

# Guardian Advocates

## What is a Guardian Advocate?

Per Florida Statute 744.3085, A circuit court may appoint a guardian advocate, without an adjudication of incapacity, for a person with developmental disabilities if the person lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person, property, or estate, or if the person has voluntarily petitioned for the appointment of a guardian advocate.

## What constitutes a Developmental Disability?

Per Florida Statute 393.063, A Developmental Disability is a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

## Why does a Developmentally Disabled person need a Guardian Advocate?

Parents, as natural guardians of their children, can make decisions for their disabled child. However, once the person reaches maturity (turns 18), parents are often not permitted to make medical and financial decisions on behalf of their disabled child, unless they are appointed Guardian Advocate by the court.

## Why a Guardian Advocate and not a Guardian?

Florida law recognizes the Guardian Advocate as a less restrictive alternative to Guardianship, and requires the court to pursue less restrictive alternatives when possible.

## When can I file to be Guardian Advocate of my Developmentally Disabled child or relative?

Until the disabled person is an adult (turns 18) their parents are their natural guardians and an Advocate is not required. Effective July 1, 2015, a petition to appoint a Guardian Advocate can be filed any time after the disabled person is 17 years and 6 months old. This allows time for the process to be complete by the 18<sup>th</sup> birthday.

## Do I need an attorney to file?

A Guardian Advocate is the only type of guardianship that does not require an attorney per Florida Probate Rule 5.030. Although an attorney is not required, it is recommended.

## What are the requirements to be a Guardian Advocate?

A Guardian Advocate must be:

- At least 18 years old.
- A resident of Florida, unless they are a spouse, blood relative, legally adopted child or parent of the disabled person or a spouse of the blood relative or legally adopted parent or child of the disabled person (an in-law).
- Has not been convicted of a felony.
- Is capable of discharging the duties of a guardian (is not incapacitated or ill).
- Is not a provider of health care services to the ward.

### How do I file?

Unfortunately, the clerk cannot provide you with the Petition to complete and file. You may search for those online, through community programs which work with the developmentally disabled, or at the local Law Library. Please also see [Florida Rule of Probate Procedure 5.649](#). The new guardian application, DCF release form and checklist are available [here](#) which provide more information.

### How long does the process take?

It is difficult to predict what the court's case load may be or other factors. However, the sooner you file, the sooner the Letters of Guardian Advocate will be signed.

### What does the Guardian Advocate have to do?

If you are the disabled person's parent, not much will change. You will continue to help them get medical care, government benefits, etc. as their Advocate. You may also be required to file annual documents updating the court on the status of the disabled person. For more information, please see [Florida Statute 393.12](#).

*Disclaimer: This document is not legal advice or a complete summary of the law on this issue, it is provided for informational purposes only. Individuals should refer directly to statutes, rules, etc. and should not act upon the information without seeking legal counsel.*

Feel free to call the Probate Court Records department at (727) 464-3321 or email [Probate@mypinellasclerk.org](mailto:Probate@mypinellasclerk.org)