



THE DETERMINATION OF INCAPACITY PROCESS IN FLORIDA

It takes approximately sixty days for a guardianship to be established in Florida. The following is a description of the legal process.

An attorney will draft several legal documents, including a petition requesting the court to determine the alleged incapacitated person's capacity and a petition to appoint a legal guardian in the event the person is adjudicated incapacitated.

Once the legal documents are all signed and filed with the circuit court, a representative from the Sheriff's Department will come to "serve papers" to the Alleged Incapacitated Person (AIP). Copies of these papers must also be sent to all known "next of kin" and any "interested parties."

The circuit court will also appoint an independent attorney to represent the AIP during the incapacity proceeding. This court-appointed attorney will visit the AIP at least one time and appear on the individual's behalf at any legal proceeding during the initiation of the guardianship.

At the same time, an "examining committee" is appointed to do an independent evaluation of the AIP. The law states this committee shall be comprised of a physician (usually a psychiatrist), a psychologist or a gerontologist, and a "lay person" (often a social worker, nurse or other professional familiar with guardianship.)

These three individuals will independently arrange for and visit the AIP in order to evaluate his or her capacity. During these visits, they will utilize both formal and informal assessment tools in order to determine the AIP's level of capacity. If the AIP is in a facility, they will also review his or her chart and interview any professionals involved with the AIP's care.



After each of the examining committee members has visited the AIP, they will file written reports to the court (no later than 20 days after petition was filed.) Some court-appointed attorneys will also file written reports to the court.

The incapacity hearing is scheduled within 14 days from the court's receipt of the final committee member's report. The parties in attendance at this hearing are, at a minimum; the court appointed attorney, the attorney for the guardian, the petitioner for incapacity determination, the guardian and the Alleged Incapacitated Person (the court-appointed attorney may waive the AIP's attendance at the capacity hearing, depending on the circumstances.)

Based on the examining committee's reports, as well as sworn testimony given at the capacity hearing, a judge (or a hearing officer) will decide if the AIP is incapacitated and whether there is a less restrictive alternative to a guardianship (such as a Power of Attorney, Trust or Healthcare surrogate.) Should the AIP require a guardian, then a finding as to what rights will be removed will be made as well. If there are "competing" petitions for the appointment of the guardian, i.e. two different family members both asking to be the guardian, there may be another hearing scheduled to determine who should be appointed.