. Prob. R. 5.235 Issuance of letters, bond.

RULE 5.330. EXECUTION BY PERSONAL REPRESENTATIVE

Notwithstanding any other provisions of these rules, the personal representative must sign the:

(a) inventory;

(b) accountings;

(c) petition for sale or confirmation of sale or encumbrance of real or personal property;

(d) petition to continue business of decedent;

(e) petition to compromise or settle claim;

(f) petition to purchase on credit;

(g) petition for discharge; and

(h) resignation of personal representative.

Committee Notes

Rule History

1975 Revision: Where the jurisdiction of the court is invoked voluntarily pursuant to section 733.603, Florida Statutes, or otherwise, the rule requires that the personal representative have actual knowledge of the more important steps and acts of administration.

1977 Revision: Citation form change in committee note.

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

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

2003 Revision: Committee notes revised.

2010 revision: Committee notes revised.

2023 Revision: Subdivision (g) was edited to conform with Fla. Prob. R. 5.400. Committee notes revised.

Statutory References

§ 733.502, Fla. Stat. Resignation of personal representative.

§ 733.604, Fla. Stat. Inventories and accountings; public records exemptions.

§ 733.612(5), (22), (24), Fla. Stat. Transactions authorized for the personal representative; exceptions.

§ 733.613, Fla. Stat. Personal representative's right to sell real property.

§ 733.708, Fla. Stat. Compromise.

§ 733.901, Fla. Stat. Final discharge.

Rule References

Fla. Prob. R. 5.340 Inventory.

Fla. Prob. R. 5.345 Accountings other than personal representatives' final accountings.

Fla. Prob. R. 5.346 Fiduciary accounting.

Fla. Prob. R. 5.350 Continuance of unincorporated business or venture.

Fla. Prob. R. 5.370 Sales of real property where no power conferred.

Fla. Prob. R. 5.400 Distribution and discharge.

Fla. Prob. R. 5.430 Resignation of personal representative.

RULE 5.340. INVENTORY

(a) Contents and Filing. Unless an inventory has been previously filed, the personal representative must file an inventory of the estate within 60 days after issuance of letters. The inventory must contain notice of the beneficiaries' rights under subdivision (e), list the estate with reasonable detail, and include for each listed item (excluding real property appearing to be protected homestead property) its estimated fair market value at the date of the decedent's death. Real property appearing to be protected homestead property must be listed and so designated.

(b) Extension. On petition the time for filing the inventory may be extended by the court for cause shown without notice, except that the personal representative must serve copies of the petition and order on the persons described in subdivision (d).

(c) Amendments. A supplementary or amended inventory containing the information required by subdivision (a) as to each affected item must be filed and served by the personal representative if:

(1) the personal representative learns of property not included in the original inventory;

(2) the personal representative learns that the estimated value or description indicated in the original inventory for any item is erroneous or misleading; or

(3) the personal representative determines the estimated fair market value of an item whose value was described as unknown in the original inventory.

(d) Service. The personal representative must serve a copy of the inventory and all supplemental and amended inventories on the surviving spouse, each heir at law in an intestate estate, each residuary beneficiary in a testate estate, and any other interested person who may request it in writing.

(e) Information. On request in writing, the personal representative must provide the following:

(1) to the requesting residuary beneficiary or heir in an intestate estate, a written explanation of how the inventory value for an asset was determined or, if an appraisal was obtained, a copy of the appraisal; and

(2) to any other requesting beneficiary, a written explanation of how the inventory value for each asset distributed or proposed to be distributed to that beneficiary was determined or, if an appraisal of that asset was obtained, a copy of the appraisal.

(f) Notice to Nonresiduary Beneficiaries. The personal representative must provide to each nonresiduary beneficiary written notice of that beneficiary's right to receive a written explanation of how the inventory value for each asset distributed or

proposed to be distributed to that beneficiary was determined or a copy of an appraisal, if any, of the asset.

(g) Elective Share Proceedings. After entry of an order determining the surviving spouse's entitlement to the elective share, the personal representative must file an inventory of the property entering into the elective estate which must value the elective estate assets as required by law and identify the direct recipient, if any, of that property. The personal representative must serve the inventory of the elective estate as provided in rule 5.360. On request in writing, the personal representative must provide an interested person with a written explanation of how the inventory value for an asset was determined and must permit an interested person to examine appraisals on which the inventory values are based.

(h) Verification. All inventories must be verified by the personal representative.

Committee Notes

Inventories are still required to be filed. Once filed, however, they are subject to the confidentiality provisions found in sections 733.604(1) and (2), Florida Statutes.

Inventories of the elective estate under subdivision (f) must be afforded the same confidentiality as probate inventories. See sections 733.604(1) and (2), Florida Statutes.

Constitutional protected homestead real property is not necessarily a probatable asset. Disclosure on the inventory of real property appearing to be constitutional protected homestead property informs interested persons of the homestead issue.

Interested persons are entitled to reasonable information about estate proceedings on proper request, including a copy of the inventory, an opportunity to examine appraisals, and other information pertinent to their interests in the estate. The rights of beneficiaries to information contained in estate inventories is limited by section 733.604(3), Florida Statutes. Inventories of the

elective estate under subdivision (g) affects a broader class of interested persons who may obtain information regarding the assets disclosed therein subject to control by the court and the confidentiality afforded such inventories under sections 733.604(1) and (2), Florida Statutes.

Rule History

1980 Revision: Eliminated the time limit in requesting a copy of the inventory by an interested person or in furnishing it by the personal representative.

1984 (First) Revision: Extensive changes. Committee notes revised.

1984 (Second) Revision: Subdivision (a) modified to clarify or re-insert continued filing requirement for inventory.

1988 Revision: Editorial changes in (b) and (d). Committee notes revised. Citation form changes in committee notes.

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

2001 Revision: Subdivision (a) amended to conform to statutory changes. Subdivision (d) amended to add requirement of filing of proof of service. Subdivision (e) amended to clarify personal representative's duty to furnish explanation of how inventory values were determined. Subdivision (f) added to require personal representative to file inventory of property entering into elective share. Subdivision (g) added to require verification of inventories. Committee notes revised.

2002 Revision: Subdivision (e) amended to conform to section 733.604(3), Florida Statutes. Subdivision (f) amended to establish procedures for interested persons to obtain information about assets and values listed in the inventory of the elective estate. Committee notes revised.

2003 Revision: Committee notes revised.

2010 Revision: Subdivisions (d) and (g) (former (f)) amended to delete the requirement to serve a copy of the inventory on the Department of Revenue. Subdivision (e) amended, and new (f) created, to limit the kind of information available to nonresiduary beneficiaries, and subsequent subdivisions relettered. Editorial changes in (a), (e), and (g). Committee notes revised.

2012 Revision: The last sentence of subdivision (d) is deleted to remove duplicative requirement of filing a proof of service for a document which includes a certificate of service as provided in Fla. R. Gen. Prac. & Jud. Admin. 2.516. If service of the inventory is by service in the manner provided for service of formal notice, then proof of service should be filed as provided in rule 5.040(a)(5). Committee notes revised.

2024 Revision: Amended subdivision (g) to require that the inventory must value the elective estate assets as required by law. Committee notes revised.

2026 Revision: Committee notes revised.

Constitutional Reference

Art. X, § 4, Fla. Const.

Statutory References

§ 732.2035, Fla. Stat. Property entering into elective estate.

§ 732.2045, Fla. Stat. Exclusions and overlapping application.

§ 732.2055, Fla. Stat. Valuation of the elective estate.

§ 732.401, Fla. Stat. Descent of homestead.

§ 732.4015, Fla. Stat. Devise of homestead.

§ 733.604, Fla. Stat. Inventories and accounting; public records exemptions.

Rule References

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

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.330 Execution by personal representative.

Fla. Prob. R. 5.360 Elective share.

Fla. Prob. R. 5.405 Proceedings to determine homestead status of real property.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service

RULE 5.341. ESTATE INFORMATION

On reasonable request in writing, the personal representative shall provide an interested person with information about the estate and its administration.

Committee Notes

This rule is not intended to overrule the holdings in *In re Estate of Shaw*, 340 So. 2d 491 (Fla. 3d DCA 1976), and *In re Estate of Posner*, 492 So. 2d 1093 (Fla. 3d DCA 1986).

Rule History

2002 Revision: New rule.

RULE 5.342. INVENTORY OF SAFE-DEPOSIT BOX

(a) Filing. The personal representative must file an inventory of the contents of the decedent's safe-deposit box within 10 days of the initial opening of the box by the personal representative or the personal representative's attorney of record. The inventory must include a copy of the financial institution's entry record for the box from a date that is 6 months before the decedent's date of death to the date of the initial opening by the personal representative or the personal representative's attorney of record.

(b) Verification. Each person who was present at the initial opening must verify the contents of the box by signing a copy of the inventory under penalties of perjury.

(c) Service. The personal representative must serve a copy of the inventory on the surviving spouse, each heir at law in an intestate estate, each residuary beneficiary in a testate estate, and any other interested person who may request it in writing.

Committee Notes

Inventories and entry records, once filed, shall be afforded the same confidentiality as probate inventories.

If a safe-deposit box is opened pursuant to section 655.935 of the Florida Statutes, no written inventory of the box need be prepared or filed.

Rule History

2003 Revision: New rule.

2012 Revision: The last sentence of subdivision (c) is deleted to remove duplicative requirement of filing a proof of service for a document which includes a certificate of service as provided in Fla. R. Gen. Prac. & Jud. Admin. 2.516. In service of the inventory is by service in the manner provided for service of formal notice, then proof of service should be filed as provided in rule 5.040(a)(5). Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 655.935, Fla. Stat. Search procedure on death of lessee.

§ 655.936, Fla. Stat. Delivery of safe-deposit box contents or property held in safekeeping to personal representative.

§ 733.6065, Fla. Stat. Opening safe-deposit box.

Rule References

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

Fla. Prob. R. 5.340 Inventory.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.3425. SEARCH OF SAFE DEPOSIT BOX

(a) Petition for Order Authorizing Search. The petition for an order authorizing the search of a safe deposit box leased or co-leased by a decedent must be verified and must contain:

(1) The petitioner's name, address, and interest, if any, in the estate;

(2) The decedent's name, address, date and place of death, and state and county of domicile;

(3) A description of the safe deposit box leased by the decedent and, if known, the name of any co-lessee;

(4) The name and address of the institution where the safe deposit box is located; and

(5) A statement that the petitioner believes that the decedent may have left in the safe deposit box one or more of the following:

(A) A will or codicil of the decedent, or a writing described in section 732.515 of the Code;

(B) A deed to a burial plot;

(C) A writing giving burial instructions; or

(D) Insurance policies on the life of the decedent.

(b) Order. If the Court determines that the petitioner is entitled to an order authorizing a search of the decedent's safe deposit box, it must enter an order

(1) authorizing the petitioner to open the safe deposit box in the presence of an officer of the lessor and, if requested by the petitioner, to remove and deliver

(A) to the court having probate jurisdiction in the county where the lessor is located any writing purporting to be a will or codicil of the decedent and any writing purporting to identify devises of tangible property;

(B) to the petitioner, any writing purporting to be a deed to a burial plot to give burial instructions; and

(C) to the beneficiary named therein, any document purporting to be an insurance policy on the life of the decedent.

(2) directing the officer of the lessor to make a complete copy of any document removed and delivered pursuant to the court order, together with a memorandum of delivery identifying the name of the officer, the person to whom the document was delivered, and the date of delivery, to be placed in the safe deposit box leased or co-leased by the decedent.

Committee Notes

The search of the safe deposit box is not considered an initial opening and is not subject to the inventory requirements of rule 5.342.

Rule History

2010 Revision: New rule.

Statutory References

§ 655.935, Fla. Stat. Search procedure on death of lessee.

RULE 5.345. ACCOUNTINGS OTHER THAN PERSONAL REPRESENTATIVES' FINAL ACCOUNTINGS

(a) Applicability and Accounting Periods. This rule applies to the interim accounting of any fiduciary of a probate estate, the accounting of a personal representative who has resigned or been removed, and the accounting of a curator upon the appointment of a successor fiduciary. The fiduciary may elect to file an interim accounting at any time, or the court may require an interim or supplemental accounting. The ending date of the accounting period for any accounting to which this rule applies shall be as follows:

(1) For an interim accounting, any date selected by the fiduciary, including a fiscal or calendar year, or as may be determined by the court.

(2) For the accounting of a personal representative who has resigned or has been removed, the date the personal representative's letters are revoked.

(3) For a curator who has been replaced by a successor fiduciary, the date of appointment of the successor fiduciary.

(b) Notice of Filing. Notice of filing and a copy of any accounting to which this rule applies shall be served on all interested persons. The notice shall state that objections to the accounting must be filed within 30 days from the date of service of notice.

(c) Objection. Any interested person may file an objection to any accounting to which this rule applies within 30 days from the date of service of notice on that person. Any objection not filed within 30 days from the date of service shall be deemed abandoned. An objection shall be in writing and shall state with particularity the item or items to which the objection is directed and the grounds upon which the objection is based.

(d) Service of Objections. The objecting party shall serve a copy of the objection on the fiduciary filing the accounting and other interested persons.

(e) Disposition of Objections and Approval of Accountings. The court shall sustain or overrule any objection filed as provided in this rule. If no objection is filed, any accounting to which this rule applies shall be deemed approved 30 days from the date of service of the accounting on interested persons.

(f) Substantiating Documents. On reasonable written request, the fiduciary shall permit an interested person to examine documents substantiating items in any accounting to which this rule applies.

(g) Supplemental Accountings. The court, on its own motion or on that of any interested person, may require a fiduciary who has been replaced by a successor fiduciary to file a supplemental accounting, the beginning date of which shall be the ending date of the accounting as specified in subdivision (a) of this rule and the ending date of which is the date of delivery of all of the estate's property to the successor fiduciary, or such other date as the court may order.

(h) Verification. All accountings shall be verified by the fiduciary filing the accounting.

Committee Notes

The personal representative is required to file a final accounting when administration is complete, unless filing is waived by interested persons. Additionally, a fiduciary of a probate estate may elect, but is not required, to file interim accountings at any time. An accounting is required for resigning or removed fiduciaries. The filing, notice, objection, and approval procedure is similar to that for final accounts.

Rule History

1977 Revision: Change in (a) to authorize selection of fiscal year.

1980 Revision: Change in (d) of prior rule to require the notice to state that the basis for an objection is necessary. Change in (e) of prior rule to require any person filing an objection to set forth the basis of such objection.

1984 Revision: Extensive changes. Committee notes revised.

1988 Revision: Citation form change in committee notes.

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

2002 Revision: Implements procedures for interim accountings and accountings by resigning or removed fiduciaries. Committee notes revised.

2003 Revision: Committee notes revised.

2005 Revision: Verification requirement added as new (h). Committee notes revised.

2016 Revision: Subdivision (f) revised to substitute "documents" for "papers."

Statutory References

§ 733.3101, Fla. Stat. Personal representative not qualified.

§ 733.501, Fla. Stat. Curators.

§ 733.5035, Fla. Stat. Surrender of assets after resignation.

§ 733.5036, Fla. Stat. Accounting and discharge following resignation.

§ 733.508, Fla. Stat. Accounting and discharge of removed personal representatives upon removal.

§ 733.509, Fla. Stat. Surrender of assets upon removal.

ch. 738, Fla. Stat. Principal and income.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.122 Curators.

Fla. Prob. R. 5.150 Order requiring accounting.

Fla. Prob. R. 5.330 Execution by personal representative.

Fla. Prob. R. 5.346 Fiduciary accounting.

Fla. Prob. R. 5.430 Resignation of personal representative.

Fla. Prob. R. 5.440 Proceedings for removal.

RULE 5.346. FIDUCIARY ACCOUNTING

(a) Contents. A fiduciary accounting, other than a guardian accounting, shall include:

(1) all cash and property transactions since the date of the last accounting or, if none, from the commencement of administration, and

(2) a schedule of assets at the end of the accounting period.

(b) Accounting Standards. The following standards are required for the accounting of all transactions occurring on or after January 1, 1994:

(1) Accountings shall be stated in a manner that is understandable to persons who are not familiar with practices and terminology peculiar to the administration of estates and trusts.

(2) The accounting shall begin with a concise summary of its purpose and content.

(3) The accounting shall contain sufficient information to put interested persons on notice as to all significant transactions affecting administration during the accounting period.

(4) The accounting shall contain 2 values in the schedule of assets at the end of the accounting period, the asset acquisition value or carrying value, and estimated current value.

(5) Gains and losses incurred during the accounting period shall be shown separately in the same schedule.

(6) The accounting shall show significant transactions that do not affect the amount for which the fiduciary is accountable.

(c) Accounting Format. A model format for an accounting is attached to this rule as Appendix A.

(d) Verification. All accountings shall be verified by the fiduciary filing the accounting.

Committee Notes

This rule substantially adopts the Uniform Fiduciary Accounting Principles and Model Formats adopted by the Committee on National Fiduciary Accounting Standards of the American Bar Association: Section of Real Property, Probate and Trust Law, the American College of Probate Counsel, the American Bankers Association: Trust Division, and other organizations.

Accountings shall also comply with the Florida principal and income law, chapter 738, Florida Statutes.

Attached as Appendix B to this rule are an explanation and commentary for each of the foregoing standards, which shall be considered as a Committee Note to this rule.

Accountings that substantially conform to the model formats are acceptable. The model accounting format included in Appendix A is only a suggested form.

Rule History

1988 Revision: New rule.

1992 Revision: Editorial changes throughout. Rule changed to require compliance with the Uniform Fiduciary Accounting Principles and Model Formats for accounting of all transactions occurring on or after January 1, 1994. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Committee notes revised.

1999 Revision: Committee notes revised to correct rule reference and to reflect formatting changes in accounting formats.

2002 Revision: Subdivisions (a) and (b) amended to clarify contents of accounting. Committee notes revised.

2003 Revision: Committee notes revised.

2005 Revision: Verification requirement added as new (d). Committee notes revised.

2007 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

2016 Revision: Subdivision (a) amended to clarify that this rule does not apply to guardian accounting. Committee notes revised.

Statutory References

§ 733.501, Fla. Stat. Curators.

§ 733.5036, Fla. Stat. Accounting and discharge following resignation.

§ 733.508, Fla. Stat. Accounting and discharge of removed personal representatives upon removal.

§ 733.602(1), Fla. Stat. General duties.

§ 733.612(18), Fla. Stat. Transactions authorized for the personal representative; exceptions.

ch. 738, Fla. Stat. Principal and income.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.122 Curators.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.330 Execution by personal representative.

Fla. Prob. R. 5.345 Accountings other than personal representatives' final accountings.

Fla. Prob. R. 5.400 Distribution and discharge.

Fla. Prob. R. 5.430 Resignation of personal representative.

Fla. Prob. R. 5.440 Proceedings for removal.

APPENDIX A

IN THE CIRCUIT COURT FOR _____ COUNTY, FLORIDA

IN RE: ESTATE OF PROBATE DIVISION

File Number

Deceased. Division

_____ ACCOUNTING OF PERSONAL REPRESENTATIVE(S)

From: _____, _____, Through: , _____

The purpose of this accounting is to acquaint all interested persons with the transactions that have occurred during the period covered by the accounting and the assets that remain on hand. It consists of a SUMMARY sheet and Schedule A showing all Receipts, Schedule B showing all Disbursements, Schedule C showing all Distributions, Schedule D showing all Capital Transactions and Adjustments (the effect of which are also reflected in other schedules, if appropriate), and Schedule E showing assets on hand at the end of the accounting period.

It is important that this accounting be carefully examined. Requests for additional information and any questions should be addressed to the personal representative(s) or the attorneys for the personal representative(s), the names and addresses of whom are set forth below.

Under penalties of perjury, the undersigned personal representative(s) declare(s) that I (we) have read and examined this accounting and that the facts and figures set forth in the Summary and the attached Schedules are true, to the best of my (our) knowledge and belief, and that it is a complete report of all cash and property transactions and of all receipts and disbursements by me (us) as personal representative(s) of the estate of _____

_____deceased, from_____, ____ through _____ _____, _____.

Signed on _____, _____.

Attorney for Personal Representative:

_____

Attorney

Florida Bar No. _____

_____

_____

(address)

Telephone: _____

Personal Representative:

_____

_____

Name

_____

(address)

[Print or Type Names Under All Signature Lines]

IN THE CIRCUIT COURT FOR _____ COUNTY, FLORIDA

IN RE: ESTATE OF PROBATE DIVISION

File Number

Deceased. Division

_____ ACCOUNTING OF PERSONAL REPRESENTATIVE(S)

From: _____, _____, Through: _____, ____

SUMMARY

		Income	Principal	Totals
I.	Starting Balance Assets per Inventory or on Hand at Close of Last Accounting Period	_____	_____	_____
II.	Receipts Schedule A:	_____	_____	_____
III.	Disbursements Schedule B:	_____	_____	_____
IV.	Distributions Schedule C:	_____	_____	_____
V.	Capital Transactions and Adjustments Schedule D: Net Gain or (Loss)		$____	_____

VI. Assets on Hand at Close of Accounting Period

Schedule E: Cash and Other Assets ____ _____ _____

NOTE: Refer to Fla. Prob. R. 5.330(b), 5.345, 5.346, and 5.400.

Also see Fiduciary Accountings, Chapter 12 of Practice Under Florida Probate Code (Fla. Bar CLE).

Entries on Summary are to be taken from totals on Schedules A, B, C, D and E.

The Summary and Schedules A, B, C, D and E are to constitute the full accounting. Every transaction occurring during the accounting period should be reflected on the Schedules.

All purchases and sales, all adjustments to the inventory or carrying value of any asset, and any other changes in the assets (such as stock splits) should be described on Schedule D.

The amount in the "Total" column for Item VI must agree with the total inventory or adjusted carrying value of all assets on hand at the close of the accounting period on Schedule E.

_____ ACCOUNTING OF PERSONAL REPRESENTATIVE,

ESTATE OF _____

From: _____, _____, Through: _____, ___

SCHEDULE A Receipts

Date	Brief Description of Items	Income	Principal

NOTE: Schedule A should reflect only those items received during administration that are not shown on the inventory. Classification of items as income or principal is to be in accordance with the provisions of the Florida Principal and Income Act, Chapter 738, Florida Statutes.

Entries involving the sale of assets or other adjustments to the carrying values of assets are to be shown on Schedule D, and not on Schedule A.

_____ ACCOUNTING OF PERSONAL REPRESENTATIVE,

ESTATE OF _____

From: _____, _____, Through: _____, ___

SCHEDULE B Disbursements

Date	Brief Description of Items	Income	Principal

NOTE: Schedule B should reflect only those items paid out during the accounting period. Classification of disbursements as income or principal is to be in accordance with the provisions of the Florida Principal and Income Act, Chapter 738, Florida Statutes.

Entries involving the purchase of assets or adjustments to the carrying values of assets are to be shown on Schedule D, and not on Schedule B.

_____ ACCOUNTING OF PERSONAL REPRESENTATIVE,

ESTATE OF _____

From: _____, _____, Through: _____,___

SCHEDULE C Distributions

Date	Brief Description of Items	Income	Principal

NOTE: Schedule C should reflect only those items or amounts distributed to beneficiaries during the accounting period. Assets distributed should be shown at their inventory or adjusted carrying values. Classification of distributions as income or principal is to be in accordance with the provisions of the Florida Principal and Income Act, Chapter 738, Florida Statutes.

Entries involving adjustments to the carrying values of assets are to be shown on Schedule D, and not on Schedule C.

_____ ACCOUNTING OF PERSONAL REPRESENTATIVE,

ESTATE OF _____

From: _____, _____, Through: _____, __

SCHEDULE D Capital Transactions and Adjustments

(Does not include distributions. Distributions are shown on Schedule C.)

Date Brief Description of Transactions Net Gain Net Loss

TOTAL NET GAINS AND LOSSES

NET GAIN OR (LOSS)

NOTE: Schedule D should reflect all purchases and sales of assets and any adjustments to the carrying values of any assets.

Entries reflecting sales should show the inventory or adjusted carrying values, the costs and expenses of the sale, and the net proceeds received. The net gain or loss should be extended in the appropriate column on the right side of Schedule D.

Entries reflecting purchases should reflect the purchase price, any expenses of purchase or other adjustments to the purchase price, and the total amount paid. Presumably no gain or loss would be shown for purchases.

Entries reflecting adjustments in capital assets should explain the change (such as a stock split) and the net gain or loss should be shown in the appropriate column on the right side of Schedule D.

The NET gain or loss should be entered in the Principal column of the Summary.

_____ ACCOUNTING OF PERSONAL REPRESENTATIVE,

ESTATE OF _____

From: _____, _____, Through: _____,____

SCHEDULE E Assets on Hand at Close of Accounting Period

(Indicate where held and legal description, certificate numbers, or other identification.)

	Estimated Current Value	Carrying Value

ASSETS OTHER THAN CASH:

_____

OTHER ASSETS TOTAL

CASH:

CASH TOTAL

TOTAL ASSETS (must agree with the Total for Item VI on Summary)

NOTE: Schedule E should be a complete list of all assets on hand reflecting inventory values for each item, adjusted in accordance with any appropriate entries on Schedule D.

Current market values for any assets that are known to be different from the inventory or carrying values as of the close of the accounting period should be shown in the column marked "Current Value." The total inventory or adjusted carrying value (not Current Value) must agree with the Total for Item VI on Summary.

APPENDIX B
UNIFORM FIDUCIARY ACCOUNTING PRINCIPLES

I. ACCOUNTS SHOULD BE STATED IN A MANNER THAT IS UNDERSTANDABLE BY PERSONS WHO ARE NOT FAMILIAR WITH PRACTICES AND TERMINOLOGY PECULIAR TO THE ADMINISTRATION OF ESTATES AND TRUSTS.

Commentary: In order for an account to fulfill its basic function of communication, it is essential that it be stated in a manner that recognizes that the interested parties are not usually familiar with fiduciary accounts. It is neither practical nor desirable to require that accounts be tailored to meet individual disabilities of particular parties but any account should be capable of being understood by a person of average intelligence, literate in English, and familiar with basic financial terms who has read it with care and attention.

Problems arising from terminology or style are usually a reflection of the fact that people who become versed in a particular form of practice tend to forget that terms which are familiar and useful to them may convey nothing to someone else or may even be affirmatively misleading. For example, the terms “debit” and “credit” are generally incomprehensible to people with no knowledge of bookkeeping and many people who are familiar with them in other contexts would assume that in the context of fiduciary accounting, the receipt of an item is a “credit” to the fund rather than a “debit” to the fiduciary.

While the need for concise presentation makes a certain amount of abbreviation both acceptable and necessary, uncommon abbreviation of matters essential to an understanding of the account should be avoided or explained.

No position is taken for or against the use of direct print-outs from machine accounting systems. The quality of the accounts produced by these systems varies widely in the extent to which they can be understood by persons who are not familiar with them. To endorse or object to a direct print-out because it is produced by

machine from previously stored data would miss the essential point by focusing attention upon the manner of preparation rather than the product.

II. A FIDUCIARY ACCOUNT SHALL BEGIN WITH A CONCISE SUMMARY OF ITS PURPOSE AND CONTENT.

Commentary: Very few people can be expected to pay much attention to a document unless they have some understanding of its general purpose and its significance to them. Even with such an understanding, impressions derived from the first page or two will often determine whether the rest is read. The use that is made of these pages is therefore of particular significance.

The cover page should disclose the nature and function of the account. While a complete explanation of the significance of the account and the effect of its presentation upon the rights of the parties is obviously impractical for inclusion at this point, there should be at least a brief statement identifying the fiduciary and the subject matter, noting the importance of examining the account and giving an address where more information can be obtained.

It is assumed that the parties would also have enough information from other sources to understand the nature of their relationship to the fund (e.g., residuary legatee, life tenant, remainderman), the function of the account, and the obligation of the fiduciary to supply further relevant information upon request. It is also assumed that notice will be given of any significant procedural considerations such as limitation on the time within which objections must be presented. This would normally be provided by prior or contemporaneous memoranda, correspondence, or discussions.

A summary of the account shall also be presented at the outset. This summary, organized as a table of contents, shall indicate the order of the details presented in the account and shall show separate totals for the aggregate of the assets on hand at the beginning of the accounting period; transactions during the period; and the assets remaining on hand at the end of the period. Each

entry in the summary shall be supported by a schedule in the account that provides the details on which the summary is based.

III. A FIDUCIARY ACCOUNT SHALL CONTAIN SUFFICIENT INFORMATION TO PUT THE INTERESTED PARTIES ON NOTICE AS TO ALL SIGNIFICANT TRANSACTIONS AFFECTING ADMINISTRATION DURING THE ACCOUNTING PERIOD.

Commentary: The presentation of the information account shall allow an interested party to follow the progress of the fiduciary's administration of assets during the accounting period.

An account is not complete if it does not itemize, or make reference to, assets on hand at the beginning of the accounting period.

Illustration:

3.1 The first account for a decedent's estate or a trust may detail the items received by the fiduciary and for which the fiduciary is responsible. It may refer to the total amount of an inventory filed elsewhere or assets described in a schedule attached to a trust agreement.

Instead of retyping the complete list of assets in the opening balance, the preparer may prefer to attach as an exhibit a copy of the inventory, closing balance from the last account, etc., as appropriate, or may refer to them if previously provided to the interested parties who will receive it.

Transactions shall be described in sufficient detail to give interested parties notice of their purpose and effect. It should be recognized that too much detail may be counterproductive to making the account understandable. In accounts covering long periods or dealing with extensive assets, it is usually desirable to consolidate information. For instance, where income from a number of securities is being accounted for over a long period of time, a statement of the total dividends received on each security with appropriate indication of changes in the number of shares held will

be more readily understandable and easier to check for completeness than a chronological listing of all dividends received.

Although detail should generally be avoided for routine transactions, it will often be necessary to proper understanding of an event that is somewhat out of the ordinary.

Illustrations:

3.2 Extraordinary appraisal costs should be shown separately and explained.

3.3 Interest and penalties in connection with late filing of tax returns should be shown separately and explained.

3.4 An extraordinary allocation between principal and income such as apportionment of proceeds of property acquired on foreclosure should be separately stated and explained.

3.5 Computation of a formula marital deduction gift involving non-probate assets should be explained.

IV. A FIDUCIARY ACCOUNT SHALL CONTAIN TWO VALUES, THE ASSET ACQUISITION VALUE OR CARRYING VALUE, AND CURRENT VALUE.

Commentary: In order for transactions to be reported on a consistent basis, an appropriate carrying value for assets must be chosen and employed consistently.

The carrying value of an asset should reflect its value at the time it is acquired by the fiduciary (or a predecessor fiduciary). When such a value is not precisely determinable, the figure used should reflect a thoughtful decision by the fiduciary. For assets owned by a decedent, inventory values or estate tax values — generally reflective of date of death — would be appropriate. Assets received in kind by a trustee from a settlor of an inter vivos trust should be carried at their value at the time of receipt. For assets purchased during the administration of the fund, cost would

normally be used. Use of Federal income tax basis for carrying value is acceptable when basis is reasonably representative of real values at the time of acquisition. Use of tax basis as a carrying value under other circumstances could be affirmatively misleading to beneficiaries and therefore is not appropriate.

In the Model Account, carrying value is referred to as "fiduciary acquisition value." The Model Account establishes the initial carrying value of assets as their value at date of death for inventoried assets, date of receipt for subsequent receipts, and cost for investments.

Carrying value would not normally be adjusted for depreciation.

Except for adjustments that occur normally under the accounting system in use, carrying values should generally be continued unchanged through successive accounts and assets should not be arbitrarily "written up" or "written down." In some circumstances, however, with proper disclosure and explanation, carrying value may be adjusted.

Illustrations:

4.1 Carrying values based on date of death may be adjusted to reflect changes on audit of estate or inheritance tax returns.

4.2 Where appropriate under applicable local law, a successor fiduciary may adjust the carrying value of assets to reflect values at the start of that fiduciary's administration.

4.3 Assets received in kind in satisfaction of a pecuniary legacy should be carried at the value used for purposes of distribution.

Though essential for accounting purposes, carrying values are commonly misunderstood by laypersons as being a representation of actual values. To avoid this, the account should include both current values and carrying values.

The value of assets at the beginning and ending of each accounting period is necessary information for the evaluation of investment performance. Therefore, the account should show, or make reference to, current values at the start of the period for all assets whose carrying values were established in a prior accounting period.

Illustrations:

4.4 The opening balance of the first account of a testamentary trustee will usually contain assets received in kind from the executor. Unless the carrying value was written up at the time of distribution (e.g., 4.2 or 4.3 supra) these assets will be carried at a value established during the executor's administration. The current value at the beginning of the accounting period should also be shown.

4.5 An executor's first account will normally carry assets at inventory (date of death) values or costs. No separate listing of current values at the beginning of the accounting period is necessary.

Current values should also be shown for all assets on hand at the close of the accounting period. The date on which current values are determined shall be stated and shall be the last day of the accounting period, or a date as close thereto as reasonably possible.

Current values should be shown in a column parallel to the column of carrying values. Both columns should be totalled.

In determining current values for assets for which there is no readily ascertainable current value, the source of the value stated in the account shall be explained. The fiduciary shall make a good faith effort to determine realistic values but should not be expected to incur expenses for appraisals or similar costs when there is no reason to expect that the resulting information will be of practical consequence to the administration of the estate or the protection of the interests of the parties.

Illustrations:

4.6 When an asset is held under circumstances that make it clear that it will not be sold (e.g., a residence held for use of a beneficiary) the fiduciary's estimate of value would be acceptable in lieu of an appraisal.

4.7 Considerations such as a pending tax audit or offer of the property for sale may indicate the advisability of not publishing the fiduciary's best estimate of value. In such circumstances, a statement that value was fixed by some method such as "per company books," "formula under buy-sell agreement," or "300% of assessed value" would be acceptable, but the fiduciary would be expected to provide further information to interested parties upon request.

V. GAINS AND LOSSES INCURRED DURING THE ACCOUNTING PERIOD SHALL BE SHOWN SEPARATELY IN THE SAME SCHEDULE.

Commentary: Each transaction involving the sale or other disposition of securities during the accounting period shall be shown as a separate item in one combined schedule of the account indicating the transaction, date, explanation, and any gain or loss.

Although gains and losses from the sale of securities can be shown separately in accounts, the preferred method of presentation is to present this information in a single schedule. Such a presentation provides the most meaningful description of investment performance and will tend to clarify relationships between gains and losses that are deliberately realized at the same time.

VI. THE ACCOUNT SHALL SHOW SIGNIFICANT TRANS¬ACTIONS THAT DO NOT AFFECT THE AMOUNT FOR WHICH THE FIDUCIARY IS ACCOUNTABLE.

Commentary: Transactions such as the purchase of an investment, receipt of a stock split, or change of a corporate name

do not alter the total fund for which a fiduciary is accountable but must be shown in order to permit analysis and an understanding of the administration of the fund. These can be best shown in information schedules.

One schedule should list all investments made during the accounting period. It should include those subsequently sold as well as those still on hand. Frequently the same money will be used for a series of investments. Therefore, the schedule should not be totalled in order to avoid giving an exaggerated idea of the size of the fund.

A second schedule (entitled "Changes in Investment Holdings" in the Model Account) should show all transactions affecting a particular security holding, such as purchase of additional shares, partial sales, stock splits, change of corporate name, divestment distributions, etc. This schedule, similar to a ledger account for each holding, will reconcile opening and closing entries for particular holdings, explain changes in carrying value, and avoid extensive searches through the account for information scattered among other schedules.

RULE 5.350. CONTINUANCE OF UNINCORPORATED BUSINESS OR VENTURE

(a) Separate Accounts and Reports. In the conduct of an unincorporated business or venture, the personal representative must keep separate, full, and accurate accounts of all receipts and expenditures and make reports as the court may require.

(b) Petition. If the personal representative determines it to be in the best interest of the estate to continue an unincorporated business or venture beyond the time authorized by statute or will, the personal representative must file a verified petition which must include:

(1) a statement of the nature of that business or venture;

(2) a schedule of specific assets and liabilities;

(3) the reasons for continuation;

(4) the proposed form and times of accounting for that business or venture;

(5) the period for which the continuation is requested; and

(6) any other information pertinent to the petition.

(c) Order. If the continuation is authorized, the order must state:

(1) the period for which that business or venture is to continue;

(2) the particular powers of the personal representative in the continuation of that business or venture; and

(3) the form and frequency of accounting by that business or venture.

(d) Petition by Interested Person. Any interested person, at any time, may petition the court for an order regarding the operation of, accounting for, or termination of an unincorporated business or venture, and the court must enter an order on the petition.

Committee Notes

Rule History

1975 Revision: New rule. § 733.612, Fla. Stat.

1984 Revision: Extensive changes in rule and title. Clarifies procedural steps to be taken by a personal representative who determines it to be in the best interest of an estate to continue any unincorporated business beyond the time authorized by statute.

Information required to be filed in a verified petition is specified, and normal information to be included in a court order is listed. Other pertinent information under (b)(6) may include provisions for insurance of business or venture, proposed professionals to be used in connection with such activities, how the business or venture shall be managed, the person or persons proposed for managerial positions, a list of all other employees, agents, or independent contractors employed by or affiliated with the business or venture, and proposed compensation for all such management personnel, agents, employees, and independent contractors. Committee notes revised and expanded.

1988 Revision: Editorial change in caption of (b). Committee notes revised. Citation form changes in committee notes.

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

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory Reference

§ 733.612(22), Fla. Stat. Transactions authorized for the personal representative; exceptions.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.330 Execution by personal representative.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.355. PROCEEDINGS FOR REVIEW OF EMPLOYMENT OF AGENTS AND COMPENSATION OF PERSONAL REPRESENTATIVES AND ESTATE EMPLOYEES

(a) Review. The court may review the propriety of the employment and the reasonableness of the compensation paid to the personal representative or any person employed by the personal representative. A petition seeking review must be filed with the court and served on all interested persons.

(b) Petition. The petition must state the grounds on which it is based. The burden of proving the propriety of the employment and the reasonableness of the compensation is on the personal representative and the person employed by the personal representative. Any person who is determined to have received excessive compensation from an estate may be ordered to make appropriate refunds.

Committee Notes

This rule represents a rule implementation of the procedure formerly found in section 733.6175, Florida Statutes. It is not intended to change the effect of the statute from which it was derived but has been reformatted to conform with the structure of these rules. It is not intended to create a new procedure or modify an existing procedure.

Rule History

1988 Revision: New rule.

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

1996 Revision: Committee notes revised.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2026 Revision: Rule divided into subdivisions and reorganized. Committee notes revised.

Statutory References

§ 731.201(23), Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 733.612(19), Fla. Stat. Transactions authorized for the personal representative; exceptions.

§ 733.617, Fla. Stat. Compensation of personal representative.

§ 733.6171, Fla. Stat. Compensation of attorney for the personal representative.

§ 733.6175, Fla. Stat. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.

Rule References

Fla. Prob. R. 5.040 Notice.

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

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.360. ELECTIVE SHARE

(a) Election. An election to take the elective share may be filed by the surviving spouse, or on behalf of the surviving spouse by an agent or guardian of the property of the surviving spouse.

(1) *Election by Surviving Spouse.* An electing surviving spouse must file the election within the time required by law and promptly serve the election on the personal representative in the manner provided for service of formal notice.

(2) *Election by Agent or Guardian of the Property of Surviving Spouse.*

(A) Petition for Approval. Before filing the election, the agent or guardian of the property of the surviving spouse must petition the court having jurisdiction of the probate proceeding for approval to make the election. The petition for approval must allege the authority to act on behalf of the surviving spouse and facts supporting the election.

(B) Notice of Petition. On receipt of the petition, the personal representative must promptly serve a copy of the petition by formal notice on all interested persons.

(C) Order Authorizing Election. If the election is approved, the order must include a finding that the election is in the best interests of the surviving spouse during the spouse's probable lifetime.

(D) Filing the Election. On entry of an order authorizing the filing of an election, the agent or guardian of the property must file the election within the later of the time provided by law or 30 days from service of the order and promptly serve the election on the personal representative in the manner provided for service of formal notice.

(b) Procedure for Election.

(1) *Extension.* Within the period provided by law to make the election, the surviving spouse or an agent or guardian of the property of the surviving spouse may petition the court for an extension of time for making an election or for approval to make the election. After notice and hearing the court for good cause shown may extend the time for election. If the court grants the petition for an extension, the election must be filed within the time allowed by the extension.

(2) *Withdrawal of Election.* The surviving spouse, an agent, a guardian of the property of the surviving spouse, or the

personal representative of the surviving spouse's estate may withdraw the election within the time provided by law.

(3) *Service of Notice.* On receipt of an election the personal representative must serve a notice of election within 20 days following service of the election, together with a copy of the election, on all interested persons in the manner provided for service of formal notice. The notice of election must indicate the names and addresses of the attorneys for the surviving spouse and the personal representative and must state that:

(A) persons receiving a notice of election may be required to contribute toward the satisfaction of the elective share;

(B) objections to the election must be served within 20 days after service of the copy of the notice of election; and

(C) if no objection to the election is timely served, an order determining the surviving spouse's entitlement to the elective share may be granted without further notice.

(4) *Objection to Election.* Within 20 days after service of the notice of election, an interested person may serve an objection to the election which must state with particularity the grounds on which the objection is based. The objecting party must serve copies of the objection on the surviving spouse and the personal representative. If an objection is served, the personal representative must promptly serve the objection on all other interested persons who have not previously been served with a copy of the objection.

(c) Determination of Entitlement.

(1) *No Objection Served.* If no objection to the election is timely served, the court must enter an order determining the spouse's entitlement to the elective share.

(2) *Objection Served.* If an objection to the election is timely served, the court must determine the surviving spouse's entitlement to the elective share after notice and hearing.

(d) Procedure to Determine Amount of Elective Share and Contribution.

(1) *Petition by Personal Representative.* After entry of the order determining the surviving spouse's entitlement to the elective share, the personal representative must file and serve a petition to determine the amount of the elective share. The petition must:

(A) give the name and address of each direct recipient known to the personal representative;

(B) describe the proposed distribution of assets to satisfy the elective share, and the time and manner of distribution; and

(C) identify those direct recipients, if any, from whom a specified contribution will be required and state the amount of contribution sought from each.

(2) *Service of Inventory.* The inventory of the elective estate required by rule 5.340, together with the petition, must be served within 60 days after entry of the order determining entitlement to the elective share on all interested persons in the manner provided for service of formal notice.

(3) *Petition by Spouse.* If the personal representative does not file the petition to determine the amount of the elective share within 90 days from rendition of the order of entitlement, the electing spouse or the agent or the guardian of the property or personal representative of the electing spouse may file the petition specifying as particularly as is known the value of the elective share.

(4) *Objection to Amount of Elective Share.* Within 20 days after service of the petition to determine the amount of the elective share, an interested person may serve an objection to the amount of or distribution of assets to satisfy the elective share. The objection must state with particularity the grounds on which the

objection is based. The objecting party must serve copies of the objection on the surviving spouse and the personal representative. If an objection is served, the personal representative must promptly serve the objection on all interested persons who have not previously been served.

(5) *Determination of Amount of Elective Share and Contribution.*

(A) No Objection Served. If no objection is timely served to the petition to determine the amount of the elective share, the court must enter an order on the petition.

(B) Objection Served. If an objection is timely served to the petition to determine the amount of the elective share, the court must determine the amount of the elective share and contribution after notice and hearing.

(6) *Order Determining Amount of Elective Share and Contribution.* The order must:

(A) set forth the amount of the elective share;

(B) identify the assets to be distributed to the surviving spouse in satisfaction of the elective share; and

(C) if contribution is necessary, specify the amount of contribution for which each direct recipient is liable.

(e) Relief from Duty to Enforce Contribution. A petition to relieve the personal representative from the duty to enforce contribution must state the grounds on which it is based and notice must be served on interested persons.

Committee Notes

The extensive rewrite of this rule in 2001 is intended to conform it with and provide procedures to accommodate amendments to Florida's elective share statutes. Sections 732.201

et seq., Florida Statutes. Proceedings to determine entitlement to elective share are not specific adversary proceedings under rule 5.025(a), but may be declared adversary at the option of the party. Proceedings to determine the amount of elective share and contribution are specific adversary proceedings under rule 5.025(a). Requirements for service are intended to be consistent with the requirements for formal notice. Rule 5.040. Service of process may be required to obtain personal jurisdiction over direct recipients who are not otherwise interested persons and who have not voluntarily submitted themselves to the jurisdiction of the court. Rule 5.040(a)(3)(C); chapter 48, Florida Statutes, Process and Service of Process; chapter 49, Florida Statutes, Constructive Service of Process. An inventory of the elective estate should be afforded the same confidentiality as other estate inventories. Section 733.604(1) and (2), Florida Statutes. In fulfilling a personal representative's obligations under this rule, a personal representative is not required to make impractical or extended searches for property entering into the elective estate and the identities of direct recipients. Preexisting rights to dower and curtesy formerly addressed in subdivision (e) of this rule are now governed by new rule 5.365.

Counsel's attention is directed to Florida Ethics Opinion 76-16, dated April 4, 1977, for guidance regarding the duties of an attorney with respect to spousal rights.

Rule History

1984 Revision: Extensive changes. Clarifies information to be included in a petition for elective share filed by a personal representative and specifies information to be included in an order determining elective share. Committee notes revised and expanded.

1988 Revision: Extensive changes. A new procedure has been added providing for optional service of a notice of election together with a copy of the election and a procedure to expose objections to and determine right to entitlement, separate from the pre-existing procedure of determination of amount and setting aside. Subdivisions (c) and (d) represent rule implementation of procedure

in statute. Committee notes revised and expanded. Citation form changes in committee notes.

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

2001 Revision: Entire rule rewritten. Committee notes revised.

2003 Revision: Committee notes revised.

2005 Revision: Subdivision (a) amended to require service in the manner of formal notice of the notice of election. Subdivision (b)(3) amended to provide time period for personal representative to service notice of election on interested persons, and title revised. Subdivision (d)(2) amended to provide time limit and service requirement for elective estate inventory and petition for determination of amount of elective share. Committee notes revised.

2010 Cycle Report Revision: Committee notes revised.

2010 Out-of-Cycle Report Revision: Subdivision (a)(2) amended to conform to an amendment to section 732.2125, Florida Statutes.

2012 Revision: Committee notes revised.

2019 Revision: Subdivisions (a), (a)(2), (a)(2)(A), (a)(2)(D), (b)(1), (b)(2), and (d)(3) amended to change “attorney-in-fact” to “agent” to be consistent with chapter 709, Florida Statutes. Committee note revised.

2026 Revision: Committee notes revised.

Statutory References

§ 732.201, Fla. Stat. Right to elective share.

§ 732.2025, Fla. Stat. Definitions.

§ 732.2035, Fla. Stat. Property entering into elective estate.

§ 732.2045, Fla. Stat. Exclusions and overlapping application.

§ 732.2055, Fla. Stat. Valuation of the elective estate.

§ 732.2065, Fla. Stat. Amount of the elective share.

§ 732.2075, Fla. Stat. Sources from which elective share payable; abatement.

§ 732.2085, Fla. Stat. Liability of direct recipients and beneficiaries.

§ 732.2095, Fla. Stat. Valuation of property used to satisfy elective share.

§ 732.2125, Fla. Stat. Right of election; by whom exercisable.

§ 732.2135, Fla. Stat. Time of election; extensions; withdrawal.

§ 732.2145, Fla. Stat. Order of contribution; personal representative's duty to collect contribution.

§ 733.604, Fla. Stat. Inventories and accountings; public records exemptions.

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.340 Inventory.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

Fla. R. App. P. 9.020 Definitions.

RULE 5.365. PETITION FOR DOWER

A widow may file an extraordinary petition for assignment of dower. The petition shall be filed in the court of each county where the widow's husband had conveyed land in which the widow had

not relinquished her right of dower before October 1, 1973. Formal notice shall be served on persons adversely affected. The proceedings shall be as similar as possible to those formerly existing for the ordinary assignment of dower.

Committee Notes

Rule History

2001 Revision: Derived from former rule 5.360(e).

Statutory Reference

§ 732.111, Fla. Stat. Dower and curtesy abolished.

RULE 5.370. SALES OF REAL PROPERTY WHERE NO POWER CONFERRED

(a) Petition. When authorization or confirmation of the sale of real property is required, the personal representative must file a verified petition setting forth the reasons for the sale, a description of the real property sold or proposed to be sold, and the price and terms of the sale.

(b) Order. If the sale is authorized or confirmed, the order must describe the real property. An order authorizing a sale may provide for the public or private sale of the real property described in the order, in parcels or as a whole. An order authorizing a private sale must specify the price and terms of the sale. An order authorizing a public sale must specify the type of notice of sale to be given by the personal representative.

Committee Notes

Petitions under the rule are governed by section 733.610, Florida Statutes, under which sales are voidable by interested persons if there was a conflict of interest without full disclosure and consent, unless the will or contract entered into by the decedent authorized the transaction or it was approved by the court after notice to all interested persons, and by section 733.609, Florida

Statutes, involving bad faith actions by the personal representative. Note provision for attorneys' fees.

Rule History

1984 Revision: Extensive changes. Notice of hearing on any petition concerning sale of real property is required by statute unless waived. The requirement to record a certified copy of the order approving sale of real estate in each county where the real property or any part thereof is situated has been deleted. Committee notes revised and expanded.

1988 Revision: Committee notes expanded. Citation form changes in committee notes.

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

1996 Revision: Editorial changes.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 733.609, Fla. Stat. Improper exercise of power; breach of fiduciary duty.

§ 733.610, Fla. Stat. Sale, encumbrance or transaction involving conflict of interest.

§ 733.613(1), Fla. Stat. Personal representative's right to sell real property.

§ 733.810, Fla. Stat. Distribution in kind; valuation.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.180 Waiver and consent.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.380. COMPULSORY PAYMENT OF DEVISES OR DISTRIBUTIVE INTERESTS

(a) Petition. A beneficiary may file a petition setting forth the facts that entitle the beneficiary to compel payment of devises or distributive interests stating that the property will not be required for the payment of debts, family allowance, spouse's elective share, estate and inheritance taxes, claims, charges, and expenses of administration, or for providing funds for contribution or enforcing equalization in case of advancements.

(b) Order. If the court finds that the property will not be required for the purposes set forth in subdivision (a), it may enter an order describing the property to be surrendered or delivered and compelling the personal representative, before the final settlement of the personal representative's accounts, to do 1 or more of the following:

(1) pay all or any part of a devise in money;

(2) deliver specific personal property within the personal representative's custody and control;

(3) pay all or any part of a distributive interest in the personal estate of a decedent; or

(4) surrender real property.

(c) Bond. Before the entry of an order of partial distribution, the court may require the person entitled to distribution to give a bond with sureties as prescribed by law.

Committee Notes

Rule History

1984 Revision: Extensive changes. Committee notes revised.

1988 Revision: Editorial change in caption of (a). Citation form change in committee notes.

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

2003 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 731.301, Fla. Stat. Notice.

§ 733.802, Fla. Stat. Proceedings for compulsory payment of devises or distributive interest.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.385. DETERMINATION OF BENEFICIARIES AND SHARES

(a) Beneficiaries and Shares. If a personal representative or other interested person is in doubt or is unable to determine with certainty beneficiaries entitled to an estate or the shares of any beneficiary of an estate, or a beneficiary entitled to any asset or

interest in an estate, the personal representative or other interested person may petition the court to determine beneficiaries.

(b) Petition. The petition must include:

(1) the names, residences, and post office addresses of all persons who may have an interest, except creditors of the decedent, known to the petitioner or ascertainable by diligent search and inquiry;

(2) a statement of the nature of the interest of each person;

(3) designation of any person believed to be a minor or incapacitated, and whether any person so designated is under legal guardianship in this state;

(4) a statement as to whether petitioner believes that there are, or may be, persons whose names are not known to petitioner who have claims against, or interest in, the estate as beneficiaries.

(c) Order. After formal notice and hearing, the court must enter an order determining the beneficiaries or the shares and amounts they are entitled to receive, or both.

Committee Notes

This rule represents a rule implementation of the procedure formerly found in section 733.105, Florida Statutes. It is not intended to change the effect of the statute from which it was derived but has been reformatted to conform with the structure of these rules. It is not intended to create a new procedure or modify an existing procedure.

Rule History

1988 Revision: New rule.

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

2002 Revision: Subdivision (c) added to implement procedure formerly found in section 733.105(2), Florida Statutes. Committee notes revised.

2003 Revision: Change in subdivision (c) to replace “heirs or devisees” with “beneficiaries” to incorporate term used in section 733.105, Florida Statutes. Committee notes revised.

2007 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2014 Revision: Fla. R. Gen. Prac. & Jud. Admin. 2.425(b)(6) provides an exception for the full name of any minor “in any document or order affecting minor’s ownership of real property.” Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

ch. 49, Fla. Stat. Constructive service of process.

§ 731.201(2), (23), Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 733.105, Fla. Stat. Determination of beneficiaries.

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.120 Administrator ad litem and guardian ad litem.

Fla. Prob. R. 5.205(a)(5) Filing evidence of death.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

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

RULE 5.386. ESCHEAT

(a) Escheat Proceeding. If it appears to the personal representative that an estate may escheat or there is doubt about the existence of any person entitled to the estate, the personal representative must institute a proceeding to determine beneficiaries within 1 year after letters have been issued to the personal representative, and notice must be served on the Department of Legal Affairs. If the personal representative fails to institute the proceeding within the time fixed, it may be instituted by the Department of Legal Affairs.

(b) Court's Report. On or before January 15 of each year, each court must furnish to the Department of Legal Affairs a list of all estates being administered in which no person appears to be entitled to the property and the personal representative has not instituted a proceeding for the determination of beneficiaries.

(c) Administration. Except as provided in this rule, escheated estates are administered as other estates.

Committee Notes

This rule represents a rule implementation of the procedure formerly found in section 732.107, Florida Statutes. It is not intended to change the effect of the statute from which it was derived but has been reformatted to conform with the structure of these rules. It is not intended to create a new procedure or modify an existing procedure.

Rule History

1988 Revision: New rule.

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

2003 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 732.107, Fla. Stat. Escheat.

§ 733.105, Fla. Stat. Determination of beneficiaries.

§ 733.816, Fla. Stat. Disposition of unclaimed property held by personal representatives.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.385 Determination of beneficiaries and shares.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.395. NOTICE OF FEDERAL ESTATE TAX RETURN

When a federal estate tax return is filed, required to be filed, or will be filed, the personal representative shall file a notice stating the due date of the return. The notice shall be filed within 12 months from the date letters are issued and copies of the notice shall be served on interested persons. Whenever the due date is subsequently extended, similar notice shall be filed and served.

Committee Notes

The purpose of the rule is to require notification to the court and all interested persons that the time for closing the estate is extended when a federal estate tax return is required.

Rule History

1984 Revision: New rule.

1988 Revision: Citation form change in committee notes.

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

2003 Revision: Committee notes revised.

2013 Revision: Clarifies the available option to file a federal tax return even if one is not required by state or federal rule or law.

Rule Reference

Fla. Prob. R. 5.400 Distribution and discharge.

RULE 5.400. DISTRIBUTION AND DISCHARGE

(a) Petition for Discharge; Final Accounting. A personal representative who has completed administration except for distribution must file a final accounting and a petition for discharge including a plan of distribution.

(b) Contents.

The petition for discharge must contain a statement:

(1) that the personal representative has fully administered the estate;

(2) that all claims which were presented have been paid, settled, or otherwise disposed of;

(3) that the personal representative has paid or made provision for taxes and expenses of administration;

(4) showing the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative and the manner of determining that compensation;

(5) showing a plan of distribution which must include:

(A) a schedule of all prior distributions;

(B) the property remaining in the hands of the personal representative for distribution;

(C) a schedule describing the proposed distribution of the remaining assets; and

(D) the amount of funds retained by the personal representative to pay expenses that are incurred in the distribution of the remaining assets and termination of the estate administration;

(6) that any objections to the accounting, the compensation paid or proposed to be paid, or the proposed distribution of assets must be filed within 30 days from the date of service of the last of the petition for discharge or final accounting; and also that within 90 days after filing of the objection, a notice of hearing on the objection must be served or the objection is abandoned; and

(7) that objections, if any, must be in writing and must state with particularity the item or items to which the objection is directed and the grounds on which the objection is based.

(c) Closing Estate; Extension. The final accounting and petition for discharge must be filed and served on interested persons within 12 months after issuance of letters for an estate not filing a federal estate tax return, otherwise within 12 months from the date the return is due, unless the time is extended by the court for cause shown after notice to interested persons. The petition to

extend time must state the status of the estate and the reason for the extension.

(d) Distribution. The personal representative must promptly distribute the estate property in accordance with the plan of distribution, unless objections are filed as provided in these rules.

(e) Discharge. On receipt of evidence that the estate has been fully administered and properly distributed, the court must enter an order discharging the personal representative and releasing the surety on any bond.

Committee Notes

The rule establishes a procedure for giving notice and serving the final accounting, petition for discharge, and plan of distribution to all interested persons prior to distribution and discharge. No distinction is made in plans of distribution which distribute estate property in kind among multiple residual beneficiaries proportionate to their respective interests and those which include equalizing adjustments in cash or property and which do not make prorated distribution. If disclosure of the compensation or disclosure of the manner of determining the compensation in the petition for discharge is to be waived, the form of waiver must conform to rule 5.180(b).

Rule History

1980 Revision: Change in prior (a)(6) to require that an objection set forth the basis on which it is being made.

1984 Revision: This rule has been substantially revised. Portions of the prior rule are now incorporated in rules 5.400 and 5.401. The committee has included the procedure for filing and serving of objections to the final accounting, petition for discharge, plan of distribution, or compensation in rule 5.401.

1988 Revision: Subdivision (b)(1) is deleted to avoid duplication with rule 5.346. Subdivision (c) is amended to add the

12-month time specification of section 733.901(1), Florida Statutes. Committee notes revised. Citation form changes in committee notes.

1992 Revision: Subdivision (b)(5)(D) is added. Editorial changes. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Addition in (a)(4) of specific attorney fee compensation disclosure requirements found in § 733.6171(9), Florida Statutes, and expanded to cover all compensation. Committee notes revised.

2003 Revision: Committee notes revised.

2005 Revision: Subdivision (f) deleted to avoid duplication with rule 5.180.

2006 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2013 Revision: Clarifies the available option to file a federal tax return even if one is not required by state or federal rule or law.

2026 Revision: Committee notes revised.

Statutory References

§ 731.201(12), (23), Fla. Stat. General definitions.

§ 731.302, Fla. Stat. Waiver and consent by interested person.

§ 733.809, Fla. Stat. Right of retainer.

§ 733.810, Fla. Stat. Distribution in kind; valuation.

§ 733.811, Fla. Stat. Distribution; right or title of distributee.

§ 733.812, Fla. Stat. Improper distribution or payment; liability of distributee or payee.

§ 733.901, Fla. Stat. Final discharge.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.330 Execution by personal representative.

Fla. Prob. R. 5.346 Fiduciary accounting.

Fla. Prob. R. 5.401 Objections to petition for discharge or final accounting.

Fla. R. Gen. Prac. & Jud. Admin. 2.250(a)(1)(D) Time standards for trial and appellate courts and reporting requirements.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.401. OBJECTIONS TO PETITION FOR DISCHARGE OR FINAL ACCOUNTING

(a) Objections. An interested person may object to the petition for discharge or final accounting within 30 days after the service of the later of the petition or final accounting on that interested person.

(b) Contents. Written objections to the petition for discharge or final accounting must state with particularity the items to which the objections are directed and must state the grounds on which the objections are based.

(c) Service. The objections must be served by the objector on the personal representative and interested persons not later

than 30 days after the last date on which the petition for discharge or final accounting was served on the objector.

(d) Hearing on Objections. Any interested person may set a hearing on the objections. Notice of the hearing must be given to all interested persons. If a notice of hearing on the objections is not served within 90 days of filing of the objections, the objections are deemed abandoned and the personal representative may make distribution as set forth in the plan of distribution.

(e) Order on Objections. The court must sustain or overrule any objections to the petition for discharge and final accounting and determine a plan of distribution.

(f) Discharge. On receipt of evidence that the estate has been distributed according to the plan determined by the court and the claims of creditors have been paid or otherwise disposed of, the court must enter an order discharging the personal representative and releasing the surety on any bond.

Committee Notes

Rule History

1984 Revision: New rule. Objections to the petition for discharge or final accounting were formerly under prior rule 5.400. Clarifies procedure for objections.

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

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

1996 Revision: Subdivision (d) amended to clarify that 90-day period pertains to service of hearing notice, not the actual hearing date.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 731.201(12), (23), Fla. Stat. General definitions.

§ 733.6175, Fla. Stat. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.

§ 733.901, Fla. Stat. Final discharge.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.400 Distribution and discharge.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.402. NOTICE OF LIEN ON PROTECTED HOMESTEAD

(a) Filing. If the personal representative has recorded a notice of lien on protected homestead, the personal representative must file a copy of the recorded notice in the probate proceeding.

(b) Contents. The notice of lien must contain:

(1) the name and address of the personal representative and the personal representative's attorney;

(2) the legal description of the real property;

(3) to the extent known, the name and address of each person appearing to have an interest in the property; and

(4) a statement that the personal representative has expended or is obligated to expend funds to preserve, maintain, insure, or protect the property and that the lien stands as security for recovery of those expenditures and obligations incurred, including fees and costs.

(c) Service. The recorded notice of lien must be served on interested persons in the manner provided for service of formal notice.

Committee Notes

Rule History

2005 Revision: New rule.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 733.608, Fla. Stat. General power of the personal representative.

Rule References

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.403 Proceedings to determine amount of lien on protected homestead.

Fla. Prob. R. 5.404 Notice of taking possession of protected homestead.

Fla. Prob. R. 5.405 Proceedings to determine protected homestead status of real property.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.403. PROCEEDINGS TO DETERMINE AMOUNT OF LIEN ON PROTECTED HOMESTEAD

(a) Petition. A personal representative or interested person may file a petition to determine the amount of any lien on protected homestead.

(b) Contents. The petition must be verified by the petitioner and must state:

(1) the name and address of the personal representative and the personal representative's attorney;

(2) the interest of the petitioner;

(3) the legal description of the real property;

(4) to the extent known, the name and address of each person appearing to have an interest in the property; and

(5) to the extent known, the amounts paid or obligated to be paid by the personal representative to preserve, maintain, insure, or protect the protected homestead, including fees and costs.

(c) Service. The petition must be served on interested persons by formal notice.

Committee Notes

Rule History

2005 Revision: New rule.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 733.608, Fla. Stat. General power of the personal representative.

Rule References

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.402 Notice of lien on protected homestead.

Fla. Prob. R. 5.404 Notice of taking possession of protected homestead.

Fla. Prob. R. 5.405 Proceedings to determine protected homestead status of real property.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.404. NOTICE OF TAKING POSSESSION OF PROTECTED HOMESTEAD

(a) Filing of Notice. If a personal representative takes possession of what appears reasonably to be protected homestead pending a determination of its homestead status, the personal representative shall file a notice of that act.

(b) Contents of Notice. The notice shall contain:

(1) a legal description of the property;

(2) a statement of the limited purpose for preserving, insuring, and protecting it for the heirs or devisees pending a determination of the homestead status;

(3) the name and address of the personal representative and the personal representative's attorney;

(4) if the personal representative is in possession when the notice is filed, the date the personal representative took possession.

(c) Service of Notice. The notice shall be served in the manner provided for service of formal notice on interested persons and on any person in actual possession of the property.

Committee Notes

Rule History

2002 Revision: New rule.

2005 Revision: Term “devisees” substituted for “beneficiaries” in subdivision (b)(2) to clarify the status of persons interested in protected homestead. Committee notes revised.

2013 Revision: Deletes subdivision (b)(4) because the required information is not appropriate for a Notice of Taking possession, nor does it comply with the Americans with Disabilities Act requirements.

Statutory References

§ 732.401, Fla. Stat. Descent of homestead.

§ 732.4015, Fla. Stat. Devise of homestead.

§ 733.608(2), Fla. Stat. General power of the personal representative.

Rule References

Fla. Prob. R. 5.402 Notice of lien on protected homestead.

Fla. Prob. R. 5.403 Proceedings to determine amount of lien on protected homestead.

Fla. Prob. R. 5.405 Proceedings to determine protected homestead status of real property.

RULE 5.405. PROCEEDINGS TO DETERMINE PROTECTED HOMESTEAD STATUS OF REAL PROPERTY

(a) Petition. An interested person may file a petition to determine the protected homestead status of real property owned by the decedent or owned by the trustee of a trust described in section 733.707(3), Florida Statutes, of which the deceased settlor was treated as the owner of the real property under section 732.4015, Florida Statutes.

(b) Contents. The petition must be verified by the petitioner and must state:

(1) the petitioner's interest in the determination of protected homestead status for the real property;

(2) the date of the decedent's death;

(3) the county of the decedent's domicile at the time of death;

(4) whether the decedent died testate or intestate;

(5) whether the decedent was survived by a spouse, and if so, the name of the decedent's surviving spouse, whether the surviving spouse waived the surviving spouse's homestead rights, and if so, the method through which the surviving spouse waived those rights;

(6) the names of surviving descendants, and a statement as to whether the decedent had any minor children as of the date of death, identifying any minor children by name and year of birth;

(7) a legal description of the property owned by the decedent on which protected homestead is claimed;

(8) whether the property was the domicile of the decedent, or if not, whether the property was located within a

municipality and was the domicile of a member of the decedent's family;

(9) how the real property was titled at the time of the decedent's death; and

(10) any other facts in support of the petition.

(c) Service of Notice. The petition must be served on interested persons by formal notice.

(d) Order. The court's order on the petition must describe the real property and determine whether any of the real property constituted protected homestead. If the court determines that any of the real property was protected homestead, the order must identify by name the person or persons entitled to the protected homestead real property and define the interest of each.

Committee Notes

This rule establishes the procedure by which the personal representative or any interested person may petition the court for a determination that certain real property constituted the decedent's protected homestead property, in accordance with article X, section 4 of the Florida Constitution. The jurisdiction of the court to determine constitutional protected homestead property was established by *In re Noble's Estate*, 73 So. 2d 873 (Fla. 1954).

Rule History

1984 Revision: New rule.

1988 Revision: Editorial change in (a). Subdivision (b)(4) amended to conform to constitutional change. Committee notes revised. Citation form change in committee notes.

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

1996 Revision: Subdivision (c) amended to require description of real property that is the subject of the petition, description of any homestead property, and definition of specific interests of persons entitled to homestead real property.

2002 Revision: Replaces “homestead” with “protected homestead” throughout to conform to addition of term in section 731.201(29), Florida Statutes. Committee notes revised.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2014 Revision: Amends subdivisions (b)(3) and (c) to conform to Fla. R. Gen. Prac. & Jud. Admin. 2.425. Committee notes revised.

2021 Revision: Amends subdivisions (a) and (b)(5) to include real property owned by a trust. Committee notes revised.

2024 Revision: New subdivision (b)(5) created to conform to the requirements to determine protected homestead in Florida under Art. X, Sec. 4, (1), Florida Constitution. Contents of former subdivisions (b)(5) and (b)(6) moved to subdivisions (b)(6) and (b)(7) accordingly. New subdivision (d) created and the contents of former subdivision (c) moved to subdivision (d). Subdivision (c) created to clarify notice under the rule. Committee notes revised.

2025 Revision: Amends subdivision (b) to require the petition to include whether the decedent died testate or intestate and to detail the method through which the surviving spouse waived homestead rights, if the surviving spouse waived homestead rights. Amends subdivision (d) to avoid conflict with section 731.201(33), Florida Statutes. Committee notes revised.

2026 Revision: Committee notes revised.

Constitutional Reference

Art. X, § 4, Fla. Const.

Statutory References

§ 731.104, Fla. Stat. Verification of documents.

§ 731.201, Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 731.302, Fla. Stat. Waiver and consent by interested person.

§ 732.103, Fla. Stat. Share of other heirs.

§ 732.104, Fla. Stat. Inheritance per stirpes.

§ 732.401, Fla. Stat. Descent of homestead.

§ 732.4015, Fla. Stat. Devise of homestead.

§ 732.702, Fla. Stat. Waiver of spousal rights.

§ 732.7025, Fla. Stat. Waiver of homestead rights by deed.

§ 733.607, Fla. Stat. Possession of estate.

§ 733.608, Fla. Stat. General power of the personal representative.

§ 733.707(3), Fla. Stat. Order of payment of expenses and obligations.

§ 736.0201(7), Fla. Stat. Role of court in trust proceedings.

§ 736.1109, Fla. Stat. Testamentary and revocable trusts; homestead protections.

§ 736.151, Fla. Stat. Homestead property.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.205(a)(6) Filing evidence of death.

Fla. Prob. R. 5.340 Inventory.

Fla. Prob. R. 5.404 Notice of taking possession of protected homestead.

Fla. R. Gen. Prac. & Jud. Admin. 2.425 Minimization of the filing of sensitive information.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.406. PROCEEDINGS TO DETERMINE EXEMPT PROPERTY

(a) Petition. An interested person may file a petition to determine exempt property within the time allowed by law.

(b) Contents. The petition must be verified by the petitioner and must:

(1) describe the property and the basis on which it is claimed as exempt property; and

(2) state the name and address of the decedent's surviving spouse or, if none, the names and addresses of decedent's children entitled by law to the exempt property and the year of birth of those who are minors.

(c) Order. The court must determine each item of exempt property and its value, if necessary to determine its exempt status, and order the surrender of that property to the persons entitled to it.

Committee Notes

This rule establishes the procedure by which the personal representative or any interested person may petition the court for determination of exempt property in accordance with article X, section 4 of the Florida Constitution and section 732.402, Florida Statutes.

Section 732.402, Florida Statutes, specifies the time within which the petition to determine exempt property must be filed, within 4 months after the date of service of the notice of administration, unless extended as provided in the statute.

Rule History

1984 Revision: New rule.

1988 Revision: Subdivision (a) revised to reflect editorial changes and to require verification. Subdivision (b)(1) revised to require the basis for asserting exempt property status. Subdivision (b)(2) added the requirement of stating addresses of those entitled to exempt property. Subdivision (c) revised to reflect editorial changes and to require determination of the value of each item of exempt property. Committee notes revised.

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

1996 Revision: Editorial changes in rule to conform to similar language in rule 5.405. Committee notes revised.

2003 Revision: Committee notes revised.

2010 Revision: Subdivision (c) amended to limit the instances in which the value of the property claimed as exempt needs to be stated in the order.

2012 Revision: Committee notes revised.

2014 Revision: Subdivision (b)(2) amended to conform to Florida Rule of General Practice and Judicial Administration 2.425 and provide the year of birth of a minor. Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 731.104, Fla. Stat. Verification of documents.

§ 732.402, Fla. Stat. Exempt property.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.420 Disposition of personal property without administration.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

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

RULE 5.407. PROCEEDINGS TO DETERMINE FAMILY ALLOWANCE

(a) Petition. An interested person may file a petition to determine family allowance.

(b) Contents. The petition must be verified by the petitioner and must:

(1) state the names and addresses of the decedent's surviving spouse and the decedent's adult lineal heirs and the initials, address, and year of birth of the decedents' lineal heirs who

are minors and who were being supported by the decedent or who were entitled to be supported by the decedent at the time of the decedent's death; and

(2) for each person for whom an allowance is sought, state the adult person's name, or minor child's initials, and relationship to the decedent, the basis on which the allowance is claimed, and the amount sought.

(c) Order. The order must identify each adult person's name and each minor child's initials entitled to the allowance, the amount to which each is entitled, the method of payment, and to whom payment should be made.

Committee Notes

Rule History

2003 Revision: New rule.

2012 Revision: Editorial change in (b)(1) for gender neutrality. Committee notes revised.

2014 Revision: Subdivisions (b)(1) and (b)(2) are amended to conform to Fla. R. Gen. Prac. & Jud. Admin. 2.425. Committee notes revised.

2019 Revision: Subdivision (c) is revised to conform to Fla. R. Gen. Prac. & Jud. Admin. 2.425. Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 731.104, Fla. Stat. Verification of documents.

§ 732.403, Fla. Stat. Family allowance.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

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

RULE 5.420. DISPOSITION OF PERSONAL PROPERTY WITHOUT ADMINISTRATION

(a) Application. An interested person may request a disposition of the decedent's personal property without administration. An application signed by the applicant shall set forth:

(1) the description and value of the exempt property;

(2) the description and value of the other assets of the decedent;

(3) the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses for the last 60 days of the last illness together with accompanying statements or payment receipts; and

(4) each requested payment or distribution of personal property.

(b) Exempt Property. If the decedent's personal property includes exempt property, or property that can be determined to be exempt property, the application must also be signed by all persons entitled to the exempt property or by their representative.

(c) Preparation. On request, the clerk shall assist the applicant in the preparation of the required writing.

(d) Disposition. If the court is satisfied that disposition without administration is appropriate, the court may, without

hearing, by letter or other writing authorize the payment, transfer, or disposition of the decedent's personal property to those persons entitled to it.

Committee Notes

Section 732.402, Florida Statutes, requires persons entitled to exempt property, which excludes property specifically or demonstratively devised, to file timely a petition to determine exempt property. Accordingly, disposition of personal property under this rule should not be granted if decedent's personal property includes exempt property without all persons entitled thereto agreeing to such disposition.

Rule History

1977 Revision: Permits the clerk to perform limited ministerial acts in the completion of the application.

1984 Revision: Editorial changes. Delineates the required contents of the application. Committee notes revised.

1988 Revision: Subdivision (a)(3) changed to require applicant to attach accompanying statements or payment receipts regarding priority expenses. Subdivision (b) added to require persons entitled to exempt property to agree to the proposed disposition. Committee notes expanded.

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

2003 Revision: Committee notes revised.

Statutory References

§ 732.402, Fla. Stat. Exempt property.

§ 735.301, Fla. Stat. Disposition without administration.

Rule Reference

Fla. Prob. R. 5.205(a)(4) Filing evidence of death.

RULE 5.425. DISPOSITION WITHOUT ADMINISTRATION OF INTESTATE PERSONAL PROPERTY IN SMALL ESTATES

(a) Administration Not Required. No administration is required or formal proceedings instituted on the estate of a decedent who:

(1) died intestate;

(2) leaves only:

(A) personal property exempt under the provisions of section 732.402, Florida Statutes,

(B) personal property exempt from the claims of creditors under the Florida Constitution, and

(C) non-exempt personal property the value of which does not exceed the sum of $20,000 and the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness;

(3) has been deceased for more than 1 year; and

(4) no administration of the decedent's estate is pending in this state.

(b) Affidavit. Any heir at law of the decedent entitled to a share of the intestate estate under section 732.102 or section 732.103, Florida Statutes, may by affidavit request distribution of assets of the decedent by affidavit. The affidavit must be signed and verified by the surviving spouse, if any, and any heirs at law, except that joinder in the affidavit is not required of an heir at law who will receive a full intestate share under the proposed distribution of the personal property. The affidavit must contain:

(1) a statement that the decedent died intestate, and that after the exercise of reasonable diligence, the person signing the affidavit is unaware of any unrevoked wills or codicils;

(2) a statement that the decedent has been deceased for more than 1 year;

(3) a statement that the decedent died leaving only personal property exempt under the provisions of section 732.402, Florida Statutes, personal property exempt from the claims of creditors under the Florida Constitution, and non-exempt personal property the value of which does not exceed the sum of $20,000;

(4) a description of all assets subject to distribution without administration and their values;

(5) a statement setting forth the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness;

(6) a statement that no administration of the decedent's estate is pending in this state;

(7) a statement of the relationship of each person signing the affidavit to the decedent, and each person's name and address;

(8) the name and last known address of the decedent, last 4 digits of the decedent's social security number, date and place of death of the decedent, and state and county of decedent's domicile;

(9) so far as is known, the names and addresses of the surviving spouse, if any, and the heirs of the decedent, and their relationship to the decedent and the year of birth of any who are minors;

(10) a statement either:

(A) that all claims against the decedent's estate are barred; or

(B) that a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors has been made and 1 of the following:

(i) a statement that the estate is not indebted;

(ii) the name and address of each creditor, the nature of the debt, the amount of the debt and whether the amount is estimated or exact, and when the debt is due. If provision for payment has been made other than for full payment in the proposed distribution schedule, the following information must be shown:

(a) the name of the person who will pay the debt,

(b) the creditor's written consent for substitution or assumption of the debt by another person,

(c) the amount to be paid if the debt has been compromised, and

(d) the terms for payment and any limitations on the liability of the person paying the debt; and

(11) a schedule of proposed distribution of all intestate personal property.

(c) Service. The affidavit must be served in the manner of formal notice on:

(1) all heirs at law who have not joined in the affidavit;

(2) all known or reasonably ascertainable creditors of the decedent; and

(3) if at the time of death the decedent was over the age of 55 years, on the Agency for Health Care Administration.

(d) Writing Under Seal of Court. If the court determines that section 735.304(1) is applicable and the affidavit filed by the heir at law meets the requirements of section 735.304(2), the court, by letter or other writing under the seal of the court, must authorize the payment, transfer, disposition, delivery, or assignment of the tangible or intangible personal property to those persons entitled.

Committee Notes

Section 732.402, Florida Statutes, requires persons entitled to exempt property, which excludes property specifically or demonstratively devised, to file timely a petition to determine exempt property. Accordingly, disposition of personal property under this rule should not be granted if decedent's personal property includes exempt property without all persons entitled thereto agreeing to such disposition.

Rule History

2020 Adoption: New rule based upon Chapter 2020-110, Laws of Florida.

2026 Revision: Subdivisions (a) and (b) amended to reflect the increase in the statutory limit in section 735.304, Florida Statutes. Committee notes revised.

Statutory References

§ 735.304, Fla. Stat. Disposition without administration of intestate property in small estates.

RULE 5.430. RESIGNATION OF PERSONAL REPRESENTATIVE

(a) Resignation. A personal representative may resign with court approval.

(b) Petition for Resignation. The personal representative seeking to resign must file a petition for resignation. The petition must be verified and must state:

(1) the personal representative desires to resign and be relieved of all powers, duties, and obligations as personal representative;

(2) the status of the estate administration and that the interests of the estate will not be jeopardized if the resignation is accepted;

(3) whether a proceeding for accounting, surcharge, or indemnification or other proceeding against the resigning personal representative is pending; and

(4) whether the appointment of a successor fiduciary is necessary. If the petition nominates a successor fiduciary, it must state the nominee's priority under the Florida Probate Code, if any, and that the nominee is qualified to serve under the laws of Florida.

(c) Service. The petition must be served by formal notice on all interested persons and the personal representative's surety, if any.

(d) Appointment of Successor. Before accepting the resignation, the court must determine the necessity for appointment of a successor fiduciary. If there is no joint personal representative serving, the court must appoint a successor fiduciary.

(e) Acceptance of Resignation. The court may accept the resignation and revoke the letters of the resigning personal representative if the interests of the estate are not jeopardized. Acceptance of the resignation must not exonerate the resigning personal representative or the resigning personal representative's surety from liability.

(f) Delivery of Records and Property. The resigning personal representative must immediately on acceptance of the resignation by the court deliver to the remaining personal representative or the successor fiduciary all of the records of the estate and all property of the estate, unless otherwise directed by the court.

(g) Petition for Discharge; Accounting. The resigning personal representative must file an accounting and a petition for discharge within 30 days after the date that the letters of the resigning personal representative are revoked by the court. The petition for discharge must be verified and must state:

(1) that the letters of the resigning personal representative have been revoked;

(2) that the resigning personal representative has surrendered all undistributed estate assets, records, documents, papers, and other property of or concerning the estate to the remaining personal representative or the successor fiduciary; and

(3) the amount of compensation paid or to be paid the resigning personal representative and the attorney and other persons employed by the resigning personal representative.

(h) Notice, Filing, and Objections to Accounting. Notice of, filing of, and objections to the accounting of the resigning personal representative must be as provided in rule 5.345.

(i) Notice of Filing and Objections to Petition for Discharge.

(1) Notice of filing and the petition for discharge must be served on all interested persons. The notice must state that objections to the petition for discharge must be filed within 30 days after the later of service of the petition or service of the accounting on that interested person.

(2) Any interested person may file an objection to the petition for discharge within 30 days after the later of service of the petition or service of the accounting on that interested person. Any objection not filed within 30 days is deemed abandoned. An objection must be in writing and must state with particularity the item or items to which the objection is directed and the grounds on which the objection is based.

(3) The objecting party must serve the objection on the resigning personal representative and other interested persons.

(4) Any interested person may set a hearing on the objections. Notice of the hearing must be given to the resigning personal representative and other interested persons.

(j) Failure to File Accounting or Deliver Records or Property. The resigning personal representative is subject to contempt proceedings if the resigning personal representative fails to file an accounting or fails to deliver all property of the estate and all estate records under the control of the resigning personal representative to the remaining personal representative or the successor fiduciary within the time prescribed by this rule or by court order.

(k) Discharge. The court must enter an order discharging the resigning personal representative and releasing the surety on any bond after the court is satisfied that the resigning personal representative has delivered all records and property of the estate to the remaining personal representative or the successor fiduciary; that all objections, if any, to the accounting of the resigning personal representative have been withdrawn, abandoned, or judicially resolved; and that the liability of the resigning personal representative has been determined and satisfied.

Committee Notes

In the event of resignation of a personal representative, if a joint personal representative is not serving, the successor fiduciary must file an oath and designation of a successor resident agent.

This rule was revised to implement the revisions to the probate code that govern resignation of personal representative. The committee intended to separate the procedure with respect to resignation from removal because these proceedings may differ in practice.

Rule History

1975 Revision: The rule provides for the orderly succession of personal representatives in the event a personal representative resigns or is removed.

1977 Revision: Editorial change in committee note.

1988 Revision: Editorial changes; captions added to subdivisions. Committee notes revised. Citation form changes in committee notes.

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

2003 Revision: Rule completely revised to comply with statutory changes. Committee notes revised.

2007 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 731.104, Fla. Stat. Verification of documents.

§ 731.201(23), Fla. Stat. General definitions.

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

§ 733.502, Fla. Stat. Resignation of personal representative.

§ 733.503, Fla. Stat. Appointment of successor upon resignation.

§ 733.5035, Fla. Stat. Surrender of assets after resignation.

§ 733.5036, Fla. Stat. Accounting and discharge following resignation.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.310 Disqualification of personal representative; notification.

Fla. Prob. R. 5.330 Execution by personal representative.

Fla. Prob. R. 5.345 Accountings other than personal representatives' final accountings.

Fla. Prob. R. 5.346 Fiduciary accounting.

Fla. Prob. R. 5.401 Objections to petition for discharge or final accounting.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.440. PROCEEDINGS FOR REMOVAL OF PERSONAL REPRESENTATIVE

(a) Commencement of Proceeding. The court on its own motion may remove, or any interested person by petition may commence a proceeding to remove, a personal representative. A petition for removal must state the facts constituting the grounds on which removal is sought, and must be filed in the court having jurisdiction over the administration of the estate.

(b) Accounting. A removed personal representative must file an accounting within 30 days after removal.

(c) Delivery of Records and Property. A removed personal representative must, immediately after removal or within such time prescribed by court order, deliver to the remaining personal representative or to the successor fiduciary all of the records of the estate and all of the property of the estate.

(d) Failure to File Accounting or Deliver Records and Property. If a removed personal representative fails to file an accounting or fails to deliver all property of the estate and all estate records under the control of the removed personal representative to the remaining personal representative or to the successor fiduciary within the time prescribed by this rule or by court order, the removed personal representative will be subject to contempt proceedings.

Committee Notes

The revision of subdivision (a) of this rule by the addition of its final phrase represents a rule implementation of the procedure found in section 733.505, Florida Statutes. It is not intended to change the effect of the statute from which it was derived but has been reformatted to conform with the structure of these rules. It is not intended to create a new procedure or modify an existing procedure.

Rule History

1980 Revision: Subdivision (a) amended to require formal notice to interested persons and to delete requirement that court give directions as to mode of notice. Surety authorized to petition for removal.

1984 Revision: Editorial changes. Provisions in prior rule for contempt have been deleted since the court has the inherent power to punish for contempt. Committee notes revised.

1988 Revision: Last phrase of (a) added to implement the procedure found in section 733.505, Florida Statutes. Subdivision (b) amended to parallel interim accounting rules. Deletes ability to extend time to file and adds reference to court power to punish for

contempt. Committee notes expanded. Editorial changes. Citation form changes in committee notes.

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

2002 Revision: Entire rule amended. Contents of accountings by removed fiduciaries are now governed by rule 5.346. Editorial changes in (a), (c), and (d). Committee notes revised.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2010 Revision: Editorial change in title to clarify scope of rule.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 731.201(23), Fla. Stat. General definitions.

§ 733.504, Fla. Stat. Removal of personal representative; causes of removal.

§ 733.505, Fla. Stat. Jurisdiction in removal proceedings.

§ 733.506, Fla. Stat. Proceedings for removal.

§ 733.5061, Fla. Stat. Appointment of successor upon removal.

§ 733.508, Fla. Stat. Accounting and discharge of removed personal representatives upon removal.

§ 733.509, Fla. Stat. Surrender of assets upon removal.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.150 Order requiring accounting.

Fla. Prob. R. 5.310 Disqualification of personal representative; notification.

Fla. Prob. R. 5.345 Accountings other than personal representatives' final accountings.

Fla. Prob. R. 5.346 Fiduciary accounting.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.460. SUBSEQUENT ADMINISTRATION

(a) Petition. If, after an estate is closed, additional property of the decedent is discovered or if further administration of the estate is required for any other reason, any interested person may file a petition for further administration of the estate. The petition must be filed in the same probate file as the original administration.

(b) Contents. The petition must state:

(1) the name, address, and interest of the petitioner in the estate;

(2) the reason for further administration of the estate;

(3) the description, approximate value, and location of any asset not included among the assets of the prior administration; and

(4) a statement of the relief sought.

(c) Order. The court must enter such orders as appropriate. Unless required, the court need not revoke the order of discharge, reissue letters, or require bond.

Committee Notes

This rule establishes a procedure for further administration after estate is closed, which may be summary in nature.

Rule History

1984 Revision: Extensive changes. Committee notes revised.

1992 Revision: Citation form change in committee notes.

2003 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory Reference

§ 733.903, Fla. Stat. Subsequent administration.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.470. ANCILLARY ADMINISTRATION

(a) Petition. The contents of the petition for ancillary letters must be as provided in rule 5.200. The petition must be verified and must include:

(1) for a testate estate, an authenticated copy of so much of the domiciliary proceedings as will show the will, petition for administration, order admitting the will to probate, and authority of the personal representative to act;

(2) for an intestate estate, an authenticated copy of so much of the domiciliary proceedings as will show the petition for administration, and authority of the personal representative to act; or

(3) if appointment of someone other than the domiciliary personal representative is requested, a statement of the facts constituting grounds on which appointment is sought.

(b) Notice. Before ancillary letters will be issued to any person, formal notice must be given to:

(1) all known persons qualified to act as ancillary personal representative and whose entitlement to preference of appointment is equal to or greater than petitioner's and who have not waived notice or joined in the petition; and

(2) all domiciliary personal representatives who have not waived notice or joined in the petition.

(c) Probate of Will. On filing the authenticated copy of a will, the court must determine whether the will complies with Florida law to entitle it to probate. If it does comply, the court must admit the will to probate.

Committee Notes

Rule History

1975 Revision: The rule sets out the procedural requirements for issuance of ancillary letters.

1984 Revision: Editorial changes with addition of notice requirement in (b). Committee notes revised.

1988 Revision: Committee notes revised.

1992 Revision: Changed rule to require that notice be given to persons qualified to act as ancillary personal representative whose entitlement to preference of appointment is equal to or greater than petitioner's and to all domiciliary personal representatives prior to entry of an order admitting the will to probate. Committee notes revised. Citation form changes in committee notes.

1996 Revision: The requirement that a filing of an authenticated copy of a will be a "probated" will is removed from subdivision (c). There may be circumstances in which a will is on deposit or file in a foreign jurisdiction but is not being offered for probate. That should not preclude an ancillary administration in Florida of that estate. This change is not intended to allow an authenticated copy of any document other than an original instrument to be filed under this rule and considered for probate.

2003 Revision: Committee notes revised.

2005 Revision: Committee notes revised.

2010 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2019 Revision: Subdivision (a) amended to clarify the contents of a petition for ancillary letters. Committee notes revised.

2026 Revision: Subdivision (a)(1) amended for consistency with subdivision (a)(2). Committee notes revised.

Statutory References

§ 731.201(1), Fla. Stat. General definitions.

§ 733.212, Fla. Stat. Notice of administration; filing of objections.

§ 733.2121, Fla. Stat. Notice to creditors; filing of claims.

§ 734.102, Fla. Stat. Ancillary administration.

§ 734.1025, Fla. Stat. Nonresident decedent's testate estate with property not exceeding $50,000 in this state; determination of claims.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.065(b) Notice of civil action or ancillary administration.

Fla. Prob. R. 5.200 Petition for Administration.

Fla. Prob. R. 5.205(a)(2) Filing evidence of death.

Fla. Prob. R. 5.215 Authenticated copy of will.

Fla. Prob. R. 5.240 Notice of administration.

Fla. Prob. R. 5.241 Notice to creditors.

Fla. Prob. R. 5.475 Ancillary administration, short form.

Fed. R. Civ. P. 44(a) Proving an official record.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.475. ANCILLARY ADMINISTRATION; SHORT FORM

(a) Filing Requirements. The foreign personal representative of a testate estate that meets the requirements of section 734.1025, Florida Statutes, may file with the clerk in the county where any property is located an authenticated copy of so much of the transcript of the foreign proceedings as will show:

(1) the probated will and all probated codicils of the decedent;

(2) the order admitting them to probate;

(3) the letters or their equivalent; and

(4) the part of the record showing the names of the beneficiaries of the estate or an affidavit of the foreign personal representative reciting that the names are not shown or not fully disclosed by the foreign record and specifying the names.

On presentation of the foregoing, the court must admit the will and any codicils to probate if they comply with section 732.502(1) or section 732.502(2), Florida Statutes.

(b) Notice to Creditors. After complying with the foregoing requirements, the foreign personal representative may cause a notice to creditors to be published as required by these rules.

(c) Claims Procedure. The procedure for filing or barring claims and objecting to them and for suing on them is the same as for other estates, except as provided in this rule.

(d) Order. If no claims are filed against the estate within the time allowed, the court must enter an order adjudging that notice to creditors has been duly published and proof of publication filed and that no claims have been filed against the estate or that all claims have been satisfied.

(e) Notification of Claims Filed. If any claim is filed against the estate within the time allowed, the clerk must send to the foreign personal representative a copy of the claim and a notice setting a date for a hearing to appoint an ancillary personal representative. At the hearing, the court must appoint an ancillary personal representative according to the preferences as provided by law.

(f) Objections to Claims. If an ancillary personal representative is appointed under this rule, the procedure for filing, objecting to, and suing on claims is the same as for other estates, except that the ancillary personal representative appointed has not less than 30 days from the date of appointment within which to object to any claim filed.

Committee Notes

This rule represents a rule implementation of the procedure found in section 734.1025, Florida Statutes. It is not intended to change the effect of the statute from which it was derived but has been reformatted to conform with the structure of these rules. It is not intended to create a new procedure or modify an existing procedure.

Rule History

1988 Revision: New rule.

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

2003 Revision: Committee notes revised.

2005 Revision: Deletion of reference to intestate estates in subdivision (a) to conform to 2001 amendments to section 734.1025, Florida Statutes. Editorial changes throughout.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 733.2121, Fla. Stat. Notice to creditors; filing of claims.

§ 734.102, Fla. Stat. Ancillary administration.

§ 734.1025, Fla. Stat. Nonresident decedent's testate estate with property not exceeding $50,000 in this state; determination of claims.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.065(b) Notice of civil action or ancillary administration.

Fla. Prob. R. 5.205(a)(2) Filing evidence of death.

Fla. Prob. R. 5.215 Authenticated copy of will.

Fla. Prob. R. 5.240 Notice of administration.

Fla. Prob. R. 5.241 Notice to creditors.

Fla. Prob. R. 5.470 Ancillary administration.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.490. FORM AND MANNER OF PRESENTING CLAIM

(a) Form. A creditor's statement of claim must be verified and filed with the clerk and must state:

(1) the basis for the claim;

(2) the amount claimed;

(3) the name and address of the creditor;

(4) the security for the claim, if any; and

(5) whether the claim is currently due or involves an uncertainty and, if not due, then the due date and, if contingent or unliquidated, the nature of the uncertainty.

(b) Service. The clerk must serve the claim as set forth in rule 5.041, to the attorney for the personal representative, unless all personal representatives file a notice directing that claims be served on a designated personal representative or designated attorney of record. Absent designation, the claim must be served on the attorney for the personal representative named first in the letters of administration. The clerk must note the fact and date of service on the statement of claim under this rule.

(c) Validity of Claim. Failure to deliver or receive the claim will not affect the validity of the claim.

(d) Amending Claims. If a claim as filed is sufficient to notify interested persons of its substance but is otherwise defective as to form, the court may permit the claim to be amended at any time.

(e) Service by Personal Representative. If the personal representative files a claim individually, or in any other capacity creating a conflict of interest between the personal representative and any interested person, then at the time the claim is filed, the personal representative must serve all interested persons with the claim and notice of the right to object to the claim. The notice must state that an interested person may object to a claim as provided by law and rule 5.496. Service must be either by informal notice or in the manner provided for service of formal notice. Service on 1 interested person by a chosen method will not preclude service on another interested person by another method.

Committee Notes

Subdivision (d) of this rule represents a rule implementation of the procedure found in section 733.704, Florida Statutes. It is not intended to change the effect of the statute from which it was derived but has been reformatted to conform with the structure of

these rules. It is not intended to create a new procedure or modify an existing procedure.

Rule History

1975 Revision: Sets forth the claims procedure to be followed and clarifies the matter of delivery of copies where there are multiple personal representatives or where the attorney of record desires to accept such delivery.

1984 Revision: Extensive editorial changes and requires furnishing of copy of claim to the attorney for the personal representative. Committee notes revised.

1988 Revision: Clarifies the matter of delivery of copies and directs the clerk to mail the same to the attorney for the personal representative unless designations are filed by all personal representatives to the contrary. Subdivision (e) added to implement the procedure found in section 733.704, Florida Statutes. Editorial changes. Committee notes expanded. Citation form change in committee notes.

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

1999 Revision: Reference to repealed rule deleted from committee notes.

2003 Revision: Committee notes revised.

2007 Revision: Editorial change in (a). New (f) added, providing procedure for notice when personal representative files a claim individually or otherwise has a conflict of interest with any interested person regarding a claim.

2019 Revisions. Deletes subdivision (b) to conform to the electronic filing rule. Subdivision (c) is renumbered to (b) and is amended to address the electronic service rules. Subdivisions (c)–(e) are renumbered accordingly. Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 731.104, Fla. Stat. Verification of documents.

§ 733.2121, Fla. Stat. Notice to creditors; filing of claims.

§ 733.702, Fla. Stat. Limitations on presentation of claims.

§ 733.703, Fla. Stat. Form and manner of presenting claim.

§ 733.704, Fla. Stat. Amendment of claims.

§ 733.708, Fla. Stat. Compromise.

§ 733.710, Fla. Stat. Limitations on claims against estates.

§ 734.102, Fla. Stat. Ancillary administration.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.241 Notice to creditors.

Fla. Prob. R. 5.470 Ancillary administration.

Fla. Prob. R. 5.475 Ancillary administration, short form.

Fla. Prob. R. 5.530 Summary administration.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

Fla. R. Gen. Prac. & Jud. Admin. 2.520 Documents.

Fla. R. Gen. Prac. & Jud. Admin. 2.525 Filing.

RULE 5.496. FORM AND MANNER OF OBJECTING TO CLAIM

(a) Filing. An objection to a claim, other than a personal representative's proof of claim, must be in writing and filed on or before the expiration of 4 months from the first publication of notice to creditors or within 30 days from the timely filing or amendment of the claim, whichever occurs later.

(b) Service. A personal representative or other interested person who files an objection to the claim must serve the objection on the claimant. If the objection is filed by an interested person other than the personal representative, the objection must also be served on the personal representative. Any objection must include a certificate of service.

(c) Notice to Claimant. An objection must contain a statement that the claimant is limited to a period of 30 days from the date of service of an objection within which to bring an action as provided by law.

Committee Notes

This rule represents an implementation of the procedure found in section 733.705, Florida Statutes, and adds a requirement to furnish notice of the time limitation in which an independent action or declaratory action must be filed after objection to a claim.

Rule History

1992 Revision: New rule.

2003 Revision: Reference in (a) to notice of administration changed to notice to creditors. Committee notes revised.

2005 Revision: Removed provision for objections to personal representative's proof of claim, now addressed in rule 5.498, and subsequent subdivisions relettered. Reference to service on the claimant's attorney removed because service on the attorney is required by rule 5.041(b). Committee notes revised.

2007 Revision: Editorial change in (a). Second sentence of (b) added to specify that the objection must include a certificate of service.

2010 Revision: Subdivision (b) amended to delete the requirement to serve a copy of an objection to a claim within 10 days, and to clarify the requirement to include a certificate of service.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 731.201(4), Fla. Stat. General definitions.

§ 733.705, Fla. Stat. Payment of and objection to claims.

Rule References

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.498 Personal representative's proof of claim.

Fla. Prob. R. 5.499 Form and manner of objecting to personal representative's proof of claim.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.498. PERSONAL REPRESENTATIVE'S PROOF OF CLAIM

(a) Contents. A personal representative's proof of claim must state:

(1) the basis for each claim;

(2) the amount claimed;

(3) the name and address of the claimant;

(4) the security for the claim, if any;

(5) whether the claim is matured, unmatured, contingent, or unliquidated;

(6) whether the claim has been paid or is to be paid; and

(7) that any objection to a claim listed as to be paid must be filed no later than 4 months from first publication of the notice to creditors or 30 days from the date of the filing of the proof of claim, whichever occurs later.

(b) Service. The proof of claim must be served at the time of filing, or promptly after filing, on all interested persons.

Committee Notes

This rule represents an implementation of the procedure found in section 733.703(2), Florida Statutes, with respect to a proof of claim filed by the personal representative.

Rule History

2005 Revision: New rule.

2007 Revision: Subdivision (b) amended to eliminate the need to serve claimants listed as paid on the proof of claim, and clarifying editorial change.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 733.703(2), Fla. Stat. Form and manner of presenting claim.

§ 733.705, Fla. Stat. Payment of and objection to claims.

Rule References

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

Fla. Prob. R. 5.499 Form and manner of objecting to personal representative's proof of claim.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.499. FORM AND MANNER OF OBJECTING TO PERSONAL REPRESENTATIVE'S PROOF OF CLAIM

(a) Filing. An objection to a personal representative's proof of claim must be in writing and filed on or before the expiration of 4 months from the first publication of notice to creditors or within 30 days from the timely filing of the proof of claim, whichever occurs later.

(b) Contents. The objection must identify the particular item or items to which objection is made. An objection to an item listed on the proof of claim as to be paid must also contain a statement that the claimant is limited to a period of 30 days from the date of service of an objection within which to bring an independent action as provided by law.

(c) Items Listed as Paid. If an objection is filed to an item listed on the proof of claim as paid, it is not necessary for the claimant to file an independent action as to that item. Liability as between estate and the personal representative individually for claims listed on the proof of claim as paid, or for claims treated as if they were listed on the proof of claim as paid, will be determined in the estate administration, in a proceeding for accounting or surcharge, or in another appropriate proceeding, whether or not an objection has been filed.

(d) Items Paid Before Objection. If an item listed as to be paid is paid by the personal representative before the filing of an objection as to that item, the item will be treated as if it were listed on the proof of claim as paid.

(e) Service. The objector must serve the objection on the personal representative and, in the case of any objection to an item listed as to be paid, must also serve the objection on that claimant at the time of filing or promptly after filing. In the case of an objection to an item listed as to be paid, the objection must include a certificate of service.

Committee Notes

This rule represents an implementation of the procedure found in section 733.705, Florida Statutes, with respect to a proof of claim filed by the personal representative. The rule recognizes the different treatment between items listed on a proof of claim as having been paid versus items listed as to be paid. An objection to an item listed as to be paid is treated in the same manner as a creditor's claim and there is a requirement to furnish notice of the time limitation in which an independent action or declaratory action must be filed after objection to a claim.

Rule History

2005 Revision: New rule.

2007 Revision: Editorial change in (a). Extensive revisions to rest of rule to clarify the differences in procedure between items listed as paid and items listed as to be paid. Committee notes revised.

2012 Revision: Committee notes revised.

2025 Revision: Subdivision (e) amended to address the timing of service of an objection to a claim. Committee notes revised.

2026 Revision: Committee notes revised.

Statutory Reference

§ 733.705, Fla. Stat. Payment of and objection to claims.

Rule References

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.496 Form and manner of objecting to claim.

Fla. Prob. R. 5.498 Personal representative's proof of claim.

RULE 5.510. ESTABLISHMENT AND PROBATE OF LOST OR DESTROYED WILL

(a) Proceeding. The establishment and probate of a lost or destroyed will must be in 1 proceeding.

(b) Petition. The petition, in addition to reciting information required under these rules for petition for administration, must include a statement of the facts constituting grounds on which relief is sought, and a statement of the contents of the will or, if available, a copy of the will.

(c) Testimony. The testimony of each witness in the proceeding must be reduced to writing and filed and may be used as evidence in any contest of the will if the witness has died or moved from the state.

(d) Notice. No lost or destroyed will may be admitted to probate unless formal notice has been given to those who, but for the will, would be entitled to the devised property.

(e) Order. The order admitting the will to probate must state in full its terms and provisions.

Committee Notes

This rule represents a rule implementation of the procedure formerly found in section 733.207, Florida Statutes. It is not intended to change the effect of the statute from which it was derived but has been reformatted to conform with the structure of these rules. It is not intended to create a new procedure or modify an existing procedure.

Rule History

1977 Revision: Editorial change in subdivision (c) of prior rule.

1984 Revision: Extensive changes. Committee notes revised.

1988 Revision: Rule rewritten to conform to statute. Committee notes expanded. Citation form change in committee notes.

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

2002 Revision: Subdivision (d) added to implement procedure formerly found in section 733.207(3), Florida Statutes. Committee notes revised.

2003 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory Reference

§ 733.207, Fla. Stat. Establishment and probate of lost or destroyed will.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.200 Petition for administration.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.530. SUMMARY ADMINISTRATION

(a) Petition. The petition must be verified as required by law and must contain:

(1) a statement of the interest of each petitioner, each petitioner's name and address, and the name and office address of each petitioner's attorney;

(2) the name and last known address of the decedent, last 4 digits of the decedent's social security number, date and place of death of the decedent, and state and county of the decedent's domicile;

(3) so far as is known, the names and addresses of the surviving spouse, if any, and the beneficiaries and their relationship to the decedent and the year of birth of any who are minors;

(4) a statement showing venue;

(5) a statement whether domiciliary or principal proceedings are pending in another state or country, if known, and the name and address of the foreign personal representative and the court issuing letters;

(6) a statement that the decedent's will, if any, does not direct administration as required by chapter 733, Florida Statutes;

(7) a statement that the value of the entire estate subject to administration in this state, less the value of property exempt from the claims of creditors, does not exceed $150,000 or that the decedent has been dead for more than 2 years;

(8) a description of all assets in the estate and the estimated value of each, and a separate description of any protected homestead and exempt property;

(9) a statement either:

(A) that all creditors' claims are barred or

(B) that a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors has been made and 1 of the following:

(i) a statement that the estate is not indebted; or

(ii) the name and address of each creditor, the nature of the debt, the amount of the debt and whether the amount is estimated or exact, and when the debt is due. If provision for payment of the debt has been made other than for full payment in the proposed order of distribution, the following information must be shown:

a. the name of the person who will pay the debt;

b. the creditor's written consent for substitution or assumption of the debt by another person;

c. the amount to be paid if the debt has been compromised; and

d. the terms for payment and any limitations on the liability of the person paying the debt.

(10) in an intestate estate, a statement that after the exercise of reasonable diligence each petitioner is unaware of any unrevoked wills or codicils;

(11) in a testate estate, a statement identifying all unrevoked wills and codicils being presented for probate, and a statement that each petitioner is unaware of any other unrevoked will or codicil; and

(12) a schedule of proposed distribution of all probate assets and the person to whom each asset is to be distributed.

(b) Service. The joinder in, or consent to, a petition for summary administration is not required of a beneficiary who will receive full distributive share under the proposed distribution. Any beneficiary and any known or reasonably ascertainable creditor not joining or consenting must receive formal notice of the petition.

(c) Testate Estate. In a testate estate, on the filing of the petition for summary administration, the decedent's will must be proved and admitted to probate.

(d) Order. If the court determines that the decedent's estate qualifies for summary administration, it must enter an order distributing the probate assets and specifically designating the person to whom each asset is to be distributed.

Committee Notes

Verification and service of a petition for summary administration are governed by rules 5.020, 5.040, and 5.041. Section 735.206(2), Florida Statutes, relating to diligent search for, and service of the petition for summary administration on, reasonably ascertainable creditors is substantive. Nothing in this rule is intended to change the effect of the statutory amendments.

Rule History

1977 Revision: Changes to conform to 1975 statutory revision. Established the requirements of a petition for summary administration and provided for the hearing thereon and the entry of the order of distribution of the assets.

1984 Revision: Extensive revisions and editorial changes. Committee notes revised.

1988 Revision: Editorial change in caption of (a). Committee notes revised.

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

2002 Revision: Replaces "homestead" with "protected homestead" in (a)(2) to conform to addition of term in section 731.201(29), Florida Statutes. Committee notes revised.

2003 Revision: Committee notes revised.

2005 Revision: Subdivision (a)(3) amended to include requirements of section 735.206(2), Florida Statutes.

2007 Revision: Rule substantially rewritten to require petition to include essentially the same information required to be stated in a petition for administration and to require the petitioners to specify facts showing they are entitled to summary administration. New subdivision (b) added to provide for formal notice of the petition, and subsequent subdivisions relettered.

2011 Revision: Subdivision (a)(2) amended to limit listing of decedent's social security number to last four digits.

2012 Revision: Committee notes revised.

2013 Revision: Subdivision (a)(9) reorganized to avoid the misconception that a diligent search and reasonable inquiry for known or reasonably ascertainable creditors is required when creditor claims are barred. Committee notes revised. Editorial changes to conform to the court's guidelines for rules submissions as set forth in AOSC06-14.

2014 Revision: Subdivision (a)(3) amended to provide only the year of birth of a minor to conform to Florida Rule of General Practice and Judicial Administration 2.425. Committee notes revised.

2026 Revision: Subdivision (a) amended to reflect the increase in the statutory limit in section 735.201, Florida Statutes. Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 731.104, Fla. Stat. Verification of documents.

§§ 735.201–735.2063, Fla. Stat. Summary administration.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.205(a)(3) Filing evidence of death.

Fla. R. Gen. Prac. & Jud. Admin. 2.420 Public access to and protection of judicial branch records.

Fla. R. Gen. Prac. & Jud. Admin. 2.425 Minimization of the filing of sensitive information.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

PART III — GUARDIANSHIP

RULE 5.540. HEARINGS

(a) Application. All hearings under chapter 744 and under section 393.12, Florida Statutes, shall be open unless the alleged incapacitated person, adjudicated ward, or person alleged to have a developmental disability elects to have the hearing closed.

(b) Election. An election to close a hearing may be made before the hearing by filing a written notice. Subject to the court's approval, an election to close or reopen a hearing may be made at any time during the hearing by oral or written motion.

Committee Notes

This rule permits an alleged incapacitated person, adjudicated ward, or person alleged to have a developmental disability to elect to have all hearings open or closed at any time by oral or written election.

Rule History

1991 Revision: New rule.

1992 Revision: Committee notes revised.

2008 Revision: Subdivision (a) amended to include persons with a developmental disability. Committee notes revised.

Statutory References

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

§ 744.1095, Fla. Stat. Hearings.

§ 744.3085, Fla. Stat. Guardian advocates.

Rule Reference

Fla. Prob. R. 5.541 Recording of hearings.

RULE 5.541. RECORDING OF HEARINGS

Electronic or stenographic recordings shall be made of all hearings on the:

(a) adjudication of incapacity;

(b) appointment of a guardian;

(c) modification, termination, or revocation of the adjudication of incapacity;

(d) restoration of capacity; or

(e) restoration of rights.

Committee Notes

This rule represents a rule implementation of the procedure found in sections 744.109 and 744.3031, Florida Statutes. It is not intended to change the effect of the statutes from which it is derived, or to create a new procedure or modify an existing procedure.

Rule History

1991 Revision: New rule.

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

2003 Revision: Committee notes revised.

2008 Revision: New subdivision (e) added for proceedings involving guardian advocates. Committee notes revised.

Statutory References

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

§ 744.109, Fla. Stat. Records.

§ 744.3031, Fla. Stat. Emergency temporary guardianship.

§ 744.3085, Fla. Stat. Guardian advocates.

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

RULE 5.550. PETITION TO DETERMINE INCAPACITY

(a) Contents. The petition to determine incapacity must be verified by the petitioner and must state:

(1) the name, age, and present address of the petitioner and the petitioner's relationship to the alleged incapacitated person;

(2) the name, age, county of residence, and present address of the alleged incapacitated person, and specify the primary language spoken by the alleged incapacitated person, if known;

(3) that the petitioner believes the alleged incapacitated person to be incapacitated, the facts on which the belief is based,

and the names and addresses of all persons known to the petitioner who have knowledge of the facts through personal observation;

(4) the name and address of the alleged incapacitated person's attending or family physician, if known;

(5) which rights the alleged incapacitated person is incapable of exercising to the best of the petitioner's knowledge; and, if the petitioner has insufficient experience to make that judgment, the petitioner must so indicate;

(6) whether plenary or limited guardianship is sought for the alleged incapacitated person;

(7) the names, relationships, and addresses of the next of kin of the alleged incapacitated person, specifying the year of birth of any who are minors, to the extent known to the petitioner;

(8) whether there are possible alternatives to guardianship known to the petitioner, including, but not limited to, trust agreements, powers of attorney, designations of health care surrogates, other advance directives, and if the petitioner is seeking a guardianship, an explanation as to why the alternatives are insufficient to meet the needs of the alleged incapacitated person; and

(9) whether the alleged incapacitated person uses assistance to exercise the person's rights, including, but not limited to, supported decisionmaking, and if so, why the assistance is inappropriate or insufficient to allow the person to independently exercise the person's rights.

(b) Notice.

(1) *Contents.* The notice of filing the petition to determine incapacity must state:

(A) the time and place of the hearing to inquire into the capacity of the alleged incapacitated person;

(B) that an attorney has been appointed to represent the alleged incapacitated person; and

(C) that if the court determines that the alleged incapacitated person is incapable of exercising any of the rights enumerated in the petition a guardian may be appointed.

(2) *Service on Alleged Incapacitated Person.* The notice and a copy of the petition to determine incapacity must be personally served by an elisor appointed by the court, who may be the court-appointed counsel for the alleged incapacitated person. The elisor must read the notice and petition to the alleged incapacitated person. A return of service must be filed by the elisor certifying that the notice and petition have been served on and read to the alleged incapacitated person. No responsive pleading is required and no default may be entered for failure to file a responsive pleading. The allegations of the petition are deemed denied.

(3) *Service on Others.* A copy of the petition and the notice must also be served on counsel for the alleged incapacitated person, and on all next of kin.

(c) Verified Statement. An interested person may file a verified statement that states:

(1) that the interested person has a good faith belief that the alleged incapacitated person's trust, trust amendment, or durable power of attorney is invalid; and

(2) facts constituting a reasonable basis for that belief.

(d) Order. When an order determines that a person is incapable of exercising delegable rights, it must specify whether there is an alternative to guardianship that will sufficiently address the problems of the incapacitated person.

(e) Reports.

(1) *Filing.* Each member of the examining committee must file the examining committee member's report with the clerk of the court within 15 days after appointment.

(2) *Service.* Within 3 days after receipt of each examining committee member's report, the clerk must serve the report on the petitioner and the attorney for the alleged incapacitated person by e-mail or United States mail, and, on service, must file a certificate of service in the incapacity proceeding. The petitioner and the attorney for the alleged incapacitated person must be served with all reports at least 10 days before the hearing on the petition, unless the reports are not complete, in which case the petitioner and attorney for the alleged incapacitated person may waive the 10-day requirement and consent to the consideration of the report by the court at the adjudicatory hearing. If service is not timely effectuated, the petitioner or the alleged incapacitated person may move for a continuance of the hearing.

(3) *Objections.* The petitioner and the alleged incapacitated person may object to the introduction into evidence of all or any portion of the examining committee members' reports by filing and serving a written objection on the other party no later than 5 days before the adjudicatory hearing. The objection must state the basis on which the challenge to admissibility is made. If an objection is timely filed and served, the court must apply the rules of evidence in determining the reports' admissibility. For good cause shown, the court may extend the time to file and serve the written objection.

(f) Adjudicatory Hearing. On appointment of the examining committee, the court must set the date on which the petition will be heard. The adjudicatory hearing must be conducted within at least 10 days, which time period may be waived, but no more than 30 days after the filing of the last filed report of the examining committee members, unless good cause is shown.

Committee Notes

Rule History

1980 Revision: Implements 1979 amendments to section 744.331, Florida Statutes.

1984 Revision: Change in title of rule. Editorial changes and adds a provision for service of petition. Committee notes revised.

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

1989 Revision by Ad Hoc Committee: The committee realized that formal notice as defined in rule 5.040(a)(1) requires the recipient of notice to file a responsive pleading within 20 days after the service of the notice. The committee believed that to impose such a requirement on the alleged incapacitated person would contravene the legislative intent of the 1989 revisions to chapter 744, Florida Statutes. The committee observed that the time required for appointment of mandatory appointed counsel might render a responsive pleading within 20 days impossible for the alleged incapacitated person. The committee concluded that, procedurally, notice upon the alleged incapacitated person should occur in the same manner as formal notice in rule 5.040, but the required response under that rule should not be imposed upon the alleged incapacitated person.

1991 Revision: Implements 1989 amendments to sections 744.3201 and 744.331, Florida Statutes, and 1990 technical amendments.

1992 Revision: Citation form changes in committee notes.

2006 Revision: Subdivisions (c) and (d) added to incorporate 2006 amendment to section 744.441 and creation of section 744.462, Florida Statutes. Committee notes revised.

2014 Revision: Amends subdivision (a)(7) to conform with Fla. R. Gen. Prac. & Jud. Admin. 2.425. Committee notes revised.

2016 Revision: Subdivision (a)(8) added to require the disclosure of whether there are possible alternatives to guardianship known to the petitioner. Committee notes revised.

2017 Revision: Adopts new subdivisions (e)(1)–(e)(3) to address statutory changes in sections 744.331(3)(e), (3)(h), and (3)(i), Florida Statutes, regarding filing, service, and objections to examining committee members' reports. Adopts new subdivision (f) to address statutory changes regarding the timing of the adjudicatory hearing in section 744.331(5)(a), Florida Statutes. Committee notes revised.

2020 Revision (September): Amends subdivision (a)(8) to address the Judicial Management Council Guardianship Workgroup Final Report dated June 15, 2018, Focus Area 1, Recommendation 3, by requiring an explanation if there are less restrictive alternatives to guardianship, but they are not sufficient to meet the needs of the alleged incapacitated person. Committee notes revised.

2020 Revision (December): Statutory references amended.

2024 Revision: Subdivision (b)(2) amended to conform to section 744.331(1), Florida Statutes. Committee notes revised.

2024 Revision: New subdivision (a)(9) adopted to conform to section 744.3201(2)(d), Florida Statutes. Committee notes revised.

Statutory References

§ 709.2104, Fla. Stat. Durable power of attorney.

§ 709.2109, Fla. Stat. Termination or suspension of power of attorney or agent's authority.

§ 744.1012, Fla. Stat. Legislative intent.

§ 744.104, Fla. Stat. Verification of documents.

§ 744.3045, Fla. Stat. Preneed guardian.

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

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

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

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

§ 744.441(1)(k), Fla. Stat. Powers of guardian upon court approval.

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

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

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040(a)(3) Notice.

Fla. Prob. R. 5.800(a) Application of revised chapter 744 to existing guardianships.

Fla. R. Gen. Prac. & Jud. Admin. 2.425 Minimization of the filing of sensitive information.

RULE 5.552. VOLUNTARY GUARDIANSHIP OF PROPERTY

(a) Petition for Appointment of Guardian. The petition for voluntary guardianship 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) that the petitioner although mentally competent is incapable of the care, custody, and management of the petitioner's estate by reason of age or physical infirmity, and is voluntarily

petitioning to have a guardian of the petitioner's property appointed;

(4) whether the guardianship shall apply to all of the petitioner's property or less than all of the petitioner's property; and if less than all of the petitioner's property, the specific property to which the guardianship is to apply;

(5) the name and residence and post office address of any proposed guardian;

(6) that the proposed guardian is qualified to serve or that a willing and qualified proposed guardian has not been located; and

(7) the names and post office addresses of persons to whom the petitioner requests that notice of the hearing for the appointment of the guardian, and any petition for authority to act, be given.

(b) Certificate of Licensed Physician. The petition shall be accompanied by a certificate of a licensed physician as required by law.

(c) Notice of Hearing. Notice of hearing on the petition for appointment, and any petition for authority to act, shall be given to the ward and any person to whom the ward requests notice be given, which request can be made in the petition for appointment or a subsequent written request for notice signed by the ward.

(d) Annual Report. The annual report shall be accompanied by a certificate from a licensed physician as required by law.

(e) Termination. The ward may terminate a voluntary guardianship by filing a notice of termination. Copies of the notice shall be served on all interested persons. The guardian shall file a petition for discharge in accordance with these rules.

Committee Notes

Rule History

2003 Revision: New rule.

2006 Revision: New (d) added to incorporate 2006 amendment to section 744.341, Florida Statutes, requiring inclusion of physician's certificate in annual report, and subsequent subdivision relettered. Committee notes revised.

Statutory Reference

§ 744.341, Fla. Stat. Voluntary guardianship.

Rule Reference

Fla. Prob. R. 5.680 Termination of guardianship.

Fla. Prob. R. 5.695 Annual guardianship report.

RULE 5.555. GUARDIANSHIPS OF MINORS

(a) Application. This rule shall apply to any guardianship for a minor.

(b) Petition to Determine Incapacity. No petition to determine incapacity need be filed.

(c) Petition for Appointment of Guardian. 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 minor;

(4) the names and addresses of the parents of the minor and if none, the next of kin known to the petitioner;

(5) 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;

(6) the proposed guardian's relationship to and any previous association with the minor, including listing any activities designated in section 744.446(3), Florida Statutes;

(7) the reasons why the proposed guardian should be appointed;

(8) the nature and value of the property subject to the guardianship; and

(9) whether there are possible alternatives to guardianship known to the petitioner, including but not limited to, trust agreements, powers of attorney, surrogates, guardian advocate under section 744.3085, Florida Statutes, or advance directive and why those possible alternatives are insufficient to meet the needs of the minor.

(d) Notice. Formal notice of the petition for appointment of guardian shall be served on any parent who is not a petitioner or, if there is no parent, on the persons with whom the minor resides and on such other persons as the court may direct.

(e) Initial and Annual Guardianship Reports.

(1) The initial guardianship report shall consist only of the verified inventory. The annual guardianship report shall consist only of the annual accounting.

(2) The guardian shall file an initial and annual guardianship plan as required by law.

(3) Unless otherwise ordered by the court or required by law, the guardian need not serve a copy of the initial

guardianship report and the annual guardianship reports on the ward.

(f) Inspection of Inventory or Accounting. Unless otherwise ordered by the court for good cause shown, any inventory, amended or supplementary inventory, or accounting is subject to inspection only by the clerk, the ward or the ward's attorney, and the guardian or the guardian's attorney.

Committee Notes

The provisions of chapter 744, Florida Statutes, and the guardianship rules enacted in 1989 leave some uncertainty with respect to the procedural requirements in guardianships for minors who are not incapacitated persons. This rule is intended to address only certain procedures with respect to the establishment and administration of guardianships over minors. The committee believes that certain provisions of the guardianship law and rules apply to both guardianships of minors as well as guardianships of incapacitated persons and no change has been suggested with respect to such rules. Because no adjudication of a minor is required by statute, it is contemplated that appointment of a guardian for a minor may be accomplished without a hearing. Initial and annual guardianship reports for minors have been simplified where all assets are on deposit with a designated financial institution under applicable Florida law.

Rule History

1991 Revision: New rule adopted to apply to guardianships over minors who are not incapacitated persons.

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

1996 Revision: Committee notes revised.

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

2003 Revision: Deletes requirement in subdivision (c) to report social security number of minor. Committee notes revised.

2006 Revision: Subdivision (e)(2) amended to conform to requirement in sections 744.362(1) and 744.3675, Florida Statutes, to file initial and annual guardianship plans. Subdivision (e)(3) amended to eliminate requirement of service on ward unless ordered by court or required by statute.

2014 Revision: Fla. R. Gen. Prac. & 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.

2020 Revision: Subdivision (c)(6) amended to include reference to section 744.446, Florida Statutes, and subdivision (c)(9) amended to conform to section 744.334, Florida Statutes, and the list of alternatives to guardianships.

2021 Revision: Committee notes revised.

Statutory References

§ 69.031, Fla. Stat. Designated financial institutions for property in hands of guardians, curators, administrators, trustees, receivers, or other officers.

§ 744.3021, Fla. Stat. Guardians of minors.

§ 744.3085, Fla. Stat. Guardian advocates.

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

§ 744.3371(2), Fla. Stat. Notice of petition for appointment of guardian and hearing.

§ 744.342, Fla. Stat. Minors; guardianship.

§ 744.362, Fla. Stat. Initial guardianship report.

§ 744.363, Fla. Stat. Initial guardianship plan.

§ 744.365, Fla. Stat. Verified inventory.

§ 744.367, Fla. Stat. Duty to file annual guardianship report.

§ 744.3675, Fla. Stat. Annual guardianship plan.

§ 744.3678, Fla. Stat. Annual accounting.

§ 744.3679, Fla. Stat. Simplified accounting procedures in certain cases.

§ 744.446, Fla. Stat. Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty.

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.541 Recording of hearings.

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

Fla. Prob. R. 5.620 Inventory.

Fla. Prob. R. 5.636 Settlement of minors' claims.

Fla. Prob. R. 5.690 Initial guardianship report.

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

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, including listing any activities designated in section 744.446(3), Florida Statutes;

(8) the reasons why the proposed guardian should be appointed;

(9) whether the petitioner has knowledge, information, or belief that there are possible alternatives to guardianship known to the petitioner, including, but not limited to, trust agreements, powers of attorney, designations of health care surrogates, guardian advocate under section 744.3085, Florida Statutes, or other advance directives, and if there are possible alternatives to guardianship, an explanation as to why the alternatives are insufficient to meet the needs of the alleged incapacitated person;

(10) whether the petitioner has knowledge, information, or belief that the alleged incapacitated person has a preneed guardian designation; and

(11) if the proposed guardian is a professional guardian, a statement that the proposed guardian has complied with the registration requirements of section 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. Gen. Prac. & 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.

2016 Revision: Subdivision (a)(9) revised to require the disclosure of whether there are possible alternatives to guardianship known to the petitioner. Committee notes revised.

2016 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.

2020 Revision (September): Amends subdivision (a)(9) to address the Judicial Management Council Guardianship Workgroup Final Report dated June 15, 2018, Focus Area 1, Recommendation 3, by requiring an explanation if there are less restrictive alternatives to guardianship, but they are not sufficient to meet the needs of the alleged incapacitated person. Adds a new subdivision (a)(10) to address the Judicial Management Council Guardianship Workgroup Final Report dated June 15, 2018, Focus Area 1, Recommendation 4, by requiring a statement of the petitioner's knowledge of any preneed guardian designation. Committee notes revised.

2020 Revision (December): Subdivision (a)(7) amended to include reference to section 744.446, Florida Statutes, and subdivision (a)(9) amended to conform to section 744.334, Florida Statutes, and the list of alternatives to guardianships.

Statutory References

§ 709.2104, Fla. Stat. Durable power of attorney.

§ 709.2109, Fla. Stat. Termination or suspension of power of attorney or agent's authority.

§ 744.2002, Fla. Stat. Professional guardian registration.

§ 744.2005, Fla. Stat. Order of appointment.

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

§ 744.3045, Fla. Stat. Preneed guardian.

§ 744.3085, Fla. Stat. Guardian advocates.

§ 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.

§ 744.446 Fla. Stat. Conflict of interest; prohibited activities; court approval; breach of fiduciary duty.

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

§ 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. Gen. Prac. & Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.590. APPLICATION FOR APPOINTMENT AS GUARDIAN; DISCLOSURE STATEMENT; FILING

(a) Individual Applicants.

(1) The application for appointment shall contain:

(A) the applicant's qualifications to serve as a guardian, including a statement indicating whether the applicant has ever been (i) arrested or (ii) convicted of a felony, even if the record of such arrest or conviction has been expunged, unless the expunction was ordered pursuant to section 943.0583, Florida Statutes; and

(B) the names of all wards who are adults and the initials of any ward who is a minor for whom the applicant is then acting as guardian, the court file number and circuit court in which each case is pending, and a statement as to whether the applicant is acting as a limited or plenary guardian of the person or property, or both, of each ward.

(2) The application for appointment shall be filed and served a reasonable time before the hearing on the appointment of a guardian.

(b) Nonprofit Corporate Guardians.

(1) No application for appointment shall be required of a nonprofit corporate guardian.

(2) A disclosure statement shall contain:

(A) the corporation's qualifications to serve as a guardian; and

(B) the names of all wards who are adults and the initials of any ward who is a minor for whom the corporation is then acting as guardian, the court file number and circuit court in which each case is pending, and a statement as to whether the

corporation is acting as a limited or plenary guardian of the person or property, or both, of each ward.

(3) The disclosure statement of a nonprofit corporate guardian shall be filed quarterly with the clerk of the court for each circuit in which the corporation has been appointed, or is seeking appointment, as guardian.

(c) For Profit Corporations and Associations. No application for appointment or disclosure statement shall be required of any for profit corporation or association authorized to exercise fiduciary powers under Florida law.

(d) Public Guardians. No application for appointment or disclosure statement shall be required of a public guardian.

Committee Notes

Rule History

1988 Revision: Prior rule deleted; text of rule moved to rule 5.650.

1989 Revision: Rule reactivated with different title and text.

1991 Revision: Implements 1989 and 1990 amendments to section 744.3125, Florida Statutes.

1992 Revision: Citation form change in committee notes.

1996 Revision: Adds filing and service provisions consistent with rule 5.560. Corrects reference to corporations qualified to exercise fiduciary powers. Editorial changes. Adds statutory references.

2003 Revision: Committee notes revised.

2006 Revision: Committee notes revised.

2008 Revision: Committee notes revised.

2014 Revision: Amends subdivisions (a)(1)(B) and (b)(1)(B) to conform to Fla. R. Gen. Prac. & Jud. Admin. 2.425. Creates a rule reference. Committee notes revised.

2014 Revision: Amends subdivision (a)(1)(A) to conform to sections 744.309(3), 943.0583, and 943.0585, Florida Statutes. Committee notes revised.

Statutory References

§ 393.063(17), Fla. Stat. Definitions.

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

§ 744.102(4), (9), (11), (14), (22) Fla. Stat. Definitions.

§ 744.3085, Fla. Stat. Guardian advocates.

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

§ 744.3125, Fla. Stat. Application for appointment.

§ 744.331(1), Fla. Stat. Procedures to determine incapacity.

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

§ 943.0583, Fla. Stat. Human trafficking victim expunction.

§ 943.0585, Fla. Stat. Court-ordered expunction of criminal history records.

Rule References

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

RULE 5.600. OATH

Every guardian or emergency temporary guardian shall take an oath to perform faithfully the duties of guardian or emergency temporary guardian before exercising such authority. The oath may be incorporated in the petition for appointment of guardian, or petition for appointment of emergency temporary guardian, if verified by the prospective guardian.

Committee Notes

Rule History

1977 Revision: Change in committee notes to conform to statutory renumbering. Rule permits oath of guardian to be incorporated in petition for appointment and in designation of resident agent.

1984 Revision: Editorial change and deletes genders.

1989 Revision: Prior rule adopted as temporary emergency rule.

1991 Revision: Permits oath to be incorporated in application for appointment of guardian, adds reference to temporary emergency guardian, and makes editorial change.

1992 Revision: Editorial changes.

2008 Revision: Committee notes revised.

Statutory References

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

§ 744.347, Fla. Stat. Oath of guardian.

RULE 5.610. EXECUTION BY GUARDIAN

The guardian shall sign the:

(a) initial guardianship plan;

(b) inventory, amended inventory, or supplemental inventory;

(c) annual guardianship plan;

(d) annual accounting;

(e) guardian's petition for court approval required by law;

(f) petition for discharge;

(g) final report; and

(h) resignation of guardian.

Committee Notes

Rule History

1975 Revision: Rule lists what guardian shall sign and includes any petition for court approval required by section 744.441, Florida Statutes. The rule requires that the guardian have actual knowledge of the more important steps and acts of administration.

1977 Revision: Change in statutory reference in rule and in committee note to conform to statutory renumbering.

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

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Changes to conform to 1989 and 1990 revisions to guardianship law. Adds additional documents to be signed by the guardian. Statutory references added.

2003 Revision: Committee notes revised.

2008 Revision: Committee notes revised.

Statutory References

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

§ 744.362, Fla. Stat. Initial guardianship report.

§ 744.363, Fla. Stat. Initial guardianship plan.

§ 744.365, Fla. Stat. Verified inventory.

§ 744.367, Fla. Stat. Duty to file annual guardianship report.

§ 744.3675, Fla. Stat. Annual guardianship plan.

§ 744.3678, Fla. Stat. Annual accounting.

§ 744.387, Fla. Stat. Settlement of claims.

§ 744.441, Fla. Stat. Powers of guardian upon court approval.

§ 744.446, Fla. Stat. Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty.

§ 744.447, Fla. Stat. Petition for authorization to act.

§ 744.451, Fla. Stat. Order.

§ 744.467, Fla. Stat. Resignation of guardian.

§ 744.511, Fla. Stat. Accounting upon removal.

§ 744.521, Fla. Stat. Termination of guardianship.

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

§ 744.527(1), Fla. Stat. Final reports and application for discharge; hearing.

§ 744.534, Fla. Stat. Disposition of unclaimed funds held by guardian.

RULE 5.620. INVENTORY

(a) Inventory. Within 60 days after issuance of letters, the guardian of the property must file a verified inventory as required by law. All property not in the guardian's possession as of the date the inventory is filed must be so identified.

(b) Amended or Supplemental Inventory. If the guardian of the property learns of any property not included in the inventory, or learns that the description in the inventory is inaccurate, the guardian must, within 30 days of this discovery, file a verified amended or supplemental inventory showing the change.

(c) Substantiating Documents. Unless ordered by the court, the guardian need not file the documents substantiating the inventory. On reasonable written request, the guardian of the property must make the substantiating documents available for examination to those persons entitled to receive or inspect the inventory.

(d) Safe-Deposit Box Inventory. If the ward has a safe-deposit box, the safe-deposit box inventory must be filed as part of the verified inventory.

(e) Guardian Advocates. This rule applies to a guardian advocate to the extent that the guardian advocate was granted authority over the property of the person with a developmental disability.

Committee Notes

Rule History

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

1984 Revision: Change to require inventory to be filed within 60 days after issuance of letters, rather than after appointment. Committee notes revised.

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

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Former rule 5.620(b) has been deleted as partly substantive and addressed in section 744.381, Florida Statutes, and the procedural part is unnecessary.

The committee recognizes the conflict between this rule and section 744.362, Florida Statutes, which requires the filing of the initial guardianship report (which includes the inventory) within 60 days after appointment. The committee believes this provision, which attempts to regulate when a paper must be filed with the court, is procedural and that a guardian may not receive letters of guardianship empowering the guardian to act contemporaneously with the appointment. Therefore, the issuance of letters is a more practical time from which to measure the beginning of the time period for the accomplishment of this act.

1992 Revision: Citation form changes in committee notes.

2005 Revision: Editorial changes in (d).

2007 Revision: Committee notes revised.

2008 Revision: Adds reference to guardian advocate in new (e). Committee notes revised.

2012 Revision: Committee notes revised.

2016 Revision: Subdivision (c) revised to substitute “documents” for “papers.”

2026 Revision: Committee notes revised.

Statutory References

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

§ 744.362, Fla. Stat. Initial guardianship report.

§ 744.365, Fla. Stat. Verified inventory.

§ 744.3701, Fla. Stat. Inspection of report.

§ 744.381, Fla. Stat. Appraisals.

§ 744.384, Fla. Stat. Subsequently discovered or acquired property.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

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

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.649 Guardian advocate.

Fla. Prob. R. 5.690 Initial guardianship report.

Fla. Prob. R. 5.700 Objection to guardianship reports.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.625. NOTICE OF COMPLETION OF GUARDIAN EDUCATION REQUIREMENTS

(a) Filing. Unless the guardian education requirement is waived by the court, each guardian, other than a professional guardian, shall file with the court within 4 months after the

issuance of letters of guardianship or letters of guardian advocacy a notice of completion of guardian education requirements.

(b) Content. The notice shall state:

(1) that the guardian has completed the required number of hours of course instruction and training covering the legal duties and responsibilities of a guardian, the rights of a ward, the availability of local resources to aid a ward, and the preparation of habilitation plans and annual guardianship reports, including accountings;

(2) the date the course was completed;

(3) the name of the course completed; and

(4) the name of the entity or instructor that taught the course.

(c) Verification. The notice shall be verified by the guardian.

Committee Notes

Rule History

2005 Revision: New rule.

2006 Revision: Subdivision (a) amended to conform to 2006 amendment to section 744.3145(4), Florida Statutes.

2008 Revision: Adds reference in (a) to guardian advocacy. Committee notes revised.

Statutory References

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

§ 744.3145, Fla. Stat. Guardian education requirements.

RULE 5.630. PETITION FOR APPROVAL OF ACTS

(a) Contents. When authorization or confirmation of any act of the guardian is required under sections 744.422 or 744.441, Florida Statutes, application must be made by verified petition stating the facts showing:

(1) the expediency or necessity for the action;

(2) a description of any property involved;

(3) the price and terms of any sale, mortgage, or other contract;

(4) whether the ward has been adjudicated incapacitated to act with respect to the rights to be exercised;

(5) whether the action requested conforms to the guardianship plan; and

(6) the basis for the relief sought.

(b) Notice. No notice of a petition to authorize sale of perishable personal property or of property rapidly deteriorating is required. Notice of a petition to perform any other act requiring a court order must be given to the ward, to the next of kin, if any, and to those persons who have filed requests for notices and copies of pleadings.

(c) Order.

(1) If the act is authorized or confirmed, the order must describe the permitted act and authorize the guardian to perform it or confirm its performance.

(2) If a sale or mortgage is authorized or confirmed, the order must describe the property. If a sale is to be private, the order must specify the price and the terms of the sale. If a sale is to be public, the order must state that the sale will be made to the

highest bidder and that the court reserves the right to reject all bids.

(3) If the guardian is authorized to bring an action to contest the validity of all or part of a revocable trust, the order must contain a finding that the action appears to be in the ward's best interests during the ward's probable lifetime. If the guardian is not authorized to bring such an action, the order must contain a finding concerning the continued need for a guardian and the extent of the need for delegation of the ward's rights.

Committee Notes

Rule History

1975 Revision: Substantially the same as sections 744.503, 744.447, and 744.451, Florida Statutes, with editorial changes.

1977 Revision: Change in statutory reference in rule and in committee note to conform to statutory renumbering.

1980 Revision: Implements 1979 amendment to section 744.447(2), Florida Statutes.

1988 Revision: Editorial changes; captions added to subdivisions. Committee notes revised. Citation form changes in rule and committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Changes to conform to 1989 revised guardianship law.

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

2006 Revision: New (a)(6) added to incorporate 2006 amendment to section 744.441, Florida Statutes. New (c)(3) added to reflect passage of 2006 amendment to section 737.2065, Florida Statutes. Committee notes revised.

2007 Revision: Committee notes revised.

2008 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

2020 Revision: Subdivision (a)(2) is created to address section 744.441(2), Florida Statutes, and the contents of a petition for court approval for a guardian to sign an order not to resuscitate. Subdivision (d) is created to include the procedure for a hearing pursuant to section 744.441(2), Florida Statutes.

2023 Revision: Subdivisions (a)(2) and (d) were deleted as section 744.441(2), Florida Statutes was repealed. Reference to section 744.422, Florida Statutes, was added to subdivision (a) to address its enactment.

Statutory References

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

§ 736.0207, Fla. Stat. Trust contests.

§ 744.3215, Fla. Stat. Rights of persons determined incapacitated.

§ 744.422, Fla. Stat. Petition for support for a dependent adult child.

§ 744.441, Fla. Stat. Powers of guardian upon court approval.

§ 744.447, Fla. Stat. Petition for authorization to act.

§ 744.451, Fla. Stat. Order.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.636 Settlement of minors' claims.

Fla. Prob. R. 5.649 Guardian advocate.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service of pleadings and documents.

RULE 5.631. PETITION FOR APPROVAL BY PROFESSIONAL GUARDIAN FOR ORDER NOT TO RESUSCITATE OR TO WITHHOLD LIFE-PROLONGING PROCEDURES

(a) Contents.

(1) When authorization for any act of the professional guardian is required under section 744.4431, Florida Statutes, application must be made by verified petition stating the facts showing:

(A) a description of the proposed action or decision for which court approval is sought;

(B) documentation of the authority of the professional guardian to make health care decisions on behalf of the ward;

(C) a statement regarding any known objections to the relief sought;

(D) a description of the ward's known wishes, including all advance directives executed by the ward, or, if there is

no indication of the ward's wishes, a description of why the relief sought is in the best interests of the ward;

(E) a description of exigent circumstances that exist which necessitate immediate relief; and

(F) a description of the circumstances requiring the proposed action or decision, which must include supporting documents that are consistent with sections 765.305, 765.401(3), or 765.404, Florida Statutes.

(b) Notice. Notice of the petition and of any hearing must be served on the ward, the ward's attorney, if any, the ward's next of kin, and any other interested persons which includes persons who have filed requests for notices and copies of pleadings. The provision of notice may be waived by the court.

(c) Hearing.

(1) The court must hold a hearing if:

(A) the ward or the ward's attorney, if any, objects to the petition;

(B) the ward's next of kin or an interested person objects for any reason authorized by section 765.105(1), Florida Statutes;

(C) the professional guardian, the ward, or the ward's attorney, if any, requests a hearing; or

(D) the petition has insufficient information for the court to make a determination.

(2) On a showing a hearing is required and exigent circumstances exist, a preliminary hearing on the petition must be held with 72 hours of filing. At the conclusion of the hearing, the court must rule on the petition or set it for an evidentiary hearing within 4 days.

(d) Order.

(1) If the petition is granted, the order must describe the permitted act and authorize the professional guardian to perform the act.

(2) If the petition is denied, the order must state the reasons for the denial.

Committee Notes

Rule History

2023 Revision: Rule adopted to address the enactment of section 744.4431, Florida Statutes.

2026 Revision: Committee notes revised.

Statutory References

§ 744.4431, Fla. Stat. Guardianship power regarding life-prolonging procedures.

Rule References

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.635. PETITION FOR EXTRAORDINARY AUTHORITY

(a) Contents. When authorization for extraordinary authority is sought as permitted by law, application shall be made by verified petition stating:

(1) the petitioner's interest in the proceeding;

(2) the specific authority requested; and

(3) the facts constituting the basis for the relief sought and that the authority being requested is in the best interest of the ward.

(b) Notice.

(1) The petition shall be served by formal notice. For good cause shown, the court may shorten the time for response to the formal notice and may set an expedited hearing.

(2) The petition shall be served on the guardian of the person, if the guardian is not the petitioner, the ward, the next of kin, if any, those interested persons who have filed requests for notices and copies of pleadings, and such other persons as the court may direct.

(c) Hearing. The hearing shall be at a time and place that will enable the ward to express the ward's views to the court.

Committee Notes

Rule History

1991 Revision: New rule.

1992 Revision: Committee notes revised.

2008 Revision: Committee notes revised.

Statutory References

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

§ 744.3215(4), Fla. Stat. Rights of persons determined incapacitated.

§ 744.3725, Fla. Stat. Procedure for extraordinary authority.

RULE 5.636. SETTLEMENT OF MINORS' CLAIMS

(a) Time of Settlement. Claims on behalf of minors may be settled either before or after an action is filed.

(b) Petition. The petition for approval of a settlement shall contain:

(1) the initials, residence address, and the year of birth of the minor;

(2) the name and address of any guardian appointed for the minor;

(3) the name and residence address of the natural guardians or other persons having legal custody of the minor;

(4) a statement disclosing the interests of any natural or court-appointed guardian whose interest may be in conflict with that of the minor;

(5) a description of the cause of action in which the minor's interest arises;

(6) a summary of the terms of the proposed settlement; and

(7) copies of all agreements, releases, or other documents to be executed on behalf of the minor.

(c) Notice. Notice of the petition shall be given to the court-appointed guardians for the minor, to the natural guardians or other persons with legal custody of the minor, to the minor if age 14 or older, and to the minor's next of kin if required by the court.

(d) Guardian Ad Litem. The court shall appoint a guardian ad litem on behalf of a minor, without bond or notice, with respect

to any proposed settlement that equals or exceeds $50,000 and affects the interests of the minor, if:

(1) there is no court-appointed guardian of the minor;

(2) the court-appointed guardian may have an interest adverse to the minor; or

(3) the court determines that representation of the minor's interest is otherwise inadequate.

(e) Valuation of Proposed Settlement. A proposed settlement is deemed to equal or exceed $50,000 if the gross amount payable equals or exceeds $50,000, without reduction to reflect present value or fees and costs.

(f) Report. A guardian ad litem appointed with respect to a proposed settlement affecting the interests of a minor shall, not later than 5 days prior to the hearing on a petition for order authorizing settlement, file and serve a report indicating the guardian ad litem's determination regarding whether the proposed settlement will be in the best interest of the minor. The report shall include:

(1) a statement of the facts of the minor's claim and the terms of the proposed settlement, including any benefits to any persons or parties with related claims;

(2) a list of the persons interviewed and documents reviewed by the guardian ad litem in evaluating the minor's claim and proposed settlement; and

(3) the guardian ad litem's analysis of whether the proposed settlement will be in the best interest of the minor.

A copy of the report shall be served on those persons on whom service is required in subdivision (c) of this rule.

Committee Notes

When a civil action is pending, the petition for approval of settlement should be filed in that civil action. In all other circumstances, the petition for approval of settlement should be filed in the same court and assigned to a judge who would preside over a petition for appointment of guardian of a minor.

The total settlement to be considered under subdivisions (d) and (e) is not limited to the amounts received only by the minor, but includes all settlement payments or proceeds received by all parties to the claim or action. For example, the proposed settlement may have a gross value of $60,000, with $30,000 payable to the minor and $30,000 payable to another party. In that instance the total proposed settlement exceeds $50,000. Further, the "gross amount payable" under subdivision (e) is the total sum payable, without reducing the settlement amount by fees and costs that might be paid from the proceeds of the settlement. For example, if the proposed settlement is $60,000 but $20,000 of that sum will be paid to the attorneys representing the minor's interest in the action, the "gross amount payable" still exceeds $50,000. Likewise, the "gross amount payable" cannot be reduced to reflect the present value of the proposed settlement on behalf of the minor.

Rule History

1992 Revision: New rule.

2003 Revision: Committee notes revised.

2006 Revision: Amended to reflect 2006 passage of new section 744.3025, Claims of Minors, increasing dollar figure from $25,000 to $50,000 as threshold amount requiring appointment of guardian ad litem if interests of minor are not otherwise adequately represented. Committee notes revised.

2014 Revision: Amends subdivision (b)(1) to conform to Fla. R. Gen. Prac. & Jud. Admin. 2.425. Committee notes revised.

2019 Revision: Amends subdivisions (d) and (e) to eliminate inconsistency with section 744.3025, Florida Statutes. Committee notes revised.

Statutory References

§ 744.3025, Fla. Stat. Claims of minors.

§ 744.387, Fla. Stat. Settlement of claims.

§ 744.391, Fla. Stat. Actions by and against guardian or ward.

§ 744.441, Fla. Stat. Powers of guardian upon court approval.

§ 744.446, Fla. Stat. Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty.

§ 744.447, Fla. Stat. Petition for authorization to act.

§ 768.23, Fla. Stat. Protection of minors and incompetents.

§ 768.25, Fla. Stat. Court approval of settlements.

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.120 Administrator ad litem and guardian ad litem.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.630 Petition for approval of acts.

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

RULE 5.640. CONTINUANCE OF UNINCORPORATED BUSINESS OR VENTURE OF WARD

(a) Continuance of Business. When the ward is adjudicated incapacitated while engaged in any unincorporated business or venture, or the court finds that a person with a developmental disability lacks capacity to manage an unincorporated business or

venture, the court may authorize the guardian to continue the business or venture for a reasonable time under the supervision of the court.

(b) Petition. Before an order is made under subdivision (a), the guardian shall file a verified petition, alleging sufficient facts to make it appear that it is in the best interest of the ward's estate to continue the business or venture.

(c) Order. The order authorizing the continuance of the business or venture may empower the guardian to make contracts necessary to conduct the business or venture and to incur debts and pay out money in the proper conduct of the business or venture. The net profits only of the business or venture are to be added to the assets of the ward's estate.

(d) Accounts and Reports. In the conduct of the business or venture, the guardian shall keep full and accurate accounts of all receipts and expenditures and make reports as the court requires.

(e) Discontinuance of Business. Any person interested in the ward's estate may at any time petition the court for an order requiring the guardian to discontinue and to wind up the business or venture, and the court, after notice to the guardian, shall enter such order thereon as is in the best interest of the ward's estate.

Committee Notes

Rule History

1975 Revision: Implements section 744.441(16), Florida Statutes. The rule is patterned after rule 5.350 pertaining to the continuation of a business of a decedent by a personal representative.

1977 Revision: No change in rule. Change in committee note to conform to statutory renumbering.

1988 Revision: Change in title of rule; captions added to subdivisions. Committee notes revised. Citation form changes in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Editorial changes in (a), (b), and (e).

1992 Revision: Citation form changes in committee notes.

2008 Revision: Subdivision (a) amended to include persons with a developmental disability. Committee notes revised.

Statutory References

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

§ 744.3085, Fla. Stat. Guardian advocates.

§ 744.441(13), Fla. Stat. Powers of guardian upon court approval.

§ 744.447, Fla. Stat. Petition for authorization to act.

Rule Reference

Fla. Prob. R. 5.350 Continuance of unincorporated business or venture.

RULE 5.645. MANAGEMENT OF PROPERTY OF NONRESIDENT WARD BY FOREIGN GUARDIAN

(a) Petition. A guardian of the property of a nonresident ward, duly appointed by a court of another state, territory, or country, who desires to manage any part or all of the property of the ward located in this state, may file a verified petition for authority to manage the property. The petition shall state:

(1) the circumstances of the guardian's appointment;

(2) a description of the property and its estimated value; and

(3) the indebtedness, if any, existing against the ward in this state.

(b) Designation of Resident Agent. The guardian shall designate a resident agent as required by these rules.

(c) Oath. The guardian shall file an oath as required by these rules.

(d) Filing of Authenticated Copies. The guardian shall file authenticated copies of:

(1) letters of guardianship or other authority to act as guardian; and

(2) bond or other security, if any.

(e) Order. The court shall determine if the foreign bond or other security is sufficient to guarantee the faithful management of the ward's property in this state. The court may require a new guardian's bond in this state in an amount it deems necessary. The order shall authorize the guardian to manage the property and shall specifically describe the property.

Committee Notes

Rule History

2007 Revision: New rule.

Statutory References

§ 744.306, Fla. Stat. Foreign guardians.

§ 744.307, Fla. Stat. Foreign guardian may manage the property of nonresident ward.

Rule References

Fla. Prob. R. 5.110 Address designation for personal representative or guardian; designation of resident agent and acceptance.

Fla. Prob. R. 5.600 Oath.

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 744.2002, 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. Gen. Prac. & Jud. Admin. 2.425. Committee notes revised.

2016 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. Gen. Prac. & Jud. Admin. 2.425 Minimization of the Filing of Sensitive Information.

RULE 5.647. SURROGATE GUARDIAN

(a) Petition for Designation of Surrogate Guardian. A guardian may file a petition to designate a surrogate guardian to exercise the powers of the guardian if the guardian is unavailable to act. The surrogate must be a professional guardian. The petition shall state:

(1) the name and business address of the surrogate guardian;

(2) the requested duration of the appointment; and

(3) the powers to be exercised by the surrogate guardian.

(b) Service. The petition for appointment of a surrogate guardian shall be served on all interested persons and the ward, unless the ward is a minor.

(c) Oath. The surrogate guardian must file with the court an oath swearing or affirming that the surrogate guardian will faithfully perform the duties delegated.

(d) Termination. Prior to the expiration of the period granted by court order, the guardian may terminate the authority of the surrogate guardian by filing a written notice of the termination with the court and serving it on the surrogate guardian.

Committee Notes

Rule History

2006 Revision: New rule.

2008 Revision: Committee notes revised.

Statutory References

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

§ 744.442, Fla. Stat. Delegation of authority.

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 temporary 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.

2016 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.

§ 744.2005, Fla. Stat. Order of appointment.

Rule References

Fla. Prob. R. 5.600 Oath.

Fla. Prob. R. 5.690 Initial guardianship report.

RULE 5.649. GUARDIAN ADVOCATE

(a) Petition for Appointment of Guardian Advocate. A petition to appoint a guardian advocate for a person with a developmental disability may be executed by an adult person who is a resident of this state. The petition must be verified by the petitioner and must state:

(1) the name, age, and present address of the petitioner and the petitioner's relationship to the person with a developmental disability;

(2) the name, age, county of residence, and present address of the person with a developmental disability;

(3) that the petitioner believes that the person needs a guardian advocate and the factual information on which the belief is based;

(4) the exact areas in which the person lacks the ability to make informed decisions about the person's care and treatment services or to meet the essential requirements for the person's physical health or safety;

(5) the legal disabilities to which the person is subject;

(6) if authority is sought over any property of the person, a description of that property and the reason why management or control of that property should be placed with a guardian advocate;

(7) the name of the proposed guardian advocate, the relationship of the proposed guardian advocate to the person with a developmental disability, the relationship of the proposed guardian advocate with the providers of health care services, residential services, or other services to the person with developmental disabilities, and the reason why the proposed guardian advocate should be appointed. If a willing and qualified guardian advocate cannot be located, the petition must so state;

(8) whether the petitioner has knowledge, information, or belief that the person with a developmental disability has executed a designation of health case surrogate or other advance directive under chapter 765, Florida Statutes, or a durable power of attorney under chapter 709, Florida Statutes, and if the person with a development disability has executed any of the foregoing documents, an explanation as to why the documents are insufficient to meet the needs of the individual;

(9) whether the petitioner has knowledge, information, or belief that the person with a developmental disability has a preneed guardian designation;

(10) whether authority is sought to seek periodic support of the person with a developmental disability; and

(11) whether the person with a developmental disability uses assistance to exercise the rights of the person, including, but not limited to, supported decisionmaking agreements, and if so, why the assistance is inappropriate or insufficient to allow the person to independently exercise the person's rights.

(b) Notice.

(1) Notice of the filing of the petition must be given to the person with a developmental disability, both verbally and in writing, in the language of the person and in English. Notice must also be given to the person with a developmental disability's next of kin, any designated health care surrogate, an agent designated in a durable power of attorney, and any other persons as the court may

direct. The petition to appoint a guardian advocate must be served with the notice.

(2) The notice must state that a hearing will be held to inquire into the capacity of the person with a developmental disability to exercise the rights enumerated in the petition. The notice must also state the date of the hearing on the petition.

(3) The notice must state that the person with a developmental disability has the right to be represented by counsel of the person's own choice and, the court must initially appoint counsel.

(c) Counsel. Within 3 days after a petition has been filed, the court must appoint an attorney to represent a person with a developmental disability who is the subject of a petition to appoint a guardian advocate. The person with a developmental disability may substitute the person's own attorney for the attorney appointed by the court.

(d) Order. If the court finds the person with a developmental disability requires the appointment of a guardian advocate, the order appointing the guardian advocate must contain findings of facts and conclusions of law, including:

(1) the nature and scope of the person's inability to make decisions;

(2) the exact areas in which the person lacks ability to make informed decisions about care and treatment services or to meet the essential requirements for the individual's physical health and safety;

(3) if any property of the person is to be placed under the management or control of the guardian advocate, a description of that property, any limitations as to the extent of such management or control, and the reason why management or control by the guardian advocate of that property is in the best interest of the person;

(4) if the person has executed a designation of health care surrogate, other advance directive, or durable power of attorney, a determination as to whether the documents sufficiently address the needs of the person and a finding that the advance directive or durable power of attorney does not provide an alternative to the appointment of a guardian advocate that sufficiently addresses the needs of the person with a developmental disability;

(5) if a durable power of attorney exists, the powers of the agent, if any, that are suspended and granted to the guardian advocate;

(6) if an advance directive exists and the court determines that the appointment of a guardian advocate is necessary, the authority, if any, the guardian advocate exercises over the health care surrogate;

(7) if the person may exercise rights with assistance, and the rights for which the person lacks decisionmaking ability;

(8) the specific legal disabilities to which the person with a developmental disability is subject;

(9) the name of the person selected as guardian advocate; and

(10) the powers, duties, and responsibilities of the guardian advocate, including bonding of the guardian advocate as provided by law.

(e) Issuance of Letters. After compliance with all of the foregoing, letters of guardian advocacy must be issued to the guardian advocate.

Committee Notes

Rule History

2008 Revision: New rule.

2013 Revision: New subdivisions (a)(6) and (d)(3) added to address situations in which the guardian advocate will have authority over the property of the person with a developmental disability. New subdivision (e) added to provide for the issuance of letters of guardian advocacy. Editorial changes to subdivisions (a)(7) and (b)(3). Editorial changes to conform to the court's guidelines for rules submissions as set forth in AOSC06-14.

2019 Revision: Subdivisions (b)(1) and (d)(5) amended to change "attorney-in-fact" to "agent" to be consistent with chapter 709, Florida Statutes. Committee notes updated to reflect the legislative amendments to chapter 709, Florida Statutes.

2020 Revision: Amends subdivision (a)(8) to address the Judicial Management Council Guardianship Workgroup Final Report dated June 15, 2018, Focus Area 1, Recommendation 3, by requiring an explanation if there are less restrictive alternatives to guardianship, but they are not sufficient to meet the needs of the person with a developmental disability. Adds a new subdivision (a)(9) to address the Judicial Management Council Guardianship Workgroup Final Report dated June 15, 2018, Focus Area 1, Recommendation 4, by requiring a statement of the petitioner's knowledge of any preneed guardian designation. Committee notes revised.

2023 Revision: Subdivision (a)(10) added to address statutory changes to sections 393.12(2)(b) and (3)(b), Florida Statutes. Committee notes revised.

2024 Revision: Subdivision (a)(11) added to address statutory changes to sections 393.12(3)(a) and 393.12, Florida Statutes. Subdivision (d)(7) added to address statutory changes to sections 393.12(2)(a), Florida Statutes. Committee notes revised.

Statutory References

§ 393.063(9), Fla. Stat. Definitions.

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

§§ 709.2101–709.2402, Fla. Stat. Florida Power of Attorney Act.

§ 709.2109, Fla. Stat. Termination or suspension of power of attorney or agent's authority.

§ 709.2209, Fla. Stat. Supported decisionmaking agreements.

§ 744.3045, Fla. Stat. Preneed guardian.

§ 765.101, Fla. Stat. Definitions.

§ 765.104, Fla. Stat. Amendment or revocation.

§ 765.202, Fla. Stat. Designation of a health care surrogate.

§ 765.204, Fla. Stat. Capacity of principal; procedure.

§ 765.205(3), Fla. Stat. Responsibility of the surrogate.

§ 765.302, Fla. Stat. Procedure for making a living will; notice to physician.

§ 765.401, Fla. Stat. The proxy.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.540 Hearings.

Fla. Prob. R. 5.681 Restoration of rights of person with developmental disability.

RULE 5.650. RESIGNATION OR DISQUALIFICATION OF GUARDIAN; APPOINTMENT OF SUCCESSOR

(a) Resignation and Petition for Discharge. A guardian seeking to resign must file a resignation and petition for discharge.

(b) Contents. The resignation and petition for discharge must state:

(1) that the guardian wishes to resign and be relieved of all duties as guardian:

(2) the amount of compensation to be paid to the guardian and to the attorneys, accountants, or other agents employed by the guardian; and

(3) the names and addresses of the successor guardian and the successor guardian's attorney, or that a successor guardian has not yet been appointed or duly qualified.

(c) Final Report. A resigning guardian of the property must 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 assets to be turned over to the successor guardian.

(d) Notice. A notice must be served stating that:

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

(2) any objection to the resignation, petition for discharge, or final report must be filed within 30 days from the date of service of the petition for discharge; and

(3) within 90 days after filing of the objection, a notice of hearing must be served or the objection is abandoned.

(e) Service. The resignation, petition for discharge, final report, and notice of resignation and petition for discharge must be served on the ward, any surety on the guardian's bond, any successor guardian, and other persons as the court may direct.

(f) Objections. Objections must be in the form and be filed within the time set forth in the notice of resignation and petition for discharge. The objections must be served by the objector on the

ward, all guardians, any surety on the guardian's bond, and any successor guardian.

(g) Disposition of Objections. Any interested person may set a hearing on the objections. Notice of the hearing must be served on the guardian, the successor guardian, if any, 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 guardian's resignation must not be accepted and the guardian must not be discharged until all objections have been withdrawn, abandoned, or judicially resolved and a successor guardian has been appointed and duly qualified. After all objections have been withdrawn, abandoned, or judicially resolved, if the court is satisfied that the resigning guardian has faithfully discharged the duties of the guardianship and the interests of the ward are protected, and the resigning guardian of the property has delivered the assets of the ward, all guardianship records, and all money due to the ward from the guardian to the remaining or successor guardian, the court must enter an order accepting resignation of guardian and granting discharge.

(i) Disqualification. Any guardian who is improperly appointed, or who becomes disqualified to act after appointment, must immediately file a resignation and petition for discharge and proceed in accordance with this rule.

(j) Nonresident Guardians. Nonresident guardians appointed before October 1, 1989, are not automatically disqualified to serve and are not required to resign and initiate their own removal.

(k) Guardian Advocates. This rule applies to guardian advocates, except that a final report is required of a guardian advocate only if the guardian advocate's authority included the management of the property of the person with a developmental disability.

Committee Notes

Rule History

1975 Revision: Substantially the same as sections 744.467 and 744.471, Florida Statutes, with editorial changes.

1977 Revision: No change in rule. Change in committee note to conform to statutory renumbering.

1988 Revision: Editorial changes in (a). Text of rule 5.590 inserted in (b). Editorial change in (c). Captions added to subdivisions. Committee notes revised. Citation form changes in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Substantial revision of entire rule to harmonize with procedure for termination of guardianship under rules 5.670 and 5.680. Subdivision (k) transferred from temporary emergency rule 5.800.

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

2007 Revision: Subdivision (i) deleted because right of waiver is substantive. Subsequent subdivisions relettered.

2008 Revision: Subdivision (k) added to include guardian advocates. Committee notes revised.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

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

§ 744.102(11), Fla. Stat. Definitions.

§ 744.3085, Fla. Stat. Guardian advocates.

§ 744.467, Fla. Stat. Resignation of guardian.

§ 744.471, Fla. Stat. Appointment of successor.

Rule References

Fla. Prob. R. 5.040 Notice.

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. 5.649 Guardian advocate.

Fla. Prob. R. 5.681 Restoration of rights of person with developmental disability.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.660. PROCEEDINGS FOR REMOVAL OF GUARDIAN

(a) Notice. Proceedings for removal of a guardian may be instituted by a court, by any surety or other interested person, or by the ward, and formal notice of the petition for removal of a guardian must be served on all guardians, other interested persons, next of kin, and the ward. The pleading must state with particularity the reasons why the guardian should be removed.

(b) Accounting. A removed guardian must file with the court an accounting for the guardianship within 20 days after the guardian's removal. The accounting must be served on the successor guardian and the ward, unless the ward is a minor or has been determined to be totally incapacitated.

(c) Transfer of Property and Records. The removed guardian (or the guardian's heirs, personal representative, or surety) must turn over all the property of the ward in the removed

guardian's control and all guardianship records to the duly qualified successor. The successor guardian must, or the ward may, demand of the removed guardian (or the guardian's heirs, personal representative, or surety) all of those items.

(d) Failure to Comply. If a removed guardian fails to file a true, complete, and final accounting for the guardianship or to turn over to the successor all property of the ward in the removed guardian's control and all guardianship records, the court must issue a show-cause order.

(e) Guardian Advocates. Subdivisions (b) through (d) of this rule must apply to guardian advocates only to the extent that the guardian advocate was granted authority over the property of the person with a developmental disability.

Committee Notes

Rule History

1977 Revision: No change in rule. Change in committee notes to conform to statutory renumbering.

1980 Revision: Subdivision (a) amended to specifically authorize any guardian or next of kin to file the petition and to require formal notice in conformity with rule 5.630(b).

1984 Revision: Subdivision (b) amended to conform to statute. Editorial changes and committee notes revised.

1988 Revision: Subdivision (a) rewritten for clarity. Language in (b) deleted as surplusage. Editorial change in caption of (c). Committee notes revised. Citation form change in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Subdivision (a) amended to require that the petition allege specific reasons why the guardian should be removed

and to require service of the petition on the ward. Otherwise, editorial changes in all subdivisions.

1992 Revision: Citation form changes in committee notes.

2006 Revision: Requirement in (b) to serve minors deleted to conform to 2006 amendment to section 744.511, Florida Statutes.

2008 Revision: Subdivision (e) added to include guardian advocates. Committee notes revised.

2012 Revision: Committee notes revised.

2013 Revision: Subdivision (b) revised to conform to section 744.511, Florida Statutes. Committee notes revised. Editorial changes to conform to the court's guidelines for rules submissions as set forth in AOSC06-14.

2026 Revision: Committee notes revised.

Statutory References

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

§ 744.3085, Fla. Stat. Guardian advocates.

§ 744.474, Fla. Stat. Reasons for removal of guardian.

§ 744.477, Fla. Stat. Proceedings for removal of a guardian.

§ 744.511, Fla. Stat. Accounting upon removal.

§ 744.514, Fla. Stat. Surrender of property upon removal.

§ 744.517, Fla. Stat. Proceedings for contempt.

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.649 Guardian advocate.

Fla. R. Gen. Prac. & Jud. Admin. 2.420 Public access to and protection of judicial branch records.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

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 must 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 must 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 must publish a notice as required by law, that states:

(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 must be in writing and must 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 must 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 must be served or the objection is abandoned.

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

(f) Objections. Objections must be in the form and be filed within the time set forth in the notice of petition for discharge. The objections must 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 must 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 must 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.

2016 Revision: Updated statutory references. Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

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

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

§ 744.1096, Fla. Stat. Domicile of ward.

§ 744.1097, Fla. Stat. Venue.

§ 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.

RULE 5.680. TERMINATION OF GUARDIANSHIP

(a) Petition for Discharge. When the ward has become sui juris, has terminated a voluntary guardianship, has been restored to capacity, has had all rights restored, or has died, or when the guardian has been unable to locate the ward after diligent search, or, for a guardian of the property, when the property subject to the guardianship has been exhausted, the guardian must file a petition for discharge. A guardian of the person is discharged without further proceeding on filing a certified copy of the ward's death certificate.

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

(1) the reason for termination of the guardianship;

(2) that the guardian has fully administered the guardianship; and

(3) the amount of unpaid and anticipated costs and fees to be paid to the guardian and to the attorneys, accountants, or other agents employed by the guardian.

(c) Final Report. The guardian of the property must promptly file a final report. If the ward has died, the guardian must file the report no later than 45 days after the guardian has been served with letters of administration, letters of curatorship, or an order of summary administration. The report must show receipts, disbursements, amounts reserved for unpaid and anticipated disbursements, costs, and fees, including the amounts set forth in subdivision (b)(3), 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 person entitled to them.

(d) Notice. A notice must be served stating:

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

(2) that any objection to the final report or the petition for discharge must be filed within 30 days from the date of service of the petition for discharge; and

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

(e) Service. The guardian applying for discharge must serve the petition for discharge and final report on the ward, on the personal representative of a deceased ward, or if there are no assets justifying qualification of a personal representative for the estate of a deceased ward, on the known next of kin of the deceased ward, or other persons as the court may direct; provided however, that a guardian of the property who is subsequently appointed personal representative must serve a copy of the petition for discharge and final report on all beneficiaries of the ward's estate.

(f) Objections. All persons served have 30 days to file objections to the petition for discharge and final report. The objections must state with particularity the items to which the objections are directed and must state the grounds on which the objections are based. The objections must be served by the objector on the guardian. Any interested person may set a hearing on the objections. Notice of the hearing must be served on the 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. The guardian may not be discharged until all objections have been withdrawn, abandoned, or judicially resolved, and the petition for discharge of the guardian is granted by the court.

(g) Discharge. The guardian may not be discharged until all objections are withdrawn, abandoned, or judicially resolved. After all objections are withdrawn, abandoned, or judicially resolved, and if it appears that the guardian has paid all amounts reserved to the

persons entitled to them and has made full and complete distribution of the ward's assets to the persons entitled to them and has otherwise faithfully discharged the duties of the guardian, the court must grant the petition for discharge and enter an order of discharge. If objections are filed and are not withdrawn, abandoned, or judicially resolved, the court must conduct a hearing in the same manner as for a hearing on objections to annual guardianship plans. After hearing, if the court is satisfied that the guardian has faithfully discharged the duties of the guardianship and the interests of the ward are protected, and the guardian has rendered a complete and accurate final report and has delivered the assets of the ward to the person entitled to them, the court must enter an order of discharge.

Committee Notes

Rule History

1975 Revision: Implements sections 744.527 and 744.531, Florida Statutes, and also requires the guardian applying for discharge to do so by filing a petition for discharge and provides the procedure pertaining thereto.

1977 Revision: No change in rule. Change in committee note to conform to statutory renumbering.

1988 Revision: Captions added to subdivisions. Committee notes revised. Citation form changes in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Substantial revision of entire rule to harmonize with procedure for discharge of personal representatives under rules 5.400 and 5.401.

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

1996 Revision: Editorial changes to clarify that all anticipated costs and fees should be shown on final report and thereafter paid prior to transfer of assets and discharge of guardian.

2003 Revision: Subdivision (a) amended to reflect addition of rule 5.552 dealing with voluntary guardianship of property. Committee notes revised.

2006 Revision: Subdivision (c) amended to conform to 2006 amendments to section 744.527, Florida Statutes. Subdivision (h) deleted as unnecessary because substantive right of waiver is provided by section 731.302, Florida Statutes.

2008 Revision: Reference to restoration of rights added in subdivision (a). Committee notes revised.

2012 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

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

§ 744.521, Fla. Stat. Termination of guardianship.

§ 744.527, Fla. Stat. Final reports and application for discharge; hearing.

§ 744.528, Fla. Stat. Discharge of guardian named as personal representative.

§ 744.531, Fla. Stat. Order of discharge.

§ 744.534, Fla. Stat. Disposition of unclaimed funds held by guardian.

Rule References

Fla. Prob. R. 5.040 Notice.

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

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.552 Voluntary guardianship of property.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.681 Restoration of rights of person with developmental disability.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.681. RESTORATION OF RIGHTS OF PERSON WITH DEVELOPMENTAL DISABILITY

(a) Suggestion of Restoration of Rights. A suggestion of restoration of rights of a person with a developmental disability may be executed by any interested person, including the person with a developmental disability. The suggestion must contain:

(1) a statement that the person with a developmental disability is capable of exercising some or all of the rights that were granted to the guardian advocate;

(2) if other assistance, including supported decisionmaking agreements, is an alternative to the continued appointment of a guardian advocate;

(3) evidentiary support for the filing as provided by law; and

(4) the name and address of the attorney representing the person with a developmental disability, if any, known to the petitioner.

(b) Counsel. Within 3 days after the suggestion has been filed, the court must appoint an attorney to represent a person with a developmental disability who is not then represented by counsel as stated in the suggestion.

(c) Notice. On filing of the suggestion, if the name and address of the attorney representing the person with a developmental disability is listed in the suggestion, or on the appointment of counsel, if no name and address of an attorney are listed in the suggestion, the clerk must immediately send notice of the filing of the suggestion, together with the suggestion, to the person with a developmental disability, the person's guardian advocate, the person's attorney, the attorney for the guardian advocate, if any, and any other interested person as directed by the court. The notice must contain a statement that all objections to the suggestion must be filed within 20 days after service of the notice. Formal notice must be served on the guardian advocate. Informal notice may be served on the other persons. Notice need not be served on the petitioner. The clerk must file proof of service.

(d) Objections. Any objection must be in writing and must state with particularity each item to which the objection is directed and the grounds on which the objection is based. The objector must serve notice of hearing on the objection and the objection on the person with the developmental disability, the person's attorney, the person's guardian advocate, the attorney for the guardian advocate, if any, the next of kin of the person with a developmental disability, and any other interested persons as directed by the court.

(e) Order. The court must enter an order denying the suggestion or restoring all or some of the rights that were granted to the guardian advocate. If only some rights are restored to the person with a developmental disability, the order must state which rights are restored and amend the letters of guardian advocacy accordingly. The court need not hold a hearing before entering an order restoring rights if no objections are filed and the court is satisfied with the evidentiary support for restoration supplied by the petitioner.

(f) Additional Requirements. If personal rights are restored, the guardian advocate must file an amended plan within 60 days after the order restoring rights. If all property rights are restored, a guardian advocate previously granted management or

control over property must file a final accounting within 60 days after the order restoring rights. Any amended plan and accounting must be promptly served on the person with a developmental disability and the person's attorney.

Committee Notes

Rule History

2008 Revision: New rule.

2013 Revision: Substantial revisions to reflect the designation of the pleading as a Suggestion of Restoration of Rights; the requirement for a statement of evidentiary support, the identification and address of the attorney for the person with a developmental disability; procedures for service of objections; clarification of requirements following a restoration of rights; and editorial changes. Editorial changes to conform to the court's guidelines for rule submissions as set forth in AOSC06-14.

2019 Revision: Committee notes updated to reflect the legislative amendments to chapter 709, Florida Statutes.

2024 Revision: Subdivision (a)(2) amended, and subdivision (a)(4) added to reflect the legislative change to section 744.464, Florida Statutes, for the restoration of rights. Committee notes revised.

Statutory References

§ 393.063(9), Fla. Stat. Definitions.

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

§§ 709.2101–709.2402, Fla. Stat. Florida Power of Attorney Act.

§ 709.2209, Fla. Stat. Supported decisionmaking agreements.

§ 744.464, Fla. Stat. Restoration to capacity.

§ 765.101, Fla. Stat. Definitions.

§ 765.104, Fla. Stat. Amendment or revocation.

§ 765.202, Fla. Stat. Designation of a health care surrogate.

§ 765.204, Fla. Stat. Capacity of principal; procedure.

§ 765.205(3), Fla. Stat. Responsibility of the surrogate.

§ 765.302, Fla. Stat. Procedure for making a living will; notice to physician.

§ 765.401, Fla. Stat. The proxy.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.540 Hearings.

Fla. Prob. R. 5.541 Recording of hearings.

Fla. Prob. R. 5.680 Termination of guardianship.

RULE 5.685. DETERMINATION REGARDING ALTERNATIVES TO GUARDIANSHIP

(a) Reporting by Guardian. The guardian shall promptly file a report attaching a copy of a final order or judgment that determines the validity of a ward's durable power of attorney, trust, or trust amendment.

(b) Petition. At any time after the appointment of a guardian, the guardian, the ward, the ward's attorney, if any, or any other interested person may file a verified petition stating that there is an alternative to guardianship that will sufficiently address the problems of the ward.

(c) Contents of Petition. The petition to determine alternatives to guardianship shall state:

(1) the petitioner's interest in the proceeding; and

(2) the facts constituting the basis for the relief sought and that the proposed alternative to guardianship will sufficiently address the problems of the ward and is in the ward's best interest.

(d) Service. The petition shall be served on the guardian, the ward, the ward's attorney, if any, those interested persons who have filed requests for notices and copies of pleadings, and such other persons as the court may direct.

(e) Order. The order shall specify whether there is an alternative to guardianship that will sufficiently address the problems of the ward, the continued need for a guardian, and the extent of the need for delegation of the ward's rights.

Committee Notes

Rule History

2006 Revision: New rule.

Statutory References

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

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

RULE 5.690. INITIAL GUARDIANSHIP REPORT

(a) Contents and Filing. An initial guardianship report must be filed within 60 days after the issuance of letters of guardianship. The guardian of the property must file the initial guardianship report consisting of the verified inventory. The guardian of the person must file the initial guardianship report consisting of the guardianship plan.

(b) Service. The initial guardianship report must be served on the ward, unless the ward is a minor under the age of 14 years

or is totally incapacitated, and the attorney for the ward, if any. With approval of the court, service on the ward may be accomplished by serving the attorney for the ward.

Committee Notes

The committee recognizes the conflict between this rule and section 744.362, Florida Statutes, which requires the filing of the initial guardianship report (which includes the inventory) within 60 days after appointment. The committee believes this provision, which attempts to regulate when a document must be filed with the court, is procedural and that a guardian may not receive letters of guardianship empowering the guardian to act contemporaneously with the appointment. Therefore, the issuance of letters is a more practical time from which to measure the beginning of the time period for the accomplishment of this act.

In the event the guardian of the property and the guardian of the person are not the same entity or person, they shall make a good faith effort to jointly file the initial guardianship report.

Rule History

1991 Revision: New rule.

1992 Revision: Addition of phrase in subdivision (b) to conform to 1992 amendment to section 744.362(1), Florida Statutes. Citation form changes in committee notes.

2012 Revision: Committee notes revised.

2016 Revision: Committee notes revised.

2026 Revision: Committee notes revised.

Statutory References

§ 744.362, Fla. Stat. Initial guardianship report.

§ 744.363, Fla. Stat. Initial guardianship plan.

§ 744.365, Fla. Stat. Verified inventory.

§ 744.3701, Fla. Stat. Inspection of report.

§ 744.384, Fla. Stat. Subsequently discovered or acquired property.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

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

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.620 Inventory.

Fla. Prob. R. 5.700 Objection to guardianship reports.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.695. ANNUAL GUARDIANSHIP REPORT

(a) Contents and Filing.

(1) *Guardian of the Person.* Unless the court requires reporting on a calendar-year basis, the guardian of the person must file an annual guardianship plan within 90 days after the last day of the anniversary month in which the letters of guardianship were signed. The plan must include the mailing address, phone number, and e-mail address of the guardian, and:

(A) the residence address of an individual guardian; or

(B) the office address of a corporate or public guardian.

The plan must cover the coming fiscal year ending on the last day of such anniversary month. If the court requires calendar-year reporting, the guardianship plan for the forthcoming year must be filed on or before April 1 of each year.

(2) *Guardian of the Property.* Unless the court requires or authorizes reporting on a fiscal year basis, the guardian of the property must file an annual accounting on or before April 1 of each year. The plan must include the mailing address, phone number, and e-mail address of the guardian, and:

(A) the residence address of an individual guardian; or

(B) the office address of a corporate or public guardian.

The annual accounting must cover the preceding annual accounting period. If the court requires or authorizes reporting on a fiscal year basis, the annual accounting must be filed on or before the first day of the fourth month after the end of the fiscal year.

(b) Service. The annual plan and accounting must be served on the ward, unless the ward is a minor or is totally incapacitated, and the attorney for the ward, if any. With the approval of the court, service on the ward may be accomplished by serving the attorney for the ward. The guardian must serve copies on other persons as the court may direct.

Committee Notes

The annual guardianship report consists of the annual plan for the guardian of the person and the annual accounting for the guardian of the property.

For annual guardianship reports regarding minors, see rule 5.555.

With approval of the court, service on the ward may be accomplished by service on the attorney for the ward, if any. The

committee was concerned that actual service on a ward of the accounting or guardianship plan may give uninterested persons access to financial or personal information to the detriment of the ward. The committee believes that under such circumstances, the guardian of the property could seek an order under section 744.371(5), Florida Statutes, even if the ward's circumstances were set out in detail in a pleading other than the annual guardianship report. Such court order may be sought in appropriate circumstances at the time of the initial hearing to determine incapacity.

Rule History

1975 Revision: Substantially the same as section 744.427(1), (2), and (4), Florida Statutes, and section 744.437, Florida Statutes, with editorial changes and providing for the waiving, by a ward who has become sui juris or by the personal representative of a deceased ward, of the filing of an annual accounting. The rule requires the guardian of the property of a ward to appear before the court at the time he files his annual accounting or at such time the court shall determine in order that the court may inquire as to any matter relating to the physical and financial well-being of the ward. This appears to be in conflict with section 744.437, Florida Statutes, which refers to "every guardian" but in the same sentence it refers to "at the time the guardian files his annual return" and only the guardian of the property is required to file an annual accounting.

1977 Revision: No change in rule. Change in committee note to conform to statutory renumbering.

1980 Revision: Subdivision (e) amended to avoid conflict with statutory changes in section 744.437, Florida Statutes (1979).

1988 Revision: Matter in (b) deleted; covered in sections 744.427(2) and 744.434, Florida Statutes. Subdivision (c) deleted; covered in section 744.427(4), Florida Statutes. Captions added to subdivisions. Committee notes revised. Citation form changes in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Substantial changes and rule renumbered.

1992 Revision: Addition of language in subdivisions (a)(1) and (a)(2) to implement 1992 amendments to sections 744.367(1) and (2), Florida Statutes. Committee notes revised. Citation form changes in committee notes.

2006 Revision: Requirement in (b) to serve minors age 14 and above deleted to conform to amendment to section 744.367(3), Florida Statutes. Committee notes revised.

2012 Revision: Committee notes revised.

2015 Revision: Subdivision (a)(1) amended to conform to statutory changes in section 744.367(1), Florida Statutes. Committee notes revised.

2017 Revision: Subdivision (a)(1) amended to conform to statutory changes regarding reporting deadline in section 744.367(1), Florida Statutes. Committee notes revised.

2019 Revision: Subdivisions (a)(1) and (a)(2) amended to require guardian's contact information.

2026 Revision: Committee notes revised.

Statutory References

§ 744.367, Fla. Stat. Duty to file annual guardianship report.

§ 744.3675, Fla. Stat. Annual guardianship plan.

§ 744.3678, Fla. Stat. Annual accounting.

§ 744.3685, Fla. Stat. Order requiring guardianship report; contempt.

§ 744.3701, Fla. Stat. Inspection of report.

§ 744.371, Fla. Stat. Relief to be granted.

§ 744.3735, Fla. Stat. Annual appearance of the guardian.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

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

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.552 Voluntary guardianship of property.

Fla. Prob. R. 5.555 Guardianships of minors.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.700 Objection to guardianship reports.

Fla. Prob. R. 5.800(b) Application of revised chapter 744 to existing guardianships.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service.

RULE 5.696. GUARDIAN ACCOUNTING

(a) Applicability. This rule applies to all guardian accountings required under Chapter 744, Florida Statutes, other than a simplified accounting permitted under section 744.3679, Florida Statutes.

(b) Contents. A guardian accounting shall include:

(1) a statement of the starting balance of assets on hand at the beginning of the accounting period which shall be the ending balance of the preceding accounting, or if none, the value of assets on the inventory;

(2) a full and correct account of the receipts and disbursements of all of the ward's property over which the guardian has control since the date of the last accounting or, if none, from the date of issuance of letters of guardianship;

(3) a schedule of assets at the end of the accounting period; and

(4) in the case of annual accountings, a copy of the annual or year-end statement of all of the ward's cash accounts from each of the institutions where the cash is deposited.

(c) Accounting Standards. The following standards are required for the accounting of all transactions occurring on or after January 1, 2017:

(1) Accountings shall be stated in a manner that is understandable to persons who are not familiar with practices and terminology peculiar to the administration of guardianships.

(2) The accounting shall begin with a concise summary of its purpose and content.

(3) The accounting shall contain sufficient information disclosing all significant transactions affecting administration during the accounting period.

(4) The accounting shall contain 2 values in the schedule of assets at the end of the accounting period, the asset acquisition value or carrying value, and estimated current value.

(5) Gains and losses incurred during the accounting period shall be shown separately in the same schedule.

(d) Accounting Format. A model format for an accounting is attached to this rule as Appendix A.

(e) Verification. All accountings shall be verified by the guardian filing the accounting.

(f) Substantiating Documents. Unless otherwise ordered by the court, the guardian need not file the documents substantiating the guardian accounting. Upon reasonable written request, the guardian of the property shall make the substantiating documents available for examination to persons entitled to receive or inspect the guardian accounting.

(g) Interim Inspection of Records. Upon reasonable written request and notice, the guardian of the property shall make all material financial records pertaining to the guardianship available for inspections to those persons entitled to receive or inspect the guardian accounting.

Committee Notes

The purpose of this substantial revision is for guardian accountings to conform to rule 5.346 and the Fiduciary Accounting Principles and Model Formats and commentaries incorporated into rule 5.346. As set forth in subdivision (b)(1), the starting balance shall be the ending balance of the preceding accounting, or if none, the value of assets on the inventory.

Attached, as Appendix A, is a model accounting format which is only a suggested form.

Rule History

1991 Revision: New rule.

1992 Revision: Citation form changes in committee notes.

2010 Revision: Editorial change in (b) to delete redundant language.

2012 Revision: Committee notes revised.

2013 Revision: Subdivision (b) revised to substitute "documents" for "papers." Committee notes revised. Editorial changes to conform to the court's guidelines for rule submissions as set forth in AOSC06-14.

2016 Revision: Substantial rule revision. Committee notes revised. Appendix A adopted.

Statutory References

§ 744.367, Fla. Stat. Duty to file annual guardianship report.

§ 744.3678, Fla. Stat. Annual accounting.

§ 744.3701, Fla. Stat. Inspection of report.

§ 744.3735, Fla. Stat. Annual appearance of the guardian.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

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

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.346 Fiduciary Accounting.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.695 Annual guardianship report.

Fla. Prob. R. 5.700 Objection to guardianship reports.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service of pleadings and documents.

APPENDIX A

IN THE CIRCUIT COURT FOR _____ COUNTY, FLORIDA

IN RE: GUARDIANSHIP OF

File Number: _____

_____

_____

Division: _____

_____ ACCOUNTING OF GUARDIAN(S)

From: _____, _____, Through: _____, _____

_____

The purpose of this accounting is to report the assets on hand at the beginning of the accounting period, all transactions that have occurred during the period covered by the accounting, and the assets that remain on hand at the end of the accounting period. It consists of a SUMMARY sheet and Schedule A showing all Receipts, Schedule B showing all Disbursements, Schedule C showing all Capital Transactions and Adjustments (the effect of which are also reflected in other schedules, if appropriate), and Schedule D showing assets on hand at the end of the accounting period.

Under penalties of perjury, the undersigned guardian(s) declare(s) that I (we) have read and examined this accounting and that the facts and figures set forth in the Summary and the attached Schedules are true, to the best of my (our) knowledge and belief, and that it is a complete report of all cash and property transactions and of all receipts and disbursements by me (us) as guardian(s) of _____, the ward, from, _ _____ through _____, _____.

Signed on _____, _____.

Attorney for Guardian: Guardian:

_____ _____

Attorney

_____
Name

_____
_____
(address)
Telephone: _____
E-mail address: _____
Florida Bar No.: _____

_____
_____
(address)
[Print or Type Names Under All Signature Lines]

IN THE CIRCUIT COURT FOR _____ COUNTY, FLORIDA

IN RE: GUARDIANSHIP OF

File Number: _____

_____

_____

Division: _____

_____ ACCOUNTING OF GUARDIAN(S)

From:_____, _____, Through: _____, _____

SUMMARY

		Estimated Current Value	Carrying Value
I.	Starting Balance Assets on Hand at Beginning of Accounting Period		$ _____
II.	Receipts Schedule A:		$ _____
III.	Disbursements Schedule B:		$ _____
IV.	Capital Transactions and Adjustments Schedule C: Net Gain or (Loss)		$ _____
V.	Assets on Hand at Close of		

Accounting Period
Schedule D: Cash and Other

Assets	$ _____	$ _____

NOTE: Refer to Fla. Prob. R. 5.696.

Entries on Summary are to be taken from totals on Schedules A, B, C and D.

The Summary and Schedules A, B, C and D are to constitute the full accounting. Every transaction occurring during the accounting period should be reflected on the Schedules.

All purchases and sales, all adjustments to the asset acquisition or carrying value of any asset, and any other significant transactions that affect the property (such as stock splits) should be described on Schedule C.

_____ ACCOUNTING OF GUARDIAN(S),

GUARDIANSHIP OF _____

From: _____ , _____, Through: _____,

SCHEDULE A Receipts

Date	Brief Description of Items	Amount

NOTE: Schedule A should reflect only those items received during administration during the accounting period.

Entries involving the sale of assets or other adjustments to the asset acquisition or carrying values of assets are to be shown on Schedule C, and not on Schedule A.

_____ ACCOUNTING OF GUARDIAN(S),

GUARDIANSHIP OF _____

From: _____, _____, Through: _____,

SCHEDULE B Disbursements

Date	Brief Description of Items	Amount

NOTE: Schedule B should reflect only those items paid out during the accounting period.

Entries involving the purchase of assets or adjustments to the asset acquisition or carrying values of assets are to be shown on Schedule C, and not on Schedule B.

_____ ACCOUNTING OF GUARDIAN(S),

GUARDIANSHIP OF _____

From: _____, _____, Through: _____,

SCHEDULE C Capital Transactions and Adjustments

Date	Brief Description of Transactions	Net Gain	Net Loss

TOTAL NET GAINS AND LOSSES

NET GAIN OR (LOSS)

NOTE: Schedule C should reflect all purchases and sales of assets and any adjustments to the asset acquisition or carrying values of any assets.

Entries reflecting sales should show the asset acquisition or adjusted carrying values, the costs and expenses of the sale, and the net proceeds received. The net gain or loss should be extended in the appropriate column on the right side of Schedule C.

Entries reflecting purchases should reflect the purchase price, any expenses of purchase or other adjustments to the purchase price, and the total amount paid. Presumably no gain or loss would be shown for purchases.

Entries reflecting adjustments in capital assets should explain the change (such as a stock split) and the net gain or loss should be shown in the appropriate column on the right side of Schedule C.

The NET gain or loss should be entered in the carrying value column of the Summary.

_____ ACCOUNTING OF GUARDIAN(S),

GUARDIANSHIP OF _____

From: _____, _____, Through:_____,

SCHEDULE D Assets on Hand at Close of Accounting Period

(Indicate where held and legal description, certificate numbers, or other identification.)

	Estimated Current Value	Carrying Value

ASSETS OTHER THAN CASH:

OTHER ASSETS TOTAL

CASH:

CASH TOTAL $ _____

TOTAL ASSETS (must agree with the Total for Item V on Summary)

NOTE: Schedule D should be a complete list of all assets on hand reflecting asset acquisition or carrying values for each item, adjusted in accordance with any appropriate entries on Schedule C, and estimated current values for each item.

Current market values for any assets that are known to be different from the asset acquisition or carrying values as of the close of the accounting period should be shown in the column marked "Estimate Current Value." The total adjusted carrying value (not Current Value) must agree with the Total for Item V on Summary.

APPENDIX B

GUARDIAN ACCOUNTING PRINCIPLES

I. ACCOUNTS SHOULD BE STATED IN A MANNER THAT IS UNDERSTANDABLE BY PERSONS WHO ARE NOT FAMILIAR WITH PRACTICES AND TERMINOLOGY PECULIAR TO THE ADMINISTRATION OF GUARDIANSHIPS.

Commentary: In order for an account to fulfill its basic function of communication, it is essential that it be stated in a manner that recognizes that the interested parties are not usually familiar with guardian accounts. It is neither practical nor desirable to require that accounts be tailored to meet individual disabilities of particular parties but any account should be capable of being understood by a person of average intelligence, literate in English, and familiar with basic financial terms who has read it with care and attention.

Problems arising from terminology or style are usually a reflection of the fact that people who become versed in a particular form of practice tend to forget that terms which are familiar and useful to them may convey nothing to someone else or may even be affirmatively misleading. For example, the terms "debit" and "credit" are generally incomprehensible to people with no knowledge of bookkeeping and many people who are familiar with them in other contexts would assume that in the context of guardian accounting, the receipt of an item is a "credit" to the fund rather than a "debit" to the guardian.

While the need for concise presentation makes a certain amount of abbreviation both acceptable and necessary, uncommon abbreviation of matters essential to an understanding of the account should be avoided or explained.

Print-outs from electronic accounting systems or account statements can be used as attachments to the schedules in the accounting form or to clarify the accounting. The quality of the accounts produced by these systems and account statements varies widely in the extent to which they can be understood by persons who are not familiar with them.

II. A GUARDIAN ACCOUNT SHALL BEGIN WITH A CONCISE SUMMARY OF ITS PURPOSE AND CONTENT.

Commentary: Very few people can be expected to pay much attention to a document unless they have some understanding of its general purpose and its significance to them. Even with such an understanding, impressions derived

from the first page or two will often determine whether the rest is read. The use that is made of these pages is therefore of particular significance.

The cover page should disclose the nature and function of the account. While a complete explanation of the significance of the account and the effect of its presentation upon the rights of the parties is obviously impractical for inclusion at this point, there should be at least a brief statement identifying the guardian and the subject matter, noting the importance of examining the account and giving an address where more information can be obtained.

A summary of the account shall also be presented at the outset. This summary, organized as a table of contents, shall indicate the order of the details presented in the account and shall show separate totals for the aggregate of the assets on hand at the beginning of the accounting period; transactions during the period; and the assets remaining on hand at the end of the period. Each entry in the summary shall be supported by a schedule in the account that provides the details on which the summary is based.

III. A GUARDIAN ACCOUNT SHALL CONTAIN SUFFICIENT INFORMATION TO PUT THE INTERESTED PARTIES ON NOTICE AS TO ALL SIGNIFICANT TRANSACTIONS AFFECTING ADMINISTRATION DURING THE ACCOUNTING PERIOD.

Commentary: The presentation of the information account shall allow an interested party to follow the progress of the guardian's administration of assets during the accounting period.

An account is not complete if it does not itemize, or make reference to, assets on hand at the beginning of the accounting period.

Illustration:

3.1 The first account for a guardianship may detail the items received by the guardian and for which the guardian is responsible. It must begin with the total amount on the inventory.

Transactions shall be described in sufficient detail to give the court and interested parties notice of their purpose and effect. It should be recognized that too much detail may be counterproductive to making the account understandable. In accounts dealing with extensive assets, it is usually desirable to consolidate information with attachments that show detail. For instance, where income from a number of securities is being accounted for, a statement of the total dividends received on each security with appropriate indication of changes in the number of shares held will be more readily

understandable and easier to check for completeness than a chronological listing of all dividends received.

Illustrations:

3.2 Extraordinary appraisal costs should be shown separately and explained.

3.3 Interest and penalties in connection with late filing of tax returns should be shown separately and explained.

3.4 Receipts and disbursements shall be shown on separate schedules in chronological order. The separate schedules may include totals by account, with separate ledgers for each account, such as securities or financial accounts.

3.5 Changes in asset values due to market fluctuations are not transactions and shall not be reflected as a loss or gain, but the estimated current value and carrying value shall be shown on the schedule listing assets held at the end of the accounting period.

IV. A GUARDIAN ACCOUNT SHALL CONTAIN TWO VALUES, THE ASSET ACQUISITION VALUE OR CARRYING VALUE, AND CURRENT VALUE.

Commentary: In order for transactions to be reported on a consistent basis, an appropriate carrying value for assets must be chosen and employed consistently.

The carrying value of an asset should reflect its value at the time it is acquired by the guardian. When such a value is not precisely determinable, the figure used should reflect a thoughtful decision by the guardian. Assets received in kind should be carried at their value at the time of receipt. For assets purchased during the administration of the guardianship, acquisition cost would normally be used. Use of Federal income tax basis for carrying value is acceptable when basis is reasonably representative of real values at the time of acquisition.

In the Model Account, carrying value is referred to as “guardian acquisition value.” The Model Account establishes the initial carrying value of assets as their value at inception of the guardianship for inventoried assets, date of receipt for subsequent receipts, and cost for investments.

Carrying value would not normally be adjusted for depreciation.

Except for adjustments that occur normally under the accounting system in use, carrying values should generally be continued unchanged through

successive accounts and assets should not be arbitrarily "written up" or "written down." In some circumstances, however, with proper disclosure and explanation, carrying value may be adjusted.

Illustrations:

4.1 Assets received in kind in satisfaction of a pecuniary legacy should be carried at the value used for purposes of distribution.

Illustrations:

4.2 When an asset is held under circumstances that make it clear that it will not be sold (e.g., a residence used by the ward) the guardian's estimate of value would be acceptable in lieu of an appraisal.

4.3 Considerations such as a pending tax audit or offer of the property for sale may indicate the advisability of not publishing the guardian's estimate of value. In such circumstances, a statement that value was fixed by some method such as "per company books," "formula under buy-sell agreement," or "300% of assessed value" would be acceptable, but the guardian would be expected to provide further information to interested parties upon request.

V. GAINS AND LOSSES INCURRED DURING THE ACCOUNTING PERIOD SHALL BE SHOWN SEPARATELY IN THE SAME SCHEDULE.

Commentary: Each transaction involving the sale or other disposition of securities during the accounting period shall be shown as a separate item in one combined schedule of the account indicating the transaction, date, explanation, and any gain or loss.

Although gains and losses from the sale of securities can be shown separately in accounts, the preferred method of presentation is to present this information in a single schedule. Such a presentation provides the most meaningful description of investment performance and will tend to clarify relationships between gains and losses that are deliberately realized at the same time.

Increases and decreases in value not related to a sale or other disposition are unrealized gains or losses and should not be shown as such on this schedule.

RULE 5.697. MAGISTRATES' REVIEW OF GUARDIANSHIP INVENTORIES, ACCOUNTINGS, AND PLANS

(a) General Magistrates. The court may appoint general magistrates to review guardianship inventories, accountings, and plans. General magistrates shall be members of The Florida Bar and shall continue in office until removed by the court. The order appointing a general magistrate shall be recorded. Each general magistrate shall take the oath required of officers of the court by the Florida Constitution. The oath shall be recorded before the magistrate begins to act.

(b) Special Magistrates. In connection with the court's review of guardianship inventories, accountings, and plans, the court may appoint members of The Florida Bar as special magistrates for any particular service required by the court. Special magistrates shall be governed by all laws and rules relating to general magistrates except special magistrates shall not be required to take an oath unless specifically required by the court. For good cause shown, the court may appoint a person other than a member of The Florida Bar as a special magistrate.

(c) General Powers and Duties. Every magistrate shall act under the direction of the court. Process issued by a magistrate shall be directed as provided by law. All grounds for disqualification of a judge shall apply to magistrates.

(d) Hearings. Hearings before any magistrate may be held in the county where the action is pending, or at any other place by order of the court for the convenience of the witnesses or the parties. A magistrate shall give notice of hearings to all parties. If any party fails to appear, the magistrate may proceed ex parte or may continue the hearing to a future day, with notice to the absent party. The magistrate shall proceed with reasonable diligence and the least practicable delay. Any party may apply to the court for an order directing the magistrate to accelerate the proceedings and to make a report promptly. Evidence shall be taken in writing or by electronic recording by the magistrate or by some other person under the magistrate's authority in the magistrate's presence and

shall be filed with the magistrate's report. The magistrate may examine and take testimony from the parties and their witnesses under oath, on all matters authorized by the court for review by the magistrate and may require production of all books, papers, writings, vouchers, and other documents applicable to those matters. The magistrate shall admit only evidence that would be admissible in court. The magistrate may take all actions concerning evidence that may be taken by the court.

(e) Magistrate's Report. The magistrate's report shall contain a description of the matters considered and the magistrate's conclusions and any recommendations. No part of any statement of facts, account, charge, deposition, examination, or answer used before the magistrate shall be recited. The magistrate shall be required to file a report only if a hearing is held pursuant to subdivision (d) of this rule or if specifically directed to do so by the court.

(f) Filing Report; Service; Exceptions. The magistrate shall file a report with the court and serve copies on the parties. The parties may serve exceptions to the report within 10 days from the date the report is served on them. If no exceptions are timely filed, the court shall take appropriate action on the report. All timely filed exceptions shall be heard by the court on reasonable notice by any party.

Committee Notes

Rule History

1991 Revision: This is a new rule, patterned after Florida Rule of Civil Procedure 1.490.

1992 Revision: Editorial change. Citation form change in committee notes.

2004 Revision: Change in nomenclature from "master" to "magistrate" to track similar change in the Florida Statutes.

2007 Revision: Title of rule and subdivisions (a) and (b) amended to include inventories. “Shall” substituted for “may” in last sentence of subdivision (f). Committee notes revised.

Statutory Reference

§ 744.369(2), Fla. Stat. Judicial review of guardianship reports.

Rule References

Fla. Prob. R. 5.095 General and special magistrates.

Fla. R. Civ. P. 1.490 Magistrates.

RULE 5.700. OBJECTION TO GUARDIANSHIP REPORTS

(a) Objections. The ward, or any other interested person, may file an objection to any part of a guardianship report within the time provided by law.

(b) Contents. 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.

(c) Service. The objector shall serve a copy of the objection on each guardian and on any other person as directed by the court.

Committee Notes

Rule History

1975 Revision: Substantially the same as section 744.427(3), (5), and (6), Florida Statutes, with editorial changes.

1977 Revision: No change in rule. Change in committee note to conform to statutory renumbering.

1988 Revision: Captions added to subdivisions. Committee notes revised. Citation form change in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Revised to conform with new statutory requirements.

1992 Revision: Citation form changes in committee notes.

2008 Revision: Committee notes revised.

2012 Revision: Committee notes revised.

Statutory References

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

§ 744.362, Fla. Stat. Initial guardianship report.

§ 744.363, Fla. Stat. Initial guardianship plan.

§ 744.365, Fla. Stat. Verified inventory.

§ 744.367, Fla. Stat. Duty to file annual guardianship report.

§ 744.3675, Fla. Stat. Annual guardianship plan.

§ 744.3678, Fla. Stat. Annual accounting.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

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

Fla. Prob. R. 5.060 Request for notices and copies of pleadings.

Fla. Prob. R. 5.180 Waiver and consent.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service of pleadings and documents.

RULE 5.705. PETITION FOR INTERIM JUDICIAL REVIEW

(a) Contents. A petition for interim judicial review shall be verified, state the petitioner's interest in the proceeding, state with particularity the manner in which the guardian's action or proposed action does not comply with or exceeds the guardian's authority under the guardian plan, or state that the guardian is acting in a manner contrary to section 744.361, Florida Statutes, and state why the action, proposed action, or conduct of the guardian is not in the best interest of the ward.

(b) Service. The petition shall be served by formal notice.

(c) Hearing. The petitioner or any interested person may set the matter for hearing.

(d) Expedited Proceedings. For good cause shown, the court may shorten the time for response to the formal notice and may set an expedited hearing.

Committee Notes

Rule History

1991 Revision: New rule.

2000 Revision: Subdivision (d) added to permit expedited proceedings.

2008 Revision: Committee notes revised.

2015 Revision: Subdivision (a) amended to conform to changes in sections 744.361 and 744.3715, Florida Statutes. Citation revised in committee notes. Committee notes revised.

Statutory References

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

§ 744.361, Fla. Stat. Powers and duties of guardian.

§ 744.3715, Fla. Stat. Petition for interim judicial review.

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 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 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 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).

2016 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

§§ 744.2001–744.2109, Fla. Stat. Public Guardianship Act.

Rule Reference

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

RULE 5.720. COURT MONITOR

(a) Appointment. Upon motion or inquiry by any interested person or upon its own motion, the court may appoint a court monitor in any proceeding over which it has jurisdiction.

(b) Order of Appointment. The order of appointment shall state the name, address, and phone number of the monitor and shall set forth the matters to be investigated. The order may authorize the monitor to investigate, seek information, examine documents, or interview the ward. The order of appointment shall

be served upon the guardian, the ward, and such other persons as the court may determine.

(c) Report. The monitor shall file a verified written report with the court setting forth the monitor's findings. The report shall be served on the guardian, the ward, and such other persons as the court may determine.

(d) Protection of Ward. If it appears from the monitor's report that further action by the court to protect the interests of the ward is necessary, the court shall, after a hearing with notice, enter any order necessary to protect the ward or the ward's property, including amending the plan, requiring an accounting, ordering production of assets, or initiating proceedings to remove a guardian. Notice of the hearing shall be served on the guardian, the ward, and such other persons as the court may determine.

Committee Notes

This rule applies to the non-emergency appointment of court monitors.

Rule History

2006 Revision: New rule.

2008 Revision: Editorial change in (d). Committee notes revised.

Statutory References

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

§ 744.107, Fla. Stat. Court monitors.

§ 744.3701, Fla. Stat. Inspection of report.

RULE 5.725. EMERGENCY COURT MONITOR

(a) Appointment. Upon motion or inquiry by any interested person or upon its own motion, the court may appoint a court monitor on an emergency basis without notice in any proceeding over which it has jurisdiction.

(b) Order of Appointment. The order of appointment shall specifically find that there appears to be imminent danger that the physical or mental health or safety of the ward will be seriously impaired or that the ward's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken. The scope of the matters to be investigated and the powers and duties of the monitor must be specifically enumerated in the order.

(c) Duration of Authority. The authority of a monitor expires 60 days after the date of appointment or upon a finding of no probable cause, whichever occurs first. The court may enter an order extending the authority of the monitor for an additional 30 days upon a showing that an emergency condition still exists.

(d) Report. Within 15 days after the entry of an order of appointment, the monitor shall file a verified written report setting forth the monitor's findings and recommendations. The report may be supported by documents or other evidence. The time for filing the report may be extended by the court for good cause.

(e) Review. Upon review of the report, the court shall enter an order determining whether there is probable cause to take further action to protect the person or property of the ward.

(1) If the court finds no probable cause, the court shall enter an order finding no probable cause and discharging the monitor.

(2) If the court finds probable cause, the court shall enter an order directed to the respondent stating the essential facts constituting the conduct charged and requiring the respondent to appear before the court to show cause why the court should not

take further action. The order shall specify the time and place of the hearing with a reasonable time to allow for the preparation of a defense after service of the order. A copy of the order to show cause together with the order of appointment and report of the monitor shall be served upon the guardian, the ward, the ward's attorney, if any, and the respondent.

(f) Protecting Ward. If at any time prior to the hearing on the order to show cause the court enters a temporary injunction, a restraining order, an order freezing assets, an order suspending the guardian or appointing a guardian ad litem, or any other order to protect the physical or mental health, safety, or property of the ward, the order or injunction shall be served on the guardian, the ward, the ward's attorney, if any, and such other persons as the court may determine.

Committee Notes

Rule History

2006 Revision: New rule.

2008 Revision: Committee notes revised.

2010 Revision: Editorial change in (c).

Statutory references

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

§ 744.1075, Fla. Stat. Emergency court monitor.

RULE 5.800. APPLICATION OF REVISED CHAPTER 744 TO EXISTING GUARDIANSHIPS

(a) Prior Adjudication of Incompetency. When an adjudication of incompetency has taken place under chapter 744, Florida Statutes, before October 1, 1989, no readjudication of incapacity shall be required.

(b) Annual Guardianship Reports. Guardians appointed before October 1, 1989, shall file annual guardianship reports as required by law.

Committee Notes

Rule History

1989 Revision by Ad Hoc Committee: The committee adopted a position that guardians appointed before the effective date of the 1989 revisions to chapter 744, Florida Statutes, should comply with all sections of the law that apply to future acts of the guardian. For example, all guardians will in the future file annual reports and will be responsible for the continuing well-being of their wards. The committee recognized a distinction between those actions that will necessarily occur on a continuing basis throughout the guardianship and those actions that happen at a particular moment in time but are not necessarily ongoing duties. There are two and only two specific examples to which the statutory reforms would not apply retrospectively if the above distinction is adopted. First, the initial adjudication of incapacity occurs only once in any guardianship. Although guardianships are reevaluated annually, the statute does not contemplate a complete readjudication procedure every year. Therefore, the committee concluded that the initial adjudicatory hearing need not be repeated for wards adjudicated incompetent before October 1, 1989. Second, as concerns nonresident guardians appointed before October 1, 1989, normally, a guardian is appointed only once at the beginning of the guardianship. While these nonresident guardians would be expected to obey all provisions of the law prospectively, they would not be required to initiate their own removal.

1991 Revision: Editorial changes in first sentence of (a), and rest of subdivision deleted as unnecessary. Subdivision (b) has been transferred to rule 5.650. Date reference no longer required in (c), and modified to make filing requirement of preexisting guardianships consistent with the current statutory provisions.

1992 Revision: Citation form changes in committee notes.

Statutory References

§ 744.367, Fla. Stat. Duty to file annual guardianship report.

§ 744.3675, Fla. Stat. Annual guardianship plan.

§ 744.3678, Fla. Stat. Annual accounting.

Rule References

Fla. Prob. R. 5.695 Annual guardianship report.

Fla. Prob. R. 5.696 Annual accounting.

PART IV — EXPEDITED JUDICIAL INTERVENTION CONCERNING MEDICAL TREATMENT PROCEDURES

RULE 5.900. EXPEDITED JUDICIAL INTERVENTION CONCERNING MEDICAL TREATMENT PROCEDURES

(a) Petition. Any proceeding for expedited judicial intervention concerning medical treatment procedures may be brought by any interested adult person and shall be commenced by the filing of a verified petition which states:

(1) the name and address of the petitioner;

(2) the name and location of the person who is the subject of the petition (hereinafter referred to as the "patient");

(3) the relationship of the petitioner to the patient;

(4) the names, relationship to the patient, and addresses if known to the petitioner, of:

(A) the patient's spouse and adult children;

(B) the patient's parents (if the patient is a minor);

(C) if none of the above, the patient's next of kin;

(D) any guardian and any court-appointed health care decision-maker;

(E) any person designated by the patient in a living will or other document to exercise the patient's health care decision in the event of the patient's incapacity;

(F) the administrator of the hospital, nursing home, or other facility where the patient is located;

(G) the patient's principal treating physician and other physicians known to have provided any medical opinion or advice about any condition of the patient relevant to this petition; and

(H) all other persons the petitioner believes may have information concerning the expressed wishes of the patient; and

(5) facts sufficient to establish the need for the relief requested, including, but not limited to, facts to support the allegation that the patient lacks the capacity to make the requisite medical treatment decision.

(b) Supporting Documentation. Any affidavits and supporting documentation, including any living will or designation of health care decision-maker, shall be attached to the petition.

(c) Notice. Unless waived by the court, notice of the petition and the preliminary hearing shall be served on the following persons who have not joined in the petition or otherwise consented to the proceedings:

(1) the patient;

(2) the patient's spouse and the patient's parents, if the patient is a minor;

(3) the patient's adult children;

(4) any guardian and any court-appointed health care decision-maker;

(5) any person designated by the patient in a living will or other document to exercise the patient's health care decision in the event of the patient's incapacity;

(6) the administrator of the hospital, nursing home, or other facility where the patient is located;

(7) the patient's principal treating physician and other physicians believed to have provided any medical opinion or advice about any condition of the patient relevant to this petition;

(8) all other persons the petitioner believes may have information concerning the expressed wishes of the patient; and

(9) such other persons as the court may direct.

(d) Hearing. A preliminary hearing on the petition shall be held within 72 hours after the filing of the petition. At that time the court shall review the petition and supporting documentation. In its discretion the court shall either:

(1) rule on the relief requested immediately after the preliminary hearing; or

(2) conduct an evidentiary hearing not later than 4 days after the preliminary hearing and rule on the relief requested immediately after the evidentiary hearing.

Committee Notes

This rule was submitted by the committee in response to the request contained in footnote 17 of *In re Guardianship of Browning*, 568 So. 2d 4 (Fla. 1990). See also *Cruzan by Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 110 S. Ct. 2841, 111 L. Ed .2d 224 (1990).

The promulgation of this rule is not intended to imply that judicial intervention is required to terminate life-prolonging procedures.

Practitioners should note that the criteria and standards of proof contained in *Browning* differ from the criteria and standards of proof presently existing in chapter 765, Florida Statutes.

Rule History

1991 Revision: New rule.

1992 Revision: This rule was created on an emergency basis and on further review, the committee decided it needed to clarify that the petition should include an allegation that the patient lacks capacity to make the requisite medical treatment decision, and that the patient should receive notice of the petition and hearing. Committee notes revised. Citation form changes in committee notes.

2008 Revision: Committee notes revised.

2019 Revision: Committee notes updated to reflect the legislative amendments to chapter 709, Florida Statutes.

2020 Revision, September 3, 2020: Rule was renumbered from 5.900 to 5.850 to allow forms to follow the rules set. Committee notes revised.

2020 Revision, December 31, 2020: Rule was renumbered from 5.850 to 5.900 to conform with statutory references. Committee notes revised.

Constitutional Reference

Art. I, § 23, Fla. Const.

Statutory References

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

§§ 709.2101–709.2402, Fla. Stat. Florida Power of Attorney Act.

§ 709.2109, Fla. Stat. Termination or suspension of power of attorney or agent's authority.

§ 731.302, Fla. Stat. Waiver and consent by interested person.

§ 744.102, Fla. Stat. Definitions.

§ 744.104, Fla. Stat. Verification of documents.

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

ch. 765, Fla. Stat. Health care advance directives.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

PART V — FORMS

The following forms are sufficient for the matters that are covered by them. So long as the substance is expressed without prolixity, the forms may be varied to meet the facts of a particular case. The forms are not intended to be part of the rules and are provided for convenience only.

RULE 5.901. FORM FOR PETITION TO DETERMINE INCAPACITY

MODEL FORM FOR USE IN PETITION TO DETERMINE INCAPACITY PURSUANT TO FLORIDA PROBATE RULE 5.550

In the Circuit Court of the
_____ Judicial Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____

In Re: Guardianship of

_____
Respondent's Name
An Alleged Incapacitated Person

_____

PETITION TO DETERMINE INCAPACITY

Petitioner, ...(name of petitioner)....., files this petition seeking a determination of incapacity of the respondent and states:

1. Petitioner's name: _____ Petitioner's age: _____

Petitioner's home address and mailing address: _____
_____

Petitioner's relationship to the respondent: _____
_____

2. Respondent's name: _____ Respondent's age: _____

Respondent's home address, mailing address, county of residence: _____
_____
_____

Primary language of the respondent: _____

3. The factual basis for alleging incapacity: _____

_____

_____

4. List all persons, with their name and address, known to have information relating to the basis for alleging incapacity: _____

_____

_____

_____

5. Which rights are being sought to be removed under section 744.3215, Florida Statutes? Indicate which rights that the petitioner requests be removed from the respondent, but not delegated to a guardian:

( ) a. to marry. If the right to enter into a contract has been removed, the right to marry is subject to court approval;

( ) b. to vote;

( ) c. to personally apply for government benefits;

( ) d. to have a driver license;

( ) e. to travel; and

( ) f. to seek or retain employment.

Indicate which rights that the petitioner requests be removed from the respondent, but may be delegated to the guardian:

( ) a. to contract;

( ) b. to sue and defend lawsuits;

( ) c. to apply for government benefits;

( ) d. to manage property or to make any gift or disposition of property;

( ) e. to determine his or her residence;

( ) f. to consent to medical and mental health treatment; and

( ) g. to make decisions about his or her social environment or other social aspects of his or her life.

If all of the above are checked a determination of plenary incapacity is requested. If only some of the above are checked a determination of limited incapacity is requested.

6. Is a guardianship being sought? _____ Yes _____ No

Check any possible alternatives to guardianship:

( ) a. trust agreements;

( ) b. powers of attorney;

( ) c. designations of health care surrogates;

( ) d. other advance directives; or

( ) e. other _____

If a guardianship is being sought, explain why the checked possible alternatives to guardianship are insufficient to meet the needs of the respondent: _____

_____

7. List the names, addresses, phone numbers, and relationships of the living next of kin of the respondent, including date of birth if the person is a minor. If married, this includes the spouse and all of his or her children:

Name	Address	Relationship

8. Name, address, and phone number of family physician, if known: _

_____

WHEREFORE, this court is respectfully requested to determine incapacity of the respondent, award attorney's fees and costs pursuant to Chapter 744, Florida Statutes, and grant such other relief as the court deems just and proper.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on .....(date).....

_____
Petitioner's Signature
Petitioner's Printed Name: _____

_____
Petitioner's Address: _____

_____
Petitioner's Phone Number: _____
Petitioner's E-mail Address: _____

RULE 5.902. FORM FOR PETITION AND ORDER OF GUARDIAN

(a) Petition.

In the Circuit Court of the
_____ Judicial Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____

In Re: Guardianship of

_____
Respondent's Name

_____

PETITION FOR APPOINTMENT OF GUARDIAN

Petitioner, _____, files this petition pursuant to section 744.1097, Florida Statutes, and alleges that:

1. The petitioner, proposed guardian .....(name)....., who is _____ years of age, whose residential address is _____ and post office address is _____. The relationship of the petitioner to the respondent is _____.

2. Venue is proper in .....(county)....., pursuant to section 744.1097(2), Florida Statutes, (choose one):

( ) a. the incapacitated person resides in .....(county)....., Florida;

( ) b. the incapacitated person is not a Florida resident but owns property in .....(county)....., Florida; or

( ) c. a debtor of the incapacitated person resides in .....(county)...., Florida and the incapacitated person is not a Florida resident and does not own property in Florida.

3. The nature of the incapacity of the respondent: _____
_____
_____

4. The extent of the guardianship requested for the respondent:

( ) a. plenary; or

( ) b. limited.

5. The guardianship requested for the respondent is (choose one):

( ) a. of the person;

( ) b. of the property; or

( ) c. of the person and property.

6. The nature and value of the property subject to guardianship: _____

_____

_____

7. The names and addresses of the living next of kin of the respondent are:

Name	Address	Relationship

8. Choose one:

( ) a. the petitioner proposes that .....(name)..... be appointed as guardian and that .....(name)..... is qualified to serve;

( ) b. a willing and qualified guardian has not been located; or

( ) c. the proposed guardian is a professional guardian and has complied with the registration requirements of section 744.2002, Florida Statutes.

9. The proposed guardian should be appointed because: _____

_____

_____

10. There _____ are or_____ are not alternatives to the appointment of a guardian, such as trust agreements, powers of attorney, designation of health care surrogate, or other advanced directive, known to petitioner.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed .....(date).....

Signature: _____
Petitioner
Name: _____
Address: _____
_____
Phone Number: _____
E-mail Address: _____

(b) Order.

In the Circuit Court of the
_____ Judicial Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____

In Re: Guardianship of

_____
Respondent's Name

_____

ORDER FOR APPOINTMENT OF GUARDIAN

1. By order of this court on .....(date)....., the respondent .....(name)..... was adjudicated incapacitated and is now a ward as defined in section 744.102(22), Florida Statutes. The extent of the incapacity is .....(plenary or limited)..... The ward retains the rights listed in section 744.3215(a), Florida Statutes.

2. No alternative to guardianship exists that sufficiently addresses the respondent's needs.

3. A .....(plenary or limited)..... guardianship of the:

( ) a. person;

( ) b. property; or

( ) c. person and property

is consistent with the respondent's welfare and safety, is the least restrictive alternative, and reserves to the respondent the right to make decisions in all matters commensurate with the ward's ability to do so.

4. .....(Name of guardian)..... is qualified to serve as .....(plenary or limited)..... guardian of the:

( ) a. person;

( ) b. property; or

( ) c. person and property of the ward

5. ( ) a. .....(Name of guardian)..... is the standby guardian or preneed guardian;

( ) b. there is no standby guardian or preneed guardian;

( ) c. there is a standby guardian or preneed guardian, but such person is not qualified to serve pursuant to section 744.309, Florida Statutes; or

( ) d. there is a standby guardian or preneed guardian, but appointment of such person is contrary to the best interests of the ward because: _____

_____

_____

6. Any additional facts that support the selection of guardian: _____

_____

_____

7. ( ) a. No advance directive exists;

( ) b. the following advance directive exists and is entitled .....(name of advance directive)..... and is dated .....(date of advance directive).....;

( ) c. the advance directive is being revoked or modified and the surrogate under the advance directive entitled .....(name of advance directive)..... and is dated .....(date of advance directive)..... was given notice of this proceeding and any motion to revoke or modify the advance directive; or

( ) d. if the advance directive is being revoked or modified the facts supporting the revocation or modification: _____

_____

_____

ORDERED and ADJUDGED as follows:

8. The court hereby appoints .....(name of guardian)..... as the.....(plenary or limited)..... guardian of the:

( ) a. person;

( ) b. property; or

( ) c. person and property of the ward.

9. The guardian may exercise only those delegable rights that have been removed from the ward and specifically delegated to the guardian, which are:

( ) a. to contract;

( ) b. to sue and defend lawsuits;

( ) c. to apply for government benefits;

( ) d. to manage property or to make any gift or disposition of property;

( ) e. to determine the ward's residence;

( ) f. to consent to medical and mental health treatment; and

( ) g. to make decisions about the ward's social environment or other social aspects of the ward's life.

10. The guardian may not exercise the following rights, even if such rights were removed from the ward:

a. to marry;

b. to vote;

c. to personally apply for government benefits;

d. to have a driver license;

e. to travel; and

f. to seek or retain employment.

11. The amount of the bond to be given by the guardian is: _____

12. The guardian:

( ) a. must; or

( ) b. is not required to

place all, or part, of the property of the ward in a restricted account in a financial institution designated pursuant to section 69.031, Florida Statutes.

13. ( ) a. No known advance directive exists;

( ) b. the advance directive entitled .....(name of advance directive)..... and is dated .....(date of advance directive)..... is being modified or revoked as follows:

( ) i. the surrogate shall not continue to exercise any authority over the ward with regard to health care decisions;

( ) ii. the surrogate shall continue to exercise authority over the respondent with regard to health care decisions;

( ) iii. the surrogate shall exercise the following authority over the ward with regard to: _____
_____
_____; or

( ) iv. The guardian shall exercise the following authority over the ward with regard to health care decisions: _____
_____
_____

14. The respondent .....(may or may not)..... have a license to carry a firearm or possess a weapon or firearm.

ORDERED this .....(date).....

_____
Judge

RULE 5.903. LETTERS OF GUARDIANSHIP

(a) Letters of Guardianship of the Person.

FORM LETTERS OF GUARDIANSHIP OF THE PERSON

In the Circuit Court of the
_____Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____

In Re: Guardianship of the Person

_____
Ward
An Incapacitated Person

_____

LETTERS OF .....(PLENARY OR LIMITED)..... GUARDIANSHIP OF THE PERSON

TO ALL WHOM IT MAY CONCERN:

WHEREAS, ...(guardian's name)..... has been appointed .....(plenary or limited)..... guardian of the person of .....(the ward)..... and has taken the prescribed oath and performed all other acts prerequisite to issuance of .....(plenary or limited)..... letters of guardianship of the person of the ward.

NOW THEREFORE, I, the undersigned judge, declare .....(guardian's name)..... duly qualified under the laws of the State of Florida to act as .....(plenary or limited)..... guardian of the person of .....(ward's name)..... with full power to exercise all power or the following powers and duties pertaining to the ward's person:

( ) 1. to determine his or her residence;

( ) 2. to consent to medical and mental health treatment; and

( ) 3. to make decisions about his or her social environment or other social aspects of his or her life;

except the guardian shall not exercise any rights enumerated under section 744.3215(1), Florida Statutes.

The guardian ____ shall ____ not execute any power over any health care surrogate appointed by any valid advance directive executed by the ward, pursuant to section 744.345, Florida Statutes, except upon order of this court.

ORDERED this .....(date).....

_____
Judge

(b) Letters of Guardianship of the Property.

FORM LETTERS OF GUARDIANSHIP OF THE PROPERTY

In the Circuit Court of the
_____ Judicial Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____

In Re: Guardianship of the Property

_____
Ward
An Incapacitated Person

_____

LETTERS OF .....(PLENARY OR LIMITED)..... GUARDIANSHIP OF THE PROPERTY

TO ALL WHOM IT MAY CONCERN:

WHEREAS, ...(guardian's name)..... has been appointed .....(plenary or limited)..... guardian of the property of .....(the ward)..... and has taken the prescribed oath and performed all other acts prerequisite to issuance of .....(plenary or limited)..... letters of guardianship of the property of the ward.

NOW THEREFORE, I, the undersigned judge, declare .....(guardian's name)..... duly qualified under the laws of the State of Florida to act as .....(plenary or limited)..... guardian of the property of .....(ward's name)..... with full power to exercise all delegable legal rights and powers of the ward, (or these listed):

( ) 1. to contract;

( ) 2. to sue and defend lawsuits;

( ) 3. to apply for government benefits; and

( ) 4. to manage property or to make any gift or disposition of property;

except the guardian shall not exercise any rights enumerated under section 744.3215(1), Florida Statutes.

ORDERED on .....(date).....

_____

Judge

RULE 5.904. FORMS FOR INITIAL AND ANNUAL GUARDIANSHIP PLANS

(a) Initial Guardianship Plan for Minor.

In the Circuit Court of the
_____ Judicial
Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____

In Re: Guardianship of

_____
Minor Ward

_____

INITIAL GUARDIANSHIP PLAN FOR MINOR

.....(Guardian's name)....., the guardian of the person of .....(ward's name)....., submits the following annual plan for the period beginning on .....(beginning date)..... and ending on .....(ending date)....., for the benefit of the ward.

1. The ward's address at the time of filing this plan is: _____
_____

2. The medical, dental, mental, or personal care services for the welfare of the ward that will be provided during the upcoming year are:

Provider	Type of Service to be Provided

3. The social and personal services to be provided for the welfare of the ward during the upcoming year are: _____
_____
_____

4. The place and kind of residential setting best suited for the needs of the ward is: _____
_____
_____

5. The physical and/or mental examinations necessary to determine the ward's medical, dental, and mental health treatment needs are: _____
_____
_____

6. Education of the ward:

Name and address of the school the ward will attend: _____
_____

Grade level of ward: _____

Description of classes the ward will attend: _____

7. Consulting with ward (Check 1):

( ) a. The ward is under age 14;

OR

( ) b. The guardian attests that the guardian has consulted with the ward (if ward is 14 years of age or older) and, to the extent reasonable, honored the ward's wishes consistent with the rights retained by the ward under the plan, and to the maximum extent reasonable, the plan is in accordance with the wishes of the ward.

8. This initial plan does not restrict the physical liberty of the ward more than is reasonably necessary to protect the ward from serious physical injury, illness, or disease and provides the ward with medical care and mental health treatment for the ward's physical and mental health.

(Please use additional sheets if necessary.)

Under penalties of perjury, I declare that I have completed and read the foregoing, and the facts set forth are true, to the best of my knowledge and belief.

Signed on .....(date).....

[A certificate of service is required if ward is 14 years of age or older.]

[I certify that the foregoing document has been furnished to .....(name, address used for service, mailing address, and e-mail address)..... by (e-mail) (delivery) (mail) (fax) on .....(date).....]

_____
Guardian's Signature
Guardian's Printed Name: _____

_____
Guardian's Address: _____

_____
Guardian's Phone Number: _____
Guardian's E-mail Address: _____

If the guardian is represented by counsel, the attorney must comply with Florida Rule of General Practice and Judicial Administration 2.515.

(b) Annual Guardianship Plan for Minor.

In the Circuit Court of the
_____ Judicial
Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____

In Re: Guardianship of

_____
Minor Ward

_____

ANNUAL GUARDIANSHIP PLAN FOR MINOR

.....(Guardian's name)....., the guardian of the person of .....(ward's name)....., submits the following annual plan for the period beginning on .....(beginning date)..... and ending on .....(ending date)......

1. The ward's address at the time of filing this plan is: _____ _____. During the prior 12 months, the ward resided at (include dates, names, addresses, and length of stay at each location):

Date	Name	Address	Length of stay

2. List any professional treatment (medical or dental) given to the ward during the prior 12 months:

Date	Provider	Treatment provided

Date	Provider	Treatment provided

3. A report from the physician who examined the ward no more than 180 days before the beginning of the applicable reporting period that contains an evaluation of the ward's physical and mental conditions has been filed with this plan. [*See subdivision (e) of this rule for a format for a physician's report.*]

4. The plan for providing medical or dental services in the coming year:

_____
_____
_____

5. A summary of the ward's school progress report:

_____
_____
_____

6. A description of the ward's social development, including how well the ward communicates and maintains interpersonal relationships:

_____
_____
_____

7. The social needs of the ward are:

_____
_____
_____

8. Consulting with ward (Check 1):

( ) a. The ward is under age 14;

OR

( ) b. The guardian attests that the guardian has consulted with the ward (if ward is 14 years of age or older) and, to the extent reasonable,

honored the ward's wishes consistent with the rights retained by the ward under the plan, and to the maximum extent reasonable, the plan is in accordance with the wishes of the ward.

(Please use additional sheets if necessary.)

Under penalties of perjury, I declare that I have completed and read the foregoing, and the facts set forth are true, to the best of my knowledge and belief.

Signed on .....(date).....

[A certificate of service is required if ward is 14 years of age or older.]

[I certify that the foregoing document has been furnished to .....(name, address used for service, mailing address, and e-mail address)..... by .....(e-mail) (delivery) (mail) (fax)..... on .....(date).....]

_____
Guardian's Signature
Guardian's Printed Name: _____

_____
Guardian's Address: _____

_____
Guardian's Phone Number: _____
Guardian's E-mail Address: _____

(c) Initial Guardianship Plan for Adult.

In the Circuit Court of the
_____ Judicial
Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____

In Re: Guardianship of

_____
Respondent's Name
Person with Developmental Disability

_____

INITIAL GUARDIANSHIP PLAN
(Initial Report of Guardian/Guardian Advocate)

.....(Guardian's name)....., the guardian of the person/guardian advocate of .....(ward's name)....., the ward, submits the following initial plan:

During the period beginning .....(beginning date)....., and ending on .....(ending date)....., the guardian proposes the following plan for the benefit of the ward.

1. The medical, mental, or personal care services for the welfare of the ward that will be provided during the upcoming year are:

Provider	Type of Service to be Provided

2. The social and personal services to be provided for the welfare of the ward during the upcoming year are: _____

_____

_____

3. The place and kind of residential setting best suited for the needs of the ward is: _____

_____

_____

4. Describe the health and accident insurance and any other private or governmental benefits to which the ward may be entitled to meet any part of the costs of medical, mental health, or related services provided to the ward: ___

_____

_____

5. The physical and mental examinations necessary to determine the ward's medical, and mental health treatment needs are: _____

_____

_____

6. The guardian/guardian advocate hereby attests that the guardian/guardian advocate has consulted with the ward and, to the extent reasonable, honored the ward's wishes consistent with the rights retained by the ward under the plan, and to the maximum extent reasonable, the plan is in accordance with the wishes of the ward.

7. This initial plan does not restrict the physical liberty of the ward more than is reasonably necessary to protect the ward from serious physical injury, illness, or disease and provides the ward with medical care and mental health treatment for the ward's physical and mental health.

(Please use additional sheets if necessary.)

8. The following is a list of preexisting orders not to resuscitate, health care surrogate decision, living will, or anatomical gift.

#	Title	Date	Suspended by Court (Yes or No)	Steps Taken to Locate any Preexisting Document
1.				

2. _____

3. _____

(Please use additional sheets if necessary.)

Under penalties of perjury, I declare that I have completed and read the foregoing, and the facts set forth are true, to the best of my knowledge and belief.

Signed on .....(date).....

[A certificate of service is required unless ward has been declared totally incapacitated.]

[I certify that the foregoing document has been furnished to .....(name, address used for service, mailing address, and e-mail address)..... by .....(e-mail) (delivery) (mail) (fax)..... on .....(date).....]

_____
Guardian's Signature
Guardian's Printed Name: _____

_____
Guardian's Address: _____

_____
Guardian's Phone Number: _____
Guardian's E-mail Address: _____

(d) Annual Guardianship Plan for Adult.

In the Circuit Court of the
_____ Judicial
Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____

In Re: Guardianship of

_____
Respondent's Name
Person with Developmental Disability

_____

ANNUAL GUARDIANSHIP PLAN OF GUARDIAN/
GUARDIAN ADVOCATE OF THE PERSON

.....(Guardian's name)....., the guardian of the person/guardian advocate of .....(ward's name)....., the ward, submits the following annual plan for the period beginning .....(beginning date)..... ending .....(ending date)......

1. The ward's address at the time of filing this plan is: _____
_____

2. During the prior 12 months, the ward resided or was maintained at (include dates, names, addresses, and length of stay at each location):

Date	Name	Address	Length of stay

3. The residential setting best suited for the current needs of the ward is (Check 1):

( ) a. group home;

( ) b. assisted living;

( ) c. nursing home;

( ) d. live with parents;

( ) e. at ward's private residence; or

( ) f. other: _____

4. Plans for ensuring that the ward is in the best residential setting to meet the ward's needs during the coming year are as follows: _____

_____

_____

5. The following is a list of any medical treatment given to the ward during the preceding year:

Date	Provider	Treatment provided

6. Attached is a report of a physician who examined the ward no more than 90 days before the beginning of the reporting period, including that physician's evaluation of the ward's condition and a statement of the current level of capacity of the ward.

7. The plan for provision of medical, dental, mental health, and rehabilitative services (for example, occupational therapy, physical therapy, speech therapy, applied behavioral analysis) in the coming year is:

Date	Provider	Service provided

8. The following information is submitted concerning the social condition of the ward:

a. The ward is currently using the following social and personal services (include name, services rendered, and address of each provider), including any groups in which the ward is participating:

Date	Provider	Service provided

b. The following is a statement of the social skills of the ward, including how well the ward maintains interpersonal relationships with others: _____

c. The following is a description of the social needs of the ward, if any: _____

9. The following is a summary of activities during the preceding year designed to increase the capacity of the ward, including involvement in groups or group activities: _____

10. Is the ward now capable of having some or all of the ward's rights restored?

( ) If yes, identify the rights that should be restored: _____

11. Do you plan to seek the restoration of any rights to the ward?

( ) If yes, identify the rights that you are seeking to be restored: _____

12. This plan _____ has or _____ has not been reviewed with the ward.

(Please use additional sheets where necessary.)

13. The following is a list of preexisting orders not to resuscitate, health care surrogate designation, living will, or anatomical gift:

#	Title	Date	Suspended by Court? (Yes or No)	Steps Taken to Locate any Preexisting Document
1.				
2.				
3.				

(Please use additional sheets if necessary.)

Under penalties of perjury, I declare that I have completed and read the foregoing, and the facts set forth are true, to the best of my knowledge and belief.

Signed on .....(date).....

[A certificate of service is required unless ward has been declared totally incapacitated.]

[I certify that the foregoing document has been furnished to .....(name, address used for service, mailing address, and e-mail address)..... by .....(e-mail) (delivery) (mail) (fax)..... on .....(date).....]

_____
Guardian's Signature
Guardian's Printed Name: _____

_____
Guardian's Address: _____

Guardian's Phone Number: _____
Guardian's E-mail Address: _____

If the guardian is represented by counsel, the attorney must comply with Florida Rule of General Practice and Judicial Administration 2.515 (every document of a party represented by an attorney must be signed by at least 1 attorney of record).

(e) Physician's Report.

In the Circuit Court of the
_____ Judicial
Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____

In Re: Guardianship of

_____
Respondent's Name
Person with Developmental Disability

_____

PHYSICIAN'S REPORT
(Required by section 744.3675, Florida Statutes)

1. Name of Physician: _____

Address: _____
_____

2. Name of ward: _____

3. Date of examination: _____

4. Purpose of examination: _____

a. Regular checkup: _____

b. Treatment for: _____

5. Evaluation of ward's condition: (Specify mental and physical condition at time of examination) _____
_____
_____

6. Description of ward's capacity to live independently: _____

_____

_____

7. The ward __ does ___ does not continue to need assistance of a guardian.

8. Is the ward capable of being restored to capacity at this time? _____ Yes _____ No

Are there any rights that can be restored at this time? Check any rights that can be restored:

( ) a. to marry;

( ) b. to vote;

( ) c. to personally apply for government benefits;

( ) d. to have a driver license;

( ) e. to travel;

( ) f. to seek or retain employment;

( ) g. to contract;

( ) h. to sue and defend lawsuits;

( ) i. to apply for government benefits;

( ) j. to manage property or to make any gift or disposition of property;

( ) k. to determine the ward's residence;

( ) *l.* to consent to medical and mental health treatment; or

( ) m. to make decisions about the ward's social environment or other social aspects of the ward's life.

9. Date of this report: _____

10. Signature of physician completing this report: _____

APPENDIX A

INSTRUCTIONS TO GUARDIANS AND GUARDIAN ADVOCATES FOR FILING ANNUAL PLANS

1. Fill in the name of the county in which the case is filed on the second blank line at the top where it reads "IN AND FOR _____ COUNTY."

2. Print the name of the ward on the line just below the "In Re: Guardianship of" caption.

3. Put the case number in the space marked "CASE NO." in the upper right-hand corner (same as court file number).

4. On the first blank line after the title of the document (Annual Plan), print the guardian's name.

5. On the next blank line, print the ward's name.

6. Write in the dates for the period of time of the plan. This period should end on the last day of the month of the month you were appointed and begin a full year before that. If you do not know your plan period, please see the chart below. Please call the clerk's office or the appropriate court staff in the county in which you are filing, if you cannot determine the plan period after reviewing the chart.

7. Type or print answers to all of the questions on the plan. If the question does not apply to your ward's circumstances, write in the phrase "not applicable." Fill in all the blanks. If your ward has a habilitation plan (produced by the social worker or the Florida Department of Children and Families) and it has changed, please provide a copy of the habilitation plan as an attachment to the annual plan. If the habilitation plan has not changed then do not file a copy.

8. In paragraph 9, if your ward participates in groups, include that information in this paragraph.

9. Sign your name, and print your name, address, e-mail address, and phone number where indicated. If there are co-guardian advocates, both must sign the plan.

10. Make a copy of the plan for your records in the event there is a problem and work from it for next year's plan. Make a copy of any attachments to the plan, as well.

11. Mail or hand deliver the original plan to the **Clerk of Court** of the county in which the case is filed. You MUST also send a copy of the plan to your attorney, if you have an attorney, so that the attorney will know that you have filed the plan and will have a copy of the plan in case there is a problem.

APPENDIX B

ANNUAL ACCOUNTING AND PLAN DATES
(IF FISCAL YEAR REPORT PERIOD)

Month Letters Signed	**Report Begin Date**	**Report End Date**	**Report Due Date**
January	February 1	January 31	May 1
February	March 1	February 28	June 1
March	April 1	March 31	July 1
April	May 1	April 30	August 1
May	June 1	May 31	September 1
June	July 1	June 30	October 1
July	August 1	July 31	November 1
August	September 1	August 31	December 1
September	October 1	September 30	January 1
October	November 1	October 31	February 1
November	December 1	November 30	March 1
December	January 1	December 31	April 1

RULE 5.905. FORM FOR PETITION; NOTICE; AND ORDER FOR APPOINTMENT OF GUARDIAN ADVOCATE OF THE PERSON

(a) Petition.

FORM FOR USE IN PETITION FOR
APPOINTMENT OF GUARDIAN ADVOCATE OF THE PERSON
UNDER FLORIDA PROBATE RULE 5.649

In the Circuit Court of the
_____ Judicial
Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____

In Re: Guardianship Advocacy of

_____
Respondent's Name
Person with Developmental Disability

_____

PETITION FOR APPOINTMENT OF
GUARDIAN ADVOCATE OF THE PERSON

Petitioner, _____, files this petition under section 393.12, Florida Statutes, and Florida Probate Rule 5.649 and alleges that:

1. The petitioner, proposed guardian advocate .....(name)....., is _____ years of age, whose residential address is _____ and post office address is _____. The relationship of the petitioner to the respondent is _____.

2. .....(Respondent's name)..... is a person with a developmental disability who was born on _____ and who is _____ years of age, who

resides in _____ County, Florida. The residential address of the respondent is _____ and the post office address is _____ _____.

3. The petitioner believes that respondent needs a guardian advocate:

a. due to the following developmental disability:

( ) i. intellectual disability;

( ) ii cerebral palsy;

( ) iii. autism;

( ) iv. spina bifida;

( ) v. Down syndrome;

( ) vi. Phelan-McDermid syndrome; or

( ) vii. Prader-Willi syndrome,

which manifested before the age of 18.

b. The developmental disability has resulted in the following substantial handicaps: _____ _____

4. The exact areas in which the person with the developmental disability lacks the ability to make informed decisions about the person's care and treatment services or to meet the essential requirements for the person's physical health or safety are as follows:

( ) a. to apply for government benefits;

( ) b. to determine residency;

( ) c. to consent to medical and mental health treatment;

( ) d. to make decisions about social environment/social aspects of life;

( ) e. to make decisions regarding education; and

( ) f. to bring an independent action for support.

5. There are no alternatives to guardian advocacy, such as trust agreements, powers of attorney, designation of health care surrogate, or other advanced directive, known to petitioner that would sufficiently address the problems of the respondent in whole or in part. Thus, it is necessary that a guardian advocate be appointed to exercise some but not all of the rights of respondent.

6. The names and addresses of the next of kin of the respondent are:

Name	Address	Relationship

7. The proposed guardian advocate .....(name)....., whose residence address is _____, and whose post office address is _____ _____, is over the age of 18 and otherwise qualified under the laws of the State of Florida to act as guardian advocate of the person of respondent. The proposed guardian advocate is not a professional guardian. The relationship of the proposed guardian advocate with the providers of health care services, residential services, or other services to the respondent is (if none, indicate: NONE):_____

8. a. The petitioner(s) allege(s) that to their knowledge, information, and belief, the respondent _____ has or _____ has NOT executed an advance directive under chapter 765, Florida Statutes, (designated health case surrogate or other advance directive) or a durable power of attorney under chapter 709, Florida Statutes.

b. The petitioner(s) also allege(s) to the petitioner's knowledge, information, and belief, the respondent, _____ has or _____ has NOT executed a supported decisionmaking agreement under section 709.2209, Florida Statutes.

c. The petitioner(s) allege(s) that the respondent has the documents referenced in subdivisions 8.a. or 8.b., but the documents are insufficient to meet the needs of the respondent because: (Do not complete if the respondent does not have the documents referenced in subdivisions 8.a. and 8.b.) _____

9. *(If a Co-Guardian Advocate sought, complete this paragraph.)* Petitioner requests that _____ be appointed co-guardian advocate of the person of respondent. The proposed co-guardian advocate .....(name)....., who is _____ years of age, whose residence is _____ _____, whose post office address is _____, is over the age of 18 and otherwise qualified under the laws of the State of Florida to act as guardian advocate of the person of respondent. The proposed co-guardian advocate is not a professional guardian. The relationship of the proposed co-guardian advocate with the providers of health care services, residential services, or other services to the respondent is (if none, indicate: NONE): _____
_____
_____

The relationship and previous association of the proposed co-guardian advocate to the respondent is _____. The proposed co-guardian advocate should be appointed because: _____
_____
_____

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed .....(date).....

Signature: _____
Proposed Guardian Advocate
Name: _____
Address: _____
_____
Phone Number: _____
E-mail Address: _____

Signature: _____
Proposed Co-Guardian Advocate
Name: _____
Address: _____
_____
Phone Number: _____
E-mail Address: _____

(b) Notice. The notice of the filing of the petition for the appointment of guardian advocate of the person and notice of hearing must be served with the petition for appointment of guardian advocate of the person under subdivision (a) of this rule.

FORM FOR NOTICE OF FILING OF A PETITION FOR APPOINTMENT OF GUARDIAN ADVOCATE OF THE PERSON UNDER SECTION 393.12(4), FLORIDA STATUTES, AND NOTICE OF HEARING

In the Circuit Court of the
_____ Judicial
Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____

In Re: Guardian Advocacy of

_____
Respondent's Name
Person with Developmental Disability

_____

NOTICE OF FILING OF A PETITION FOR APPOINTMENT OF GUARDIAN ADVOCATE AND NOTICE OF HEARING

TO: .....(Respondent)....., ...(attorney for respondent)....., ...(next of kin)....., ...(healthcare surrogate)....., and .....(agent under durable power of attorney).....

YOU ARE NOTIFIED that a petition for appointment of guardian advocate of the person has been filed. A copy of the petition for appointment of guardian advocate of the person is attached to this notice. There will be a hearing on the petition as follows:

You are to appear before the Honorable ....., Judge, at .....(time)....., on .....(date)....., at the county courthouse of ..... County, in ....., Florida for the hearing of this petition.

The reason for this hearing is to inquire into the capacity of the respondent, the person with a developmental disability, to exercise the rights enumerated in the petition. (See § 744.102(12)(b), Fla. Stat.)

The respondent has the right to be represented by counsel of the respondent's own choice and the court has initially appointed the following attorney to represent the respondent:

Attorney for the respondent: .....(name)....., ...(address)....., ...(phone)....., ...(e-mail).....

Respondent has the right to substitute an attorney of the respondent's own choice in place of the attorney appointed by the court.

Signed .....(date).....

Signature: _____
Proposed Guardian Advocate

Name: _____
Address: _____
_____
Phone Number: _____
E-mail Address: _____

Signature: _____
Proposed Co-Guardian Advocate (if any)

Name: _____
Address: _____
_____
Phone Number: _____
E-mail Address: _____

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing notice of filing petition to appoint guardian advocate and notice of hearing and a copy of the petition for appointment of guardian advocate of the person was served on all persons indicated above, including on the attorney for the respondent, on .....(date).....

Signature: _____
Proposed Guardian Advocate

Name: _____
Address: _____
_____
Phone Number: _____
E-mail Address: _____

Signature: _____
Proposed Co-Guardian Advocate (if any)

Name: _____
Address: _____
_____
Phone Number: _____
E-mail Address: _____

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to

you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

(c) Order.

In the Circuit Court of the
_____ Judicial
Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____

In Re: Guardianship of

_____
Respondent's Name
Person with Developmental Disability

_____

ORDER APPOINTING GUARDIAN ADVOCATE

On consideration of the petition for the appointment of guardian advocate of the person, the court finds that .....(respondent's name)..... has a developmental disability of a nature that requires the appointment of guardian advocate of the person based on the following findings of fact and conclusions of law:

1. The nature and scope of the person's lack of decision-making ability are: _____
_____
_____

2. The exact areas in which the person lacks decision-making ability to make informed decisions about care and treatment services or to meet the essential requirements for the respondent's health and safety are specified in number 4.

3. The specific legal disabilities to which the person with a developmental disability is subject to are: _____
_____
_____

4. The powers and duties delegated to the guardian advocate are:

( ) a. to apply for government benefits;

( ) b. to determine residency;

( ) c. to consent to medical and mental health treatment;

( ) d. to make decisions about social environment/social aspects of life;

( ) e. to make decisions regarding education; and

( ) f. to bring an independent action for support.

5. There are no alternatives to guardian advocacy, such as trust agreements, powers of attorney, designation of health care surrogate, or other advanced directive, known to petitioner that would sufficiently address the problems of the respondent in whole or in part. Thus, it is necessary that a guardian advocate be appointed to exercise some but not all of the rights of respondent.

6. Without first obtaining specific authority from the court, as stated in section 744.3725, Florida Statutes, the guardian advocate may not exercise any authority over any health care surrogate appointed by any valid advance directive executed by the disabled person, under Chapter 765, Florida Statutes, except on further order of this Court.

ORDERED AND ADJUDGED:

1. .....(Name)..... is qualified to serve as guardian advocate and is hereby appointed as guardian advocate of the person of .....(respondent's name).....

2. The guardian advocate will exercise only the rights that the court has found the disabled person incapable of exercising on the disabled person's own behalf, as outlined herein above. Said rights are specifically delegated to the guardian advocate.

ORDERED this .....(date).....

_____

Judge

RULE 5.906. LETTERS OF GUARDIAN ADVOCACY

FORM LETTERS OF GUARDIAN ADVOCACY

In the Circuit Court of the
_____ Judicial
Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____

In Re: Guardian Advocacy of

_____
Respondent's Name
Person with Developmental Disability

_____

LETTERS OF GUARDIAN ADVOCATE (CO-GUARDIAN ADVOCATES) OF THE PERSON

TO ALL WHOM IT MAY CONCERN:

WHEREAS, ...(guardian advocate's name(s))..... has/have been appointed guardian advocate(s) of the person of .....(the ward)....., a person with a developmental disability who lacks the decision-making capacity to do some of the tasks necessary to take care of the ward's person; and

NOW, THEREFORE, I, the undersigned, declare that .....(guardian advocate's name(s))..... is/are duly qualified under the laws of the State of Florida to act as guardian advocate of the person of .....(the ward)...., with full power to exercise the following powers and duties on behalf of the person with a developmental disability:

( ) 1. to apply for government benefits;

( ) 2. to determine residency;

( ) 3. to consent to medical and mental health treatment;

( ) 4. to make decisions about social environment and social aspects of life;

( ) 5. to make decisions regarding education; and

( ) 6. to bring an independent action for support.

Without first obtaining specific authority from the court, under sections 744.3215(4) and 744.3725, Florida Statutes, the guardian advocate (co-guardian advocates) may not:

a. commit the respondent to a facility, institution, or licensed service provider without formal placement proceedings under Chapter 393, Florida Statutes;

b. consent to the participation of the respondent in any experimental biomedical or behavior procedure, exam, study, or research;

c. consent to the performance of sterilization or abortion procedure on the respondent;

d. consent to termination of life support systems provided for the respondent;

e. initiate a petition for dissolution of marriage for the ward; or

f. exercise any authority over any health care surrogate appointment by a valid advance directive executed by the disabled person, under Chapter 765, Florida Statutes, except on further order of this court.

The respondent retains all legal rights except those that are specifically granted to the guardian advocate (co-guardian advocates) under court order.

ORDERED this .....(date).....

_____

Judge

RULE 5.910. INVENTORY

_____ Judicial Circuit,
in and for _____
County, Florida

Probate Division
Case No. _____
Judge: _____
Amended Form? ____ Yes* ____ No
*If yes, version of the Amended Form: _____

In Re: Guardianship of

_____

INITIAL INVENTORY

Date of letters of guardianship: _____

Property guardianship type: _____

SUMMARY

Section A: Value of Real Property Assets	$ _____
Section B: Cash Assets/Cash Equivalent Assets	$ _____
Section C: Intangible Assets/Stocks/Bonds	$ _____
Section D: Tangible Personal Property	$ _____
Section E: Debts/Encumbrances/Liabilities/Liens	$ _____
Total	**$** _____

Section A: Real Property Assets

Do you have entries for Section A? _____ Yes _____ No

Number	Description and Address	Full Value	Is There Another Owner? Yes or No
1.			
2.			
3.			

Total for Section A **$** _____

Attach a copy of the property appraiser's information or a copy of the deed for all real property.

Section B: Cash Assets/Cash Equivalent Assets (checking account, savings account, money market account, certificate of deposit (CD))

Do you have entries for Section B? _____ Yes _____ No

Are any of the entries held in a depository account? _____ Yes _____ No

Number	Institution Name	Last 4 Digits of Account Number	Type of Asset	Full Value	Is There Another Owner? Yes or No	Is this a Depository Account? Yes or No
1.						
2.						
3.						

Total for Section B **$** _____

Attach a copy of the institution's statement for each account from the creation date of the guardianship.

Section C: Intangible Assets/Stocks/Bonds

Do you have entries for Section C? _____ Yes _____ No

Are any of the entries held in a depository account? _____ Yes _____ No

Number	Issuer Name and Address	Type of Asset	Full Value	Last 4 Digits of Account Number	Is There Another Owner? Yes or No
1.					
2.					
3.					

Total for Section C **$** _____

Attach a copy of the institution's statement for each account from the creation date of the guardianship.

Section D: Tangible Personal Property Assets (motor vehicles, jewelry, household furnishings, collectibles, fine art)

Do you have entries for Section D? _____ Yes _____ No

Number	Description and Location	Full Value	Is There Another Owner? Yes or No
1.			
2.			
3.			

Total for Section D **$** _____

Attach a copy of the title for any motor vehicle.

Section E: Debts/Encumbrances/Liens/Liabilities

Do you have entries for Section E? _____ Yes _____ No

Instructions: List each liability equal to or greater than $1,000.

Number	Creditor	Full Amount of Liability	Last 4 Digits of Account Number	Is there Another Person who Owes on the Debt? Yes or No
1.				
2.				
3.				

Total for Section E **$** _____

A copy of documents detailing each listed liability.

Section F: Sources of Income

Do you have entries for Section F? _____ Yes _____ No

Number	Type	Payor	Estimated Monthly Amount
1.			
2.			
3.			

Total for Section F **$** _____

Is the guardian the representative payee of Social Security benefits? ___ Yes ___ No

If no, who is the representative payee for the Social Security benefits? _____

_____

Section G: Lawsuits Against the Ward

Do you have entries for Section G? _____ Yes _____ No

Number	Description of Lawsuit or Claim	Estimated Amount of Claim	Court Address	Plaintiff's Name and Address	Describe Cause of Action	Date of Debt Occurrence
1.						
2.						
3.						

_____

Section H: Pending Litigation and/or Lawsuits the Ward May Bring if Court Approval Is Received

Do you have entries for Section H? _____ Yes _____ No

Number	Description of Lawsuit or Claims	Case Number and Court Address	Defendant Name and Address	Describe Cause of Action	Attorney for Ward
1.					
2.					
3.					

_____

Section I: Assets the Ward, as of the Date of the Letters of Guardianship, Was Entitled to Receive, but Has Not Received

Do you have entries for Section I? _____ Yes _____ No

Instructions: If the guardian has knowledge of assets the ward was entitled to receive as of the date of letters, but were not received the assets should be listed here. Examples: insurance policies, benefits, inheritance, or settlements from litigation.

Number	Description	Estimated Date of Receipt	Estimated Amount
1.			
2.			
3.			

Section J: Trusts

Do you have entries for Section J? _____ Yes _____ No

Number	Name of Current Trustee and Address	Ward's Interest	Estimated Date Trust was Created	Value of the Ward's Interest in the Trust
1.				
2.				
3.				

Section K. Safe-Deposit Box

Does the ward lease a safe-deposit box? _____ Yes _____ No

If yes, location and number of safe-deposit box: _____

Does the ward lease a safe-deposit box with another individual or individuals? _____ Yes _____ No

Who is the joint lessee with the ward? _____

Was an inventory of the safe-deposit box filed with the court as required by section 744.365, Florida Statutes? _____ Yes _____ No

Has the safe-deposit box been opened? _____ Yes _____ No

[*A certificate of service as required by Florida Rule of Judicial Administration 2.516 must be included if the incapacitated person is not a minor under 14 years of age and is not totally incapacitated.*]

I certify that the foregoing document has been furnished to .....(name, address used for service, mailing address, and e-mail address)..... by .....(e-mail) (delivery) (mail) (fax)..... on .....(date)……

_____
Guardian's Signature
Guardian's Printed Name: _____

_____
Guardian's Address: _____

_____
Guardian's Phone Number: _____
Guardian's E-mail Address: _____

RULE 5.920. FORMS RELATED TO INJUNCTION FOR PROTECTION AGAINST EXPLOITATION OF A VULNERABLE ADULT

(a) Petition for Injunction. Petitioners should take steps to protect confidential information within the petition for injunction under Florida Rule of General Practice and Judicial Administration 2.420 and minimize sensitive information within the petition for injunction under Florida Rule of General Practice and Judicial Administration 2.425.

In the Circuit Court of the
_____ Judicial
Circuit,
in and for _____
County, Florida

Case No.: _____
ADVERSARY PROCEEDING

In re: Protection of

_____
Vulnerable Adult

_____,
Petitioner,

and

_____,
Respondent.

PETITION FOR INJUNCTION FOR PROTECTION AGAINST EXPLOITATION OF A VULNERABLE ADULT UNDER SECTION 825.1035, FLORIDA STATUTES

Before me, the undersigned authority, personally appeared petitioner ____ _____who has been sworn and says that the following statements are true:

1. The vulnerable adult, _____, whose age is ____, who resides at (address): _____

2. Section 825.101, Florida Statutes, provides that a vulnerable adult is a person whose ability to perform the normal activities of daily living or to provide for the vulnerable adult's own care or protection is impaired due to a

mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. Please describe the vulnerable adult's inability to perform the normal activities of daily living._____

_____

_____

_____

3. The petitioner's relationship to the vulnerable adult is: _____, and the petitioner has the right to bring the petition because: _____

_____

_____

4. The respondent, _____, resides at (last known address): _____

5. The respondent's last known place of employment is: _____

_____

6. The physical description of the respondent is:

Race: _____ Sex: _____ Date of Birth: _____

Height: _____ Weight: _____ Eye Color: _____

Hair Color: _____ Distinguishing Marks/Scars: _____

7. Aliases of the respondent are: _____

8. The respondent is associated with the vulnerable adult as follows: _

_____

_____

9. The following describes other causes of action:

(a) _____ there is/are 1 or more cause(s) of action currently pending between the petitioner and the respondent, and/or a proceeding under the Florida Guardianship Code, chapter 744, Florida Statutes, concerning the vulnerable adult. Describe causes of action here:_____

_____

(b) Related case numbers and county where filed, if available: __

_____

(c) _____ there are previous or pending attempts by the petitioner to obtain an injunction for protection against exploitation of the

vulnerable adult in this or any other circuit. Describe attempts here:_____
_____

(d) The results of any such attempts: _____
_____

10. The following describes the petitioner's knowledge of:

(a) Any reports made to a government agency, such as the Department of Elder Affairs or the Department of Children and Families: _____
_____
_____

(b) Any investigations performed by a government agency relating to abuse, neglect, or exploitation of the vulnerable adult:_____
_____
_____

and

(c) The results of any such reports or investigations: _____
_____
_____
_____

11. The petitioner knows or has reasonable cause to believe the vulnerable adult is either a victim of exploitation or is in imminent danger of becoming a victim of exploitation, because the respondent (include a description of any incidents or threats of exploitation by the respondent here):__
_____
_____
_____
_____
_____
_____
_____

12. The following describes:

(a) The petitioner's knowledge of the vulnerable adult's dependence on the respondent for care: _____
_____

(b) Alternative provisions for the vulnerable adult's care in the absence of the respondent, if necessary: _____

(c) Available resources the vulnerable adult has for such alternative provisions:_____
_____; and

(d) The vulnerable adult's willingness to use such alternative provisions: _____
_____
_____
_____

13. The petitioner knows the vulnerable adult maintains assets, accounts, or lines of credit at the following institutions:

Institution	Address	Account Number

14. If petitioner is seeking to freeze assets of the vulnerable adult, petitioner believes that the vulnerable adult's assets to be frozen are (check 1):

_____ Worth less than $1,500

_____ Worth from $1,500 to $5,000

_____ Worth more than $5,000

15. The petitioner genuinely fears imminent exploitation of the vulnerable adult by the respondent.

16. The petitioner seeks an injunction for the protection of the vulnerable adult, including (mark appropriate section or sections):

_____ Prohibiting the respondent from having any direct or indirect contact with the vulnerable adult.

_____ Immediately restraining the respondent from committing any acts of exploitation against the vulnerable adult.

_____ Freezing the below assets, accounts, and lines of credit of the vulnerable adult, listed below even if titled jointly with the respondent, or in the respondent's name only, in the court's discretion.

Institution	Address	Account Number

_____ Providing any terms the court deems necessary for the protection of the vulnerable adult or the vulnerable adult's assets, including any injunctions or directives to law enforcement agencies, including: _____

17. If the court enters an injunction freezing assets, accounts, and credit lines:

(a) the petitioner believes that the critical expenses of the vulnerable adult will be paid for or provided by the following persons or entities: _____

OR

(b) The petitioner requests that the following expenses be paid notwithstanding the freezing of assets, accounts, or lines of credit from the following institution(s): _____

I ACKNOWLEDGE THAT UNDER SECTION 415.1034, FLORIDA STATUTES, ANY PERSON WHO KNOWS, OR HAS REASONABLE CAUSE TO SUSPECT, THAT A VULNERABLE ADULT HAS BEEN OR IS BEING ABUSED, NEGLECTED, OR EXPLOITED HAS A DUTY TO IMMEDIATELY REPORT SUCH KNOWLEDGE OR SUSPICION TO THE CENTRAL ABUSE HOTLINE. I HAVE REPORTED THE ALLEGATIONS IN THIS PETITION TO THE CENTRAL ABUSE HOTLINE.

I HAVE READ EACH STATEMENT MADE IN THIS PETITION AND EACH SUCH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY PUNISHABLE AS PROVIDED IN SECTION 837.02, FLORIDA STATUTES.

_____
Signature of Party
Printed Name: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____
Designated E-mail Address(es): _____

STATE OF FLORIDA

COUNTY OF _____

Sworn to or affirmed and signed before me on .....(date).....

_____
Printed Name

_____
Notary Public or Deputy Clerk

_____ Personally known or _____ Produced identification

Type of identification produced: _____

(b) Temporary Protective Injunction Against Exploitation of a Vulnerable Adult.

In the Circuit Court of the
_____ Judicial
Circuit,
in and for _____
County, Florida

Case No.: _____

In re:

_____
Vulnerable Adult

_____,
Petitioner,

and

_____,
Respondent.

TEMPORARY PROTECTIVE INJUNCTION AGAINST EXPLOITATION OF A VULNERABLE ADULT AND NOTICE OF HEARING

This cause came before the court, which has jurisdiction over the parties and subject matter under state law. The court having reviewed the petition and affidavits and considered argument of counsel, finds as follows:

1. _____ Reasonable notice and opportunity to be heard was given to the respondent in a manner sufficient to protect the respondent's due process rights. Date of service _____

OR

2. _____ The court conducted its review ex parte.

3. An immediate and present danger of exploitation of the vulnerable adult exists.

4. There is a likelihood of irreparable harm and unavailability of an adequate legal remedy.

5. There is a substantial likelihood of success on the merits.

6. The threatened injury to the vulnerable adult outweighs possible harm to the respondent.

7. Granting a temporary injunction will not disserve the public interest.

8. This injunction provides for the vulnerable adult's physical or financial safety.

9. These findings were based on the following facts: _____
_____
_____
_____

Accordingly, it is hereby ADJUDGED that:

The petitioner's request for a temporary protective injunction is GRANTED. This injunction is valid for 15 days from the date of this order or ___ _____. The full hearing is set for .....(date)....., at .....(time)..... The hearing will be held before the Honorable _____ at _____, Florida.

It is further ordered that:

_____ The respondent must not commit any act of exploitation against the vulnerable adult.

_____ The respondent will have no contact with vulnerable adult.

_____ The vulnerable adult is awarded temporarily exclusive use and possession of any dwelling the vulnerable adult shares with the respondent.

_____ The respondent is barred from entering the residence of the vulnerable adult.

_____ The vulnerable adult's assets, accounts, and credit lines are hereby frozen until further court order except: _____
_____
_____

_____ Institution(s) served on .....(date).....

_____ The following institution(s) _____ holding the vulnerable adult's assets must use the vulnerable adult's unencumbered assets to pay the clerk of court the following filing fee:

_____ $75.00 (if assets are between $1,500–$5,000)

OR

_____ $200.00 (if assets are more than $5,000).

If the court enters an injunction, these fees will be taxed as costs against the respondent.

Law enforcement is hereby directed to: _____
_____
_____

Other relief: _____
_____
_____

This injunction is valid and enforceable in all Florida counties, does not affect title to real property, and law enforcement may use their section 901.15(6), Florida Statutes, arrest powers to enforce its terms.

DONE and ORDERED on .....(date)..... at .....(time).....

_____
Judge

CC: All parties and counsel of record

COPIES TO: (Check those that apply)

Petitioner:

_____ by U. S. Mail

_____ by hand delivery in open court (Petitioner must acknowledge receipt in writing on the original order—see below.)

Vulnerable Adult (if not petitioner)

_____ by U. S. Mail

_____ by hand delivery in open court

Respondent:

_____ forwarded to Sheriff for service

_____ by U. S. Mail

_____ by hand delivery in open court (Respondent must acknowledge receipt in writing on the original order—see below.)

_____ by certified mail (May only be used when respondent is present at the hearing and respondent fails or refuses to acknowledge the receipt of a certified copy of this injunction.)

_____ by substitute service under section 825.1035, Florida Statutes.

Other: _____

Petitioner's Attorney: _____ by e-mail

Respondent's Attorney: _____ by e-mail

I CERTIFY the foregoing is a true copy of the original as it appears on file in the office of the clerk of the circuit court of _____ County, Florida, and that I have furnished copies of this order as indicated above on .....(date).....

CLERK OF THE CIRCUIT COURT

By: _____
Deputy Clerk

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

(c) Order Denying Injunction and Notice of Hearing.

In the Circuit Court of the
_____ Judicial
Circuit,
in and for _____
County, Florida

Case No.: _____

In re:

_____
Vulnerable Adult

_____,
Petitioner,

and

_____,
Respondent.

ORDER DENYING REQUEST FOR TEMPORARY INJUNCTION AND SETTING HEARING ON PETITION FOR INJUNCTION FOR PROTECTION AGAINST EXPLOITATION OF A VULNERABLE ADULT

A petition for injunction for protection against exploitation of a vulnerable adult has been reviewed. This court has jurisdiction over the parties and of the subject matter. Based on the facts stated in the petition, the court finds:

The facts supporting the denial of the request for an ex parte injunction are: _____
_____
_____
_____
_____
_____

The court finds that based on the facts, as stated in the petition alone and without a hearing in the matter, there is no appearance of an immediate and present danger of exploitation of a vulnerable adult.

IT IS THEREFORE ORDERED:

The request for a temporary injunction for protection against exploitation of a vulnerable adult is **denied**. A hearing is scheduled on the petition for injunction for protection against exploitation of a vulnerable adult. The petitioner has the right to promptly amend any petition consistent with court rules.

NOTICE OF HEARING

A hearing is scheduled regarding this matter on .....(date)....., at .....(time)....., when the court will fully hear the allegations in the petition for injunction for protection against exploitation of a vulnerable adult. The hearing will be before The Honorable .....(name)....., at the following .....(address)....., Florida. All witnesses and evidence, if any, must be presented at this time.

IF EITHER PETITIONER OR RESPONDENT DO NOT APPEAR AT THE FINAL HEARING, THE PETITIONER OR RESPONDENT WILL BE BOUND BY THE TERMS OF ANY INJUNCTION OR ORDER ISSUED IN THIS MATTER.

Nothing in this order limits petitioner's rights to dismiss the petition.

DONE AND ORDERED in, _____ Florida, on .....(date).....

_____
JUDGE

COPIES TO:

Sheriff of _____ County

CERTIFICATE OF SERVICE:

Petitioner: _____ by U. S. Mail _____ by e-mail to designated e-mail address(es)

Respondent will be served by sheriff, or by substitute service under section 825.1035, Florida Statutes.

Vulnerable Adult will be served by sheriff.

The financial institution will be served by sheriff. (If any assets, accounts, or lines of credit are requested to be frozen, insert names of the financial institutions.)

I CERTIFY the foregoing is a true copy of the original as it appears on file in the office of the clerk of the circuit court of _____ County, Florida, and that I have furnished copies of this order as indicated above.

CLERK OF THE CIRCUIT COURT

(SEAL)

By: _____
Deputy Clerk or Judicial Assistant

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

(d) Final Protective Injunction.

In the Circuit Court of the
_____ Judicial
Circuit,
in and for _____
County, Florida

Case No.: _____

In re:

_____
Vulnerable Adult

_____,
Petitioner,

and

_____,
Respondent.

PERMANENT INJUNCTION FOR PROTECTION AGAINST EXPLOITATION OF A VULNERABLE ADULT

This cause came before the court, which has jurisdiction over the parties and subject matter under state law. The court having reviewed the petition and affidavits and considered the testimony presented and argument of counsel, finds as follows:

1. Reasonable notice and opportunity to be heard was given to the respondent in a manner sufficient to protect the respondent's due process rights. Respondent was served with the petition for injunction, notice of hearing, and temporary protective injunction, if issued.

2. A hearing was held on .....(date).....

3. The vulnerable adult is a victim of exploitation or in imminent danger of becoming an exploitation victim.

4. There is a likelihood of irreparable harm and unavailability of an adequate legal remedy.

5. The threatened injury to the vulnerable adult outweighs possible harm to the respondent.

6. With regard to freezing the respondent's assets, accounts, and lines of credit that were the proceeds of exploitation, there is probable cause that exploitation has occurred and a substantial likelihood that such assets, accounts, and lines of credit will be returned to the vulnerable adult.

7. This injunction provides for the vulnerable adult's physical or financial safety.

8. These findings were based on the following facts: _____
_____
_____
_____
_____
_____

Accordingly, it is hereby ADJUDGED that:

The petitioner's request for a protective injunction is GRANTED. This injunction remains in effect until it has been modified or dissolved, and it is further ordered that:

_____ The respondent must not commit any acts of exploitation against, or have any direct or indirect contact with, the vulnerable adult.

_____ The vulnerable adult is awarded exclusive use and possession of any dwelling the vulnerable adult shares with the respondent.

_____ The respondent is excluded from the residence of the vulnerable adult.

_____ The respondent must, at the respondent's own expense, participate in all relevant treatment, intervention, or counseling services to be paid for by the respondent.

_____ Unless ownership is unclear, any temporarily frozen assets, accounts, and credit lines of the vulnerable adult are to be returned to the vulnerable adult.

If not already paid under the order granting temporary protective injunction against exploitation of a vulnerable adult, a final cost judgment is hereby entered against respondent and in favor of the clerk of courts in the amount of (check 1):

_____ $75.00 (if assets are between $1,500–$5,000)

OR

_____ $200.00 (if assets are more than $5,000).

All for which let execution issue forthwith.

If the amount set forth above has already been paid to the clerk of courts, a final cost judgment is hereby entered against respondent and in favor of the vulnerable adult in the amount set forth above, all for which let execution issue forthwith.

Any other costs associated with this judgment, including filing fees and service charges, are to be paid by the respondent.

Other: _____
_____
_____
_____
_____
_____
_____
_____

This injunction is valid and enforceable in all Florida counties, does not affect title to real property, and law enforcement may use section 901.15(6), Florida Statutes, arrest powers to enforce its terms.

DONE and ORDERED on .....(date).....

_____
Judge

CC: All parties and counsel of record

COPIES TO: (Check those that apply)

Petitioner:

_____ by U. S. Mail

_____ by hand delivery in open court (Petitioner must acknowledge receipt in writing on the original order—see below.)

Vulnerable Adult (if not petitioner)

_____ by U. S. Mail

_____ by hand delivery in open court

Respondent:

_____ forwarded to Sheriff for service

_____ by U. S. Mail

_____ by hand delivery in open court (Respondent must acknowledge receipt in writing on the original order—see below.)

_____ by certified mail (May only be used when respondent is present at the hearing and respondent fails or refuses to acknowledge the receipt of a certified copy of this injunction.)

_____ by substitute service under 825.1035, Florida Statutes.

Department of Agriculture and Consumer Services

Other: _____

Petitioner's Attorney: _____ by e-mail

Respondent's Attorney: _____ by e-mail

I CERTIFY the foregoing is a true copy of the original as it appears on file in the office of the clerk of the circuit court of _____ County, Florida, and that I have furnished copies of this order as indicated above on .....(date).....

CLERK OF THE CIRCUIT COURT

By: _____
Deputy Clerk

RULE 5.930. AFFIDAVIT OF QUALIFIED CUSTODIAN OF ELECTRONIC WILL

STATE OF FLORIDA
COUNTY OF _____

I, ...(affiant)....., state under oath that:

1. The affiant is:

_____ a person domiciled in and a resident of Florida; or

_____ a representative authorized to sign on behalf of .....(name of entity)..... which is incorporated, organized, or has its principal place of business in Florida.

2. The affiant has been informed that .....(name of "testator")..... has died. At the time of the testator's death, the affiant or entity the affiant represents was the qualified custodian (the "qualified custodian") who had custody of the electronic will .....(date of the "electronic will").....

3. The qualified custodian deposited the electronic will with the Clerk of Court of _____ County, Florida on .....(date).....

4. The electronic record that contains the electronic will was held in the custody of the qualified custodian at all times from .....(date)..... until it was deposited with the clerk of court.

5. To the best of the affiant's knowledge, the electronic record that contains the electronic will was at all times, before being offered to the court, in the custody of a qualified custodian in compliance with section 732.524, Florida Statutes, and the electronic will has not been altered in any way since the date it was created.

6. The qualified custodian has (check all that apply):

_____ posted and maintained a blanket surety bond in compliance with the requirements of section 732.525(1)(a), Florida Statutes; or

_____ maintained a liability insurance policy in compliance with the requirements of section 732.525(1)(b), Florida Statutes.

Affiant

Sworn to (or affirmed) and subscribed before me by means of _____ physical presence or _____ online notarization, this _____ day of _____ _____, 20_____, by .....(name of person making statement).....

Signature of Notary Public—State of Florida
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ or Produced _____

Identification Type of Identification Produced _____