

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE FLORIDA  
PROBATE RULES**

**CASE NO: SC08-**

**FAST TRACK AMENDMENTS REPORT OF THE  
FLORIDA PROBATE RULES COMMITTEE**

Frank T. Pilotte, Chair, Florida Probate Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this fast track report of the Florida Probate Rules Committee (FPRC) under *Fla. R. Jud. Admin.* 2.140(f), reporting rule changes necessitated by statutory amendments passed by the 2008 Florida Legislature. The FPRC approved all the amendments by a vote of 26-0 in concept and 13-0 in final on June 23, 2008. The proposed amendments were approved 9-0 on June 30, 2008, by the Board of Governors of The Florida Bar through its Executive Committee.

Because of the emergency nature of this report, the proposals have not been published for comment.

A table of contents showing which rules have been amended is attached as Appendix A. The amendments in full-page format are attached as Appendix B. The amendments in two-column format (except for rules containing Committee Note changes only) are attached as Appendix C.

With the exception of the deletion of an obsolete statutory reference in the Committee Note to Rule 5.042, all of the amendments that accompany this report are occasioned by passage of Chapter 2008-125 (CS/HB 739) by the 2008 Legislature, and specifically the Legislature's revisions to section 393.12, Florida Statutes, titled "Capacity; appointment of guardian advocate." (The legislation was approved by the Governor on June 10, 2008, with an effective date of July 1, 2008. It is attached as Appendix D.)

The threshold question dealt with by the FPRC was whether there should be a separate rule for guardian advocates and whether existing guardianship rules should be modified as they apply to guardian advocates.

Despite the existence of section 393.12, Florida Statutes, since 1955, there has never been a procedural rule related specifically to guardian advocates. Section 393.12, especially after its revision in 2008, contains a

substantial amount of procedure. The FPRC felt that it would be appropriate to draft a specific rule relating to the appointment of guardian advocates, as well as a rule relating to the restoration of rights of a person with a developmental disability. The FPRC further felt that certain rules relating to guardianship in general should be revised to clarify their application to proceedings under newly amended section 393.12. In some instances, the FPRC simply revised the Committee Notes to include statutory and rule references to the applicable guardian advocate statutes and rules. *See* page 5 of this Report.

The proposed amendments to various rules, and explanations of the changes, are as follows:

**Rule 5.015 General Definitions.** The terms “guardian advocate” and “developmental disability” are terms defined in section 393.063, Florida Statutes. Section 744.3085, Florida Statutes, provides that guardian advocacy is a less restrictive form of guardianship. Section 393.12, Florida Statutes, both before and after its amendment in 2008, provides that, unless stated otherwise, guardian advocates have the same duties and responsibilities as guardians appointed under Chapter 744, Florida Statutes. Accordingly, the FPRC has proposed a revision to Rule 5.015, which provides definitions applicable throughout the Probate Rules. The new definitions for “guardian,” “guardian advocate,” and “ward” are consistent with the definitions in subsections (9), (11), and (22), respectively, of section 744.102, Florida Statutes. A specific definition for guardian advocate was included to make clear that in certain instances a guardian advocate may have a different duty or responsibility than a guardian. For example, see Rule 5.030, which is amended to provide that a guardian advocate is not required to be represented by an attorney unless required by law or the court.

**Rule 5.030 Attorneys.** Subdivision (a) of this rule is amended to provide, as is provided in section 393.12(2)(b), Florida Statutes (2008), that a guardian advocate is not required to be represented by counsel unless otherwise required by law or the court.

**Rule 5.040 Notice.** The amendment to subdivision (a)(3)(A)(iii) makes clear that service of formal notice includes service to a person with a developmental disability.

**Rule 5.050 Transfer of Proceedings.** The amendment to subdivision

(b) adds the language “or the guardian advocate” to make clear that this subdivision applies not only to a guardian of the person but also to a “guardian advocate” as defined in the rules.

**Rule 5.120 Administrator Ad Litem and Guardian Ad Litem.**

This rule is amended to add the term “person with a developmental disability” in subdivisions (a) through (d).

**Rule 5.540 Hearings.** Subdivision (a) is amended to make clear that hearings under section 393.12, Florida Statutes (2008) are open unless the person with a developmental disability elects to have the hearing closed.

**Rule 5.541 Recording of Hearings.** New subdivision (e) is added to include a proceeding for restoration of rights as provided in section 393.12, Florida Statutes (2008).

**Rule 5.620 Inventory.** New subdivision (e) is added to make clear that the procedures for inventory apply to a guardian advocate to the extent the guardian advocate is granted authority over the property of the person with a developmental disability.

**Rule 5.625 Notice of Completion of Guardian Education Requirements.** Subdivision (a) is amended to include a reference to letters of guardian advocacy.

**Rule 5.640 Continuance of Unincorporated Business or Venture of Ward.** Subdivision (a) is amended to include a reference to a person with a developmental disability.

**Rule 5.649 Guardian Advocate.** This is a new rule, promulgated in response to amendments to section 393.12, Florida Statutes (“Capacity; appointment of guardian advocate”) in Chapter 2008-124, section 1), and in recognition of the need for a rule counterpart to the statute to provide procedural guidelines.

Subdivision (a) of the rule is derived from paragraphs (3)(a) through (3)(f) and subsection (7) of the statute to provide for the procedure for a petition for appointment of a guardian advocate.

Subdivision (b) of the rule is derived from subsection (4) of the statute to provide for notice of the filing of the petition for appointment of the guardian advocate.

Subdivision (c) of the rule is derived from subsection (5) of the statute and provides for the appointment of counsel to represent a person with a developmental disability. The subdivision tracks the statute in also providing that the person with a developmental disability may substitute his or her own attorney.

Subdivision (d) of the rule is derived from subsections (7) and (8) of the statute to address the contents of the order appointing a guardian advocate.

Paragraph (2)(b) of the statute, addressing the circumstances under which a person being considered for appointment as guardian advocate or who is appointed must or need not be represented by an attorney, has been addressed in proposed changes to rule 5.030. Subsection (12) of the statute, relating to the restoration of rights of a person with a developmental disability, has been addressed in new Rule 5.681. The remainder of the statute is deemed to be substantive and has not been addressed by the FPRC.

**Rule 5.650 Resignation or Disqualification of Guardian; Appointment of Successor.** Subdivision (k) has been added to make clear that the procedures under this rule apply to guardian advocates, except that a final report will be required of a guardian advocate only if the guardian advocate's authority includes the management of the property of the person with a developmental disability.

**Rule 5.660 Proceedings for Removal of Guardian.** Subdivision (e) is added to provide that subdivisions (b)–(d) of the rule 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.

**Rule 5.680 Termination of Guardianship.** Subdivision (a) is amended to provide that a guardian for a ward who has had all rights restored shall file a petition for discharge.

**Rule 5.681 Restoration of Rights of Person with Developmental Disability.** This is a new rule promulgated in response to amendments to section 393.12, Florida Statutes (“Capacity; appointment of guardian advocate”) in Chapter 2008-124, section 1), and in recognition of the need for a rule counterpart to the statute to provide procedural guidelines.

Subdivision (a) of the rule is derived from subsection (12) of the statute to provide the contents of a petition for the restoration of rights.

Subdivision (b) of the rule is derived from paragraph (12)(a) of the statute and provides for appointment of counsel for the person with a developmental disability.

Subdivision (c) of the rule is derived from paragraph (12)(b) of the statute to provide notice.

Subdivision (d) of the rule is derived from paragraphs (12)(c) and (12)(d) of the statute to provide for proceedings on objections to the suggestion of restoration of rights.

Subdivision (e)(1) of the rule is derived from paragraphs (12)(f) and (12)(g) of the statute to provide for an order by the court when a hearing is held.

Subdivision (e)(2) of the rule is derived from paragraph (12)(e) of the statute to provide for an order by the court when no hearing is necessary.

Subdivision (f) of the rule is derived from paragraph (12)(g) of the statute to provide for filing and service of an amended plan.

Paragraph (2)(b) of the statute has been addressed in proposed changes to rule 5.030. Procedural aspects of subsections (1) through (11) of the statute, relating to the appointment of a guardian advocate, have been addressed in new Rule 5.649. The remainder of the statute is deemed to be substantive and has not been addressed by the FPRC.

**Rule 5.720 Court Monitor.** An editorial change has been made in subdivision (d) to substitute the term “property” for the “estate” of a ward.

As noted on page 2 of this Report, in some instances the FPRC revised Committee Notes to include statutory and rule references to the applicable guardian advocate statutes and rules, or to add commentary, but made no changes to the text of the rules that contain these Notes. The following Notes were amended in this fashion and were approved unanimously by the FPRC: 5.020, 5.025, 5.041, 5.042, 5.110, 5.150, 5.590, 5.600, 5.610, 5.630, 5.635, 5.646, 5.647, 5.670, 5.700, 5.705, 5.725, and 5.900.

The Probate Rules Committee requests that the Court amend the Florida Probate Rules as outlined in this report.

Respectfully submitted on July 2, 2008.

/s/ Frank T. Pilotte

FRANK T. PILOTTE

Chair

Florida Probate Rules Committee

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CERTIFICATIONS

I certify that these rules were read against *West's Florida Rules of Court – State* (2008).

I certify that this report was prepared in MS Word using 14 point Times New Roman font.

/s/ J. Craig Shaw

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