

# Elder Law Section Guardianship Committee

## AGENDA

Meeting Date: August 9, 2022

Chair: Twyla Sketchley

Vice Chairs: Michelle Kenney & Melissa Williams

Time: Noon Eastern

## VIA ZOOM

Time: Jul 12, 2022 12:00 PM Eastern Time (US and Canada)

Every month on the Second Tue, until Jun 13, 2023, 12 occurrence(s)

Aug 9, 2022 12:00 PM

Sep 13, 2022 12:00 PM

Oct 11, 2022 12:00 PM

Nov 8, 2022 12:00 PM

Dec 13, 2022 12:00 PM

Jan 10, 2023 12:00 PM

Feb 14, 2023 12:00 PM

Mar 14, 2023 12:00 PM

Apr 11, 2023 12:00 PM

May 9, 2023 12:00 PM

Jun 13, 2023 12:00 PM

Join Zoom Meeting

<https://us02web.zoom.us/j/85859846481?pwd=M4JIZCAOmLMkQQtamAc8lK0hIC8bXS.1>

Meeting ID: 858 5984 6481

Passcode: 349083

One tap mobile

+16469313860,,85859846481# US

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Dial by your location

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- I. Call to Order – Chair/Vice Chair
- II. Roll Call/Attendance
- III. Introduction of Guests
- IV. Approval of Minutes

Minutes from July 2022 Meeting:

Call to Order at 12:07 p.m.

Open Forum Discussion of the following topics:

Issues with DNRO statute

745 Rewrite Update & Concerns

Uniform Jurisdiction in Guardianship

Clerk's Bill – Information Collection

Magistrate Balent's proposal for combining incapacity and guardianship petitions

Need for judicial education

Overall Goal for Year: Promote Consistency in Application of Guardianship

Adjourned 12:38 p.m.

- V. Announcements
  - a. Elder Law Section Annual Retreat in Boston, MA September 29, 2022 – October 1, 2022  
<https://member.floridabar.org/s/lt-event?id=a1R1R00000898uRUAQ#/Overview>
  - b. AFELA UnProgram in Orlando, FL December 2, 2022 – December 3, 2022
- VI. Law/Case Law Updates
  - a. New Cases
  - b. New Statutes
  - c. New Court Rules
  - d. New FL Bar Rules
  - e. New Administrative Rules
    - i. OPPG
    - ii. DCF
    - iii. AHCA
  - f. New Local Rules
    - i. Administrative Rules
    - ii. Local Judicial Rules

iii. Unwritten rules by clerk's offices regarding review of petitions, accountings, plans, etc.

g. New Federal Laws

VII. Legislative Update

a. DNRO Language – Victoria Heuler, Michelle Kenney – Exhibit A Florida Public Guardian Coalition Proposal

b. 745 Rewrite – Michelle Kenney Attachments to Email Agenda

c. Proposal to Combine Petition to Determine Incapacity and Petition to Appoint Guardian – Michelle Kenney Attachments to Email Agenda

VIII. Special Projects

a. Guardianship Local Rule Repository – Melissa Finley Williams

b. Clerk's Transparency Work Group – Twyla Sketchley, Deb Slater, Shannon Miller, Karen Murillo

c. Anti-guardianship Group Monitoring – Bill Johnson & Paul Lemieux

d. Public Relations Projects – Victoria Heuler, Twyla Sketchley

i. News Stories of Interest

ii. **Need stories that show the guardianship (family, professional, or public guardian) had to be put in place for the protection of the elder or person with a disability.**

**Stories that show the guardianship saved a person's life, got a ward necessary medical care, saved a ward's assets. We need stories that show that a professional guardian helped saved a ward from an abusive family member or where the ward had no other person outside a professional. Send these stories to Twyla Sketchley so that we can get them to the PR committee.**

e. WINGS Update – Jose Rodriguez

IX. Advocate Article

X. Old Business

XI. New Business

XII. Next Meeting – September 30, 2022

XIII. Adjourn

# **EXHIBIT A**

## I. Honoring Preexisting Order Not to Resuscitate / Advance Directive Provision

### 744.363 Initial guardianship plan. —

(1) The initial guardianship plan shall include all of the following:

(f) A list of any preexisting orders not to resuscitate executed under s. 401.45(3) or preexisting advance directives, as defined in s. 765.101, the date an order or directive was signed, whether such order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order not to resuscitate or advance directive. **When a preexisting order not to resuscitate or a preexisting advance directive is disclosed on a court approved initial guardianship plan and has not been suspended by the court, a plenary guardian or a limited guardian of the person with medical decision-making authority may consent, without prior court approval, to the withholding or withdrawal of life-prolonging procedures as directed by the preexisting order not to resuscitate or the advance directive.**

### 744.3675 Annual guardianship plan. —

(1) Each plan for an adult ward must, if applicable, include:

(d) A list of any preexisting orders not to resuscitate executed under s. 401.45(3) or preexisting advance directives, as defined in s. 765.101, the date an order or directive was signed, whether such order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order not to resuscitate or advance directive. **When a preexisting order not to resuscitate or a preexisting advance directive is disclosed on a court approved annual guardianship plan and has not been suspended by the court, a plenary guardian or a limited guardian of the person with medical decision-making authority may consent, without prior court approval, to the withholding or withdrawal of life-prolonging procedures as directed by the preexisting order not to resuscitate or the advance directive.**

#### Justification:

1. House and Senate bill sponsors from 2020 legislation were unaware a ward's preexisting advance directives were not being honored.
2. Similar language was adopted to SB 1032 (2022 Session)
3. Language vetted through the Elder Law Section and Real Property Probate and Trust Law Section (2022 Session)

## II. Enumerated Right Provision

### **744.3215 Rights of persons determined incapacitated. -**

(3) Rights that may be removed from a person by an order determining incapacity and which may be delegated to the guardian include the right:

**(h) To consent to the withholding or withdrawal of life-prolonging procedures.**

#### **Justification:**

1. This provision applies in all new guardianship cases once the language becomes law.
2. Adding end of life decision making as an enumerated right (not in current law).
3. Provision provides the following:
  - Ward is allowed an opportunity to speak on his/her behalf.
  - Ward is represented by counsel.
  - Objective opinion by the three-member examining committee as to whether the ward can exercise the right on his/her own.
  - Ward's next of kin is given notice and an opportunity to be heard.
  - Potentially reduces the need for emergency proceedings because the judicial decision can be made during the initial guardianship proceedings rather than emergency situations.
  - Prior to the 2020 legislation becoming law, guardians end of life decisions on behalf of their wards did not require pre-approval by the court. This provision retains the court's authority to review the guardian's authority in current law, however, allows for these decisions to be handled during the initial guardianship proceedings, if the judge chooses to do so, rather than during emergency situations.

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### III. Court Approval Provision After Initial Guardianship Proceedings

**744.441** Powers of guardian upon court approval. — ~~After obtaining approval of the court (2) pursuant to a petition for authorization to act:~~

~~(2) — A plenary guardian or a limited guardian of a ward may sign an order not to resuscitate as provided in s. 401.45(3). When a plenary guardian or a limited guardian of a ward seeks to obtain approval of the court to sign an order not to resuscitate, if required by exigent circumstances, the court must hold a preliminary hearing within 72 hours after the petition is filed, and:~~

~~(a) Rule on relief requested immediately after the preliminary hearing; or~~

~~(b) Conduct an evidentiary hearing not later than 4 days after the preliminary hearing and rule on the relief requested immediately after the evidentiary hearing.~~

**(2) If the right to consent to the withholding or withdrawal of life-prolonging procedures is not delegated to the guardian under Sec. 744.3215(3)(h), Florida Statutes, or an advance directive or order not to resuscitate was not previously submitted to the court, the guardian must seek court approval by filing a petition under Sections 765.401, 765.404, Florida Statutes or Fla. Prob. R. 5.900.**

#### Justification:

1. The provision applies to existing guardianship cases except when an advance directive or order not to resuscitate was previously submitted to the court.
2. Uses the same wording “withholding or withdrawing...” as is used in Sec. 765.401(3), F.S.
3. Listed statutes clarify the judicial proceedings followed by the court and guardians.