

# Comparison of Guardian Advocacy and Guardianship

	GUARDIAN ADVOCACY	GUARDIANSHIP
Statutory Authority	Sec. 393.12, F.S.	Chapter 744, F.S.
Governing Court Rule	Florida Probate Rules	Florida Probate Rules
Petitioner	<p>Person petitioning the court is:</p> <ul style="list-style-type: none"> <li>Someone alleging that a person with a developmental disability (DD) needs decision-making assistance in specified areas, or an</li> <li>Individual in need of a guardian advocate.</li> </ul>	<p>Person petitioning the court would be someone alleging the incapacity of another.</p>
Petition to determine incapacity	No adjudication of incapacity	<p>Required: Must be filed usually with a petition to appoint guardian. The court appoints an attorney to represent the alleged incapacitated person (AIP). The AIP can substitute counsel if he/she chooses.</p> <p><b>Costs:</b> AIP attorney's fees and filing fees paid from AIP's property if guardianship is established, unless AIP is indigent.</p>
Petition for appointment of a guardian advocate/guardian	<p>This option is available only to persons with developmental disabilities, who can perform some but not all decision-making tasks necessary to care for their person or property. Like Chapter 744, Florida Statutes, this petition must include specific information about the individual with a disability, as well as the person desiring to become the guardian advocate. It must specify the exact area(s) in which the person lack(s) the capacity to make informed decision(s) about his or her care and treatment. Statute specifies what must be included in the petition.</p> <p><b>Costs:</b> Filing Fee (statute does not specify who pays)</p>	<p>Required: A petition for appointment of a guardian must be filed with the petition to determine incapacity. Statute specifies what must be included in the petition.</p> <p><b>Costs:</b> Filing Fee (Paid from ward's property if guardianship established, unless ward is indigent. Paid by petitioner if petition filed in bad faith. Unclear who pays if petition dismissed and there is no bad faith filing.)</p>
Notice	<p>Notice of petition must be given to:</p> <ul style="list-style-type: none"> <li>Person with a DD (served on and read)</li> <li>Next of kin of person with a DD</li> <li>Health care surrogate</li> <li>Attorney-in-fact under a DPOA</li> </ul>	<p>Notice of petition must be given to:</p> <ul style="list-style-type: none"> <li>AIP (served on and read)</li> <li>Next of kin named in petition</li> <li>Attorney for AIP</li> </ul>



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Examining Committee	None	Required: An Examining Committee is appointed by the court and consists of three (3) members.  <b>Costs:</b> Examining committee fees are paid from the AIP's assets, unless the AIP is indigent.
Adjudicatory hearing to determine incapacity	None, however there is a hearing to appoint a guardian advocate. At the hearing, the court shall receive and consider all reports relevant to the person's disability, including the person's current individual family or individual support plan, the individual education plan, and other professional reports documenting the condition and needs of the person.	Required: AIP must be present, unless he/she waives presence. In the hearing, partial or total incapacity of the person must be established by clear and convincing evidence.
Requirement that guardian have an attorney	A guardian advocate need not be represented by an attorney unless required by the court or if the guardian advocate is delegated any rights regarding property other than the right to be the representative payee for government benefits.	Generally, the Florida Probate Rules require guardians to be represented by counsel.  Exception: A guardian need not be represented by an attorney to file simplified annual accountings where all assets of the estate are in designated depositories and the only transactions that occur in that account are interest accrual, deposits from a settlement, or financial institution service charges.
Exceptions from Reporting	Guardian advocates are not required to file annual accountings if the only property is Social Security and the guardian is also the representative payee.	Guardians are not required to file annual accountings if the only property is Social Security and the guardian is also the representative payee.
Removal of Rights	The individual retains all rights except those granted to the guardian advocate to exercise. Letters should be same as Chapter 744.	The court will issue Letters of Guardianship specifying what type of guardianship has been approved by the Court, which rights have been removed, who is authorized to act on behalf of the person and to what extent the guardian is authorized.



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Restoration of Rights	<p>Any interested person, including the person with DD, may file a Suggestion of Restoration of Rights which must state that the person has regained the ability to exercise some of the rights that were given to the guardian advocate along with evidentiary support or a statement of the good faith reason for the belief. If no evidentiary support is attached, the court must immediately set a hearing wherein the court can consider all reports and testimony relevant to the person's decision-making abilities.</p> <p>At the conclusion of the hearing or review of the evidence submitted, the court will enter an order denying the suggestion or restoring some or all of the individual's rights.</p>	<p>Any interested person, including the ward, may file a suggestion of capacity stating that the ward is currently capable of exercising some or all of the rights which were removed. The court will immediately appoint a physician to examine the ward and submit his report within 20 days.</p> <p>If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court shall set the matter for hearing. If the ward does not have an attorney, the court shall appoint one to represent the ward.</p> <p>At the conclusion of the hearing or review of the physician's report, the court will enter an order denying the suggestion or restoring some or all of the individual's rights.</p>



