

Local Procedures of the Seventeenth Judicial Circuit



Probate Division

(revised August, 2009)

TABLE OF CONTENTS

I. CLERK'S OFFICE	5
<hr/>	
HOURS	5
OBTAINING FILES	5
UNAVAILABLE COURT FILES	6
OBTAINING COPIES	6
II. HEARINGS	6
<hr/>	
MOTION CALENDAR	6
SETTING A MOTION	6
DURATION OF HEARING	7
APPEARANCE BEFORE THE COURT	7
EX PARTE	7
JUDGE GROSSMAN'S DIVISION	8
JUDGE ROSS'S DIVISION	8
JUDGE SPEISER'S DIVISION	9
SPECIALY SET MOTIONS AND EVIDENTIARY HEARINGS	9
III. MATTERS TAKEN UNDER ADVISEMENT	9
<hr/>	
IV. OPENING AND REOPENING FILES	9
<hr/>	
OPENING FILES	10
FORMAL ADMINISTRATION	10
NONRESIDENT PERSONAL REPRESENTATIVE AND POSTING BOND	10
SUMMARY ADMINISTRATION	10
DISPOSITION OF PERSONAL PROPERTY WITHOUT ADMINISTRATION	11
GUARDIANSHIP	11
REOPENING ESTATES	12
CLOSED BY ORDER OF DISCHARGE	12
NO LETTERS NEEDED	12
LETTERS NEEDED TO BE REINSTATED	12
NEWLY DISCOVERED ASSETS	12
CLOSED BY COURT ORDER (SUA SPONTE)	13
V. EXEMPT PROPERTY DETERMINATIONS	13
<hr/>	
HOMESTEAD	13
STAND-ALONE HOMESTEAD PETITIONS	13
SUMMARY ADMINISTRATION PETITIONS	13
FORMAL ADMINISTRATION PETITIONS	13
OTHER EXEMPT PROPERTY DETERMINATIONS	14

VI. CLOSING ESTATES	14
VII. DISCRETIONARY DETERMINATION OF SECURITY	15
TYPES AND DETERMINATION OF SECURITIES	15
DEPOSITORIES IN GUARDIANSHIPS	15
VIII. SALE OF REAL PROPERTY IN ESTATES AND GUARDIANSHIPS	15
IX. GUARDIANSHIPS	16
EMERGENCY TEMPORARY GUARDIANSHIPS	16
BACKGROUND INVESTIGATIONS	16
PROSPECTIVE GUARDIANS	17
APPOINTED GUARDIANS	17
PROFESSIONAL GUARDIANS	17
SETTLEMENTS	17
GUARDIAN AD LITEMS	18
FEES	18
ATTORNEYS AND GUARDIANS	18
SPECIAL COURT MONITORS	18
REPORTING REQUIREMENTS	18
SHOW CAUSE PROCEDURES	20
FAILURE TO FILE	20
NON COMPLIANT FILING	20
CLOSING GUARDIANSHIPS	20
X. MENTAL HEALTH	20
INCAPACITY	20
BAKER ACT	21
MARCHMAN ACT	21
V. COMMON PROBATE MISTAKES	22
V. FREQUENTLY ASKED QUESTIONS	22
ESTATES AND TRUSTS	22
GUARDIANSHIPS	23
AUDITING	26

LOCAL PROCEDURES

I. CLERK'S OFFICE

A. HOURS

The Clerk's Office, Room 252 of the Broward County Courthouse, is open from 8:00 a.m. to 4:30 p.m., Monday through Friday.

B. OBTAINING FILES

To review any open file or request copies of documents from open files, regardless of the year, you may appear in person at 201 SE 6th Street, Room 252, Ft. Lauderdale, FL 33301. To review probate files for years 1981 through 2000 that are closed, you must first order the file by calling (954) 831-7150. It takes two to three days to transfer these files from storage to the Central Courthouse, located at 201 SE 6th Street, Fort Lauderdale, Florida, room 252. Upon receipt of the file requested, you will be notified by telephone that your file is available for review at the Central Courthouse. Probate and Mental Health files for the years 1915 through 1980 are available on microfilm. The address where you can personally appear or mail your request is Archives Division, 515 South West Second Avenue, Fort Lauderdale, Florida 33301.

The public cannot remove files from the Clerk's Office or Courthouse without a court order. Ex parte matters for Judge Speiser (Division 62) require the attorney to retrieve the court file from the Clerk's Office the morning of the hearing before the matter will be heard. For a pending case before Judge Grossman (Division 60), and Judge Ross (Division 61 & 63) the court file for the ex parte Thursday calendar shall be ordered via the Ex Parte Request form by 11:00 a.m. on the immediately preceding Tuesday and for the Tuesday calendar, by 11:00 a.m. on the preceding Thursday. The court files for Judges Grossman and Ross's ex parte calendar will be at chambers. The ex parte request form is available at the Clerk's office and on the probate division website.

C. UNAVAILABLE COURT FILES

If a file is checked out of the Clerk’s Office to the Judge, General Magistrate, Clerk, Program Attorney, Staff Attorney, Court Monitor/Guardianship Investigator, Guardianship Audit, Administrative Assistant, or Case Manager, it will be made available to an attorney unless extraordinary circumstances exist. The Clerk’s Office must obtain the file for your review.

D. OBTAINING COPIES

Copies are available for \$1.00 per page and an additional \$2.00 to certify. Requests for five (5) copies or less may be obtained by visiting the Clerk’s Office. Requests for more than five (5) copies must be made in writing, with a check made payable to the Clerk of Courts, and must include a self addressed stamped envelope. Please send these requests to: Clerk of Court - Probate Division, Room 252, 201 SE Sixth Street, Ft. Lauderdale, FL 33301.

II. HEARINGS

A. MOTION CALENDAR

Motion calendar is held on Mondays and Wednesdays from 9:00 a.m. to 9:45 a.m. for Judges Grossman and Speiser. Judge Ross conducts motion calendar Monday through Thursday from 8:45 a.m. to 9:45 a.m. Please contact the Judge’s judicial assistant to schedule a motion calendar hearing.

1. SETTING A MOTION

Contact the Judge’s judicial assistant to schedule a special set hearing.

Judge	Judicial Assistant	Phone Number
Judge Grossman (Administrative Judge)	Beth Ranalli	954-831-7759
Judge Ross	Christine Blake	954-831-7837

Judge Speiser	Lizette Marciniak	954-831-7805
---------------	-------------------	--------------

Copies of the notice of hearing, the motion, and any document to which the motion is addressed shall be in the hands of the Judicial Assistant in advance of the hearing. The original notice shall be sent to the Clerk for filing.

You will not be placed on the calendar until the judicial assistant receives your notice of hearing. If an attorney needs to cancel a hearing, the attorney who set the hearing must call the Judge's Judicial Assistant at least 24 hours prior to the hearing and must send a Notice of Cancellation.

2. DURATION OF HEARING

Motions may be heard on motion calendar, provided such matters can be conducted in a total of ten (10) minutes, equally allocated among the parties. No motions requiring the presentation of evidence shall be set on motion calendar.

3. APPEARANCE BEFORE THE COURT

At motion calendar hearings, the attorney's appearance before the Court will be directed by the Judge's Court Deputy. The attorney should introduce himself/herself to the Court Deputy and indicate whether the matter is uncontested or contested. If a matter is contested, the Court will hear the petition after all parties have arrived.

B. EX PARTE / VIDEO CONFERENCING

Ex parte dockets are held on Tuesdays and Thursdays for Judges Grossman, Ross and Speiser. A court file will not be released for an ex parte docket until the original petition is filed. The Clerk will check the pleadings/papers to be submitted to make sure everything is in order. Any file that is not in proper order will not be given to the attorney.

No application for fees will be deemed an urgent matter. If you believe you have an emergency that is not one of the delineated ex parte matters, you must obtain prior Court approval in writing from the respective judge's office.

Letters of Administration will not be entered at an ex parte hearing when the Court determines the posting of a bond is required by the personal representative. In addition, Letters will not be entered when the court file

reflects a caveat was filed by a beneficiary or other interested person (not a creditor) entitled to formal notice of the administration of the decedent's estate.

Video Conferencing. Judge Grossman conducts video conferencing for ex parte dockets on Tuesday for all divisions. To appear via video at the North Regional Satellite, West Regional Satellite or South Regional Satellite use the ex parte request form and be sure to mark your choice of Deerfield Beach, Plantation or Hollywood.

1. JUDGE GROSSMAN'S EX PARTE

Tuesdays and Thursdays 9:00 a.m. to 10:00 a.m. Judge Grossman's ex parte calendar includes most matters. For Judge Grossman's Tuesday calendar a party should file, either by hand delivery or fax, any pleadings, motions, or petitions by 11:00 a.m. on the Thursday immediately prior. For Thursday's calendar, a party should file, either by hand delivery or fax, any pleadings, motions, or petitions by 11:00 a.m. on the Tuesday immediately prior. The fax number for the Clerk is (954) 831-6457. If pleadings/papers have been faxed to the Clerk, attorneys will need to bring the originals with them to the hearing. Please note, new files cannot be opened by fax. All filings MUST include a completed ex parte request form.

You may also eFile your ex parte request form (aforementioned time deadlines still apply). For information regarding eFiling, please visit:
http://www.17th.flcourts.org/probate_efiling.html

2. JUDGE ROSS'S EX PARTE

Tuesdays and Thursdays 9:00 a.m. to 10:00 a.m. Judge Ross's ex parte calendar includes most matters. For Judge Ross's Tuesday calendar a party should file, either by hand delivery or fax, any pleadings, motions, or petitions by 11:00 a.m. on the Thursday immediately prior. For Thursday's calendar, a party should file, either by hand delivery or fax, any pleadings, motions, or petitions by 11:00 a.m. on the Tuesday immediately prior. The fax number for the Clerk is (954) 831-6457. If pleadings/papers have been faxed to the Clerk, attorneys will need to bring the originals with them to the hearing. Please note, new files cannot be opened by fax. All filings MUST include a completed ex parte request form.

You may also eFile your ex parte request form (aforementioned time deadlines still apply). For. For information regarding eFiling, please visit: http://www.17th.flcourts.org/probate_efiling.html

3. JUDGE SPEISER'S EX PARTE

Tuesdays and Thursdays 9:00 a.m. to 10:00 a.m.

The Clerk's Office will not process or release any files after 9:30 a.m. for Judge Speiser's ex parte calendar. Judge Speiser's ex parte is for emergencies only. The Clerk's Office begins accepting ex parte matters for processing at 8:00 a.m. You may also fax your ex parte matter no later than 3:00 p.m. the previous day to (954) 831-6457. A court file will not be released for ex parte until the original petition is filed. The Clerk will check through the papers to be submitted to make sure everything is in order. Any file that is not in proper order will not be given to the attorney. All filings MUST include a completed ex parte request form.

You may also eFile your ex parte request form (aforementioned time deadlines still apply). For. For information regarding eFiling, please visit: http://www.17th.flcourts.org/probate_efiling.html.

C. SPECIAL SET HEARINGS

Specially set hearings are scheduled throughout the week at various times and days depending on the availability of time in a particular Judge's division. A specially set hearing must be scheduled with the Judicial Assistant. After a date has been assigned, the attorney must send a Notice of Hearing and a copy of the motion or pleadings to all counsel or interested persons with courtesy copies of both to the Court. All original pleadings/papers are to be forwarded to the Clerk.

III. MATTERS TAKEN UNDER ADVISEMENT

When a matter is taken under consideration by the Court, attorneys are directed not to call or disturb the Judge until a reasonable amount of time has passed from the time all pleadings have been submitted. Attorneys should call the Clerk's Office at (954) 831-7154 to determine the status of the Order. When a matter has been submitted to the Court for at least 30 days and no response has been received (via an Order or otherwise), a letter of inquiry may be sent to the Judge.

IV. OPENING/REOPENING FILES

To open a new file, the attorney can either mail his/her documents or take them directly to the Clerk's Office. The attorney should provide the Clerk with the following:

A. OPENING NEW FILES

1. FORMAL ADMINISTRATION

Chapter 733, Fla. Stat.

Filing Fee: \$401

WITH WILL (TESTATE)

Petition Original Will Order Admitting Will & Appointing Personal Representative Oath of Personal Representative Letters of Administration

WITHOUT WILL (INTESTATE)

Petition

Order Appointing Personal Representative

Oath of Personal Representative

Letters of Administration

2. NONRESIDENT PERSONAL REPRESENTATIVE & POSTING BOND

Presently a uniform policy among the Probate Judges of the 17th Judicial Circuit requires the posting of a bond for estates involving nonresident personal representatives. A bond to the extent of the value of the assets can be posted at the time of the initial filing. In the alternative, an attorney can wait until the Court enters the Order Admitting Will & Appointing Personal Representative setting the amount of the bond. According to Florida Statute, the decision to require bond is within the discretion of the Court regardless of the language in the will waiving such requirement.

3. SUMMARY ADMINISTRATION

§ 735.201-735.202, Fla. Stat.

Filing Fee: \$346 (assets greater than \$1,000)

Filing Fee:\$236 (assets less than \$1,000)

Probate Assets: (1) greater than \$1,000 and less than \$75,000

(excluding exempt property) or (2) decedent has been dead for more than 2 years

Petition for Summary Administration

Original Will (if applicable)

Order Admitting Will (if applicable)

Proof of Paid Funeral Expenses & Last Medical Expenses

Proof of Payment for Nursing Home Expenses Incurred

Death Certificate

Order of Summary Administration

Effective January 1, 2000, for small estates only, the Department of Revenue will no longer require the filing of a tax return and the personal representative may execute an affidavit attesting that the estate is not taxable. The form of the affidavit is prescribed by the Department of Revenue. In the case of a nontaxable estate, the court may consider the affidavit prepared pursuant to §198.32(2), Fla. Stat., as evidence of the non-liability for tax. Contact the Department of Revenue for further information.

4. DISPOSITION OF PERSONAL PROPERTY WITHOUT ADMINISTRATION

§ 735.301, Fla. Stat.

Filing Fee: \$232

Decedent must have been a Broward County resident

Procedure only available for personal property of decedent

Disposition forms are available at the Probate Clerk's Office May file forms by mailing to Probate Clerk's Office Reimbursement for funeral expenses (\$3,500 up to \$10,000) Reimbursement for medical expenses incurred within the last sixty (60) days of decedent's death to the extent not covered by insurance.

5. GUARDIANSHIPS

CHAPTER 744, Fla. Stat.

Filing Fee: \$401 for Person & Property

\$236 for Person only
Petition Letters of Guardianship Order Appointing Guardian
Mandatory Checklist for Guardianship Applications

Application for Appointment (*Must be on Broward County Form*)

Fingerprint Card (IF APPLICABLE -*Must be provided by the Probate Clerk's Office*)

Investigatory Cost (IF APPLICABLE - \$50 payable to the Clerk of Court) FDLE Processing Cost- (IF APPLICABLE - \$54.25 payable to FDLE)

All investigation forms, excluding the fingerprint card, are available in the Background Investigation Package that may be obtained in the Probate Clerk's office or at www.17th.flcourts.org on the Probate and Guardianship site.

B. REOPENING ESTATES

The following procedures must be complied with to reopen a closed estate. A \$50 filing fee is required to reopen a closed estate.

1. CLOSED BY ORDER OF DISCHARGE

(a) NO LETTERS NEEDED

File a Petition for Subsequent Administration & Order for Subsequent Administration. The assets and beneficiaries should be described with specificity but no account numbers or other personal identifying information, e.g. social security number or taxpayer identification number, of the decedent or beneficiary shall be provided.

(b) LETTERS TO BE REINSTATED

File a Petition to Reopen & Order to Reopen for Further Administration. Pertinent language in the Petition to Reopen must include to revoke the order of discharge and reinstate previous letters. As long as the personal representative remains the same, the Clerk's office will use the old Letters in the file with a new certification. If the personal representative is a different individual, then the successor personal representative will need to submit an Amended Petition, an Oath of Personal Representative, and proposed Letters of Administration. To re-close the estate, a Petition and Order for Discharge must be filed.

(c) NEWLY DISCOVERED ASSETS IN CONTEXT OF SUMMARY ADMINISTRATION

When a new asset is discovered and an order has already been entered by the Court, the petitioner can file an Amended Petition for Summary

Administration, provided the newly discovered asset when added to the existing probate estate does not exceed the statutory threshold for that type of estate administration. A proposed Order of Summary Administration should be provided to the court for entry.

2. CLOSED BY COURT ORDER/LACK OF ACTIVITY (SUA SPONTE)

File Petition and Order To Reopen File and closing papers necessary to complete administration

V. EXEMPT PROPERTY DETERMINATIONS

A. HOMESTEAD

1. STAND-ALONE HOMESTEAD PETITION

The Probate Judges will no longer entertain stand-alone homestead petitions.

2. SUMMARY ADMINISTRATION PROCEEDINGS

Generally, when a petitioner files a Homestead Petition in a Summary Administration proceeding, the Court will not require Notice to Creditors prior to the issuance of the Homestead Order and Order of Summary Administration. The petitioner must make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors and serve a copy of the petition on those creditors, and make provision for payment for those creditors to the extent that assets are available. See, § 735.206, Fla. Stat. The petitioner is required to sign the Petition for Summary Administration which must contain a penalty of perjury statement. However, in the event that a Petition for Summary Administration has listed known creditors of the decedent, the Court will require the attorney for the petitioner to schedule a hearing and provide the creditors with formal notice. At the hearing, the Court will either enter the Homestead Order or deny the Homestead Petition.

3. FORMAL ADMINISTRATION PROCEEDINGS

In a Formal Administration proceeding, the Court will not enter the Homestead Order until the expiration of the creditor period three (3) months from the time of publication. Reasonably ascertainable creditors to the extent that their claims are not barred should be served with formal notice of the homestead proceeding. Prior publication is not necessary if two (2) years have passed

since decedent's death. In the event, there is a pending sale prior to the creditor period having expired, the Court will state in the order to sell that the proceeds are to be placed in either the attorney's escrow account or a designated depository until the expiration of the creditor period. After the expiration of the ninety (90) day creditor period, the Court will enter the Homestead Order.

B. OTHER EXEMPT PROPERTY DETERMINATIONS

Interested persons must receive formal notice of a Petition to Determine Exempt Property under § 732.402, Fla. Stat. If an estate is insolvent or the effect of granting a Petition to Determine Exempt Property is that some creditors will not be paid in full, creditors may be interested persons entitled to notice. The total family allowance has been increased to \$18,000. See, §732.403, Fla. Stat.

VI. CLOSING ESTATES

PLEADINGS/PAPERS TO CLOSE

- 1 Death Certificate
- 2 Inventory
- 3 Proof of Publication
- 4 Florida Tax Release/or Affidavit (If Final Certificate, Need Estate Tax Closing Letter)*
- 5 Proof That Agency for Health Care Administration was served. (Agency for Health Care Administration, c/o Health Management Systems, Inc., Suite E- 42, 2002 Old St. Augustine Road, Tallahassee, Florida 32301)
- 6 Receipt of Beneficiaries
- 7 Verified Statement Regarding Creditors
- 8 Resolution or Satisfaction of any/all claims filed against Estate
- 9 Final Accounting or Waivers of same by Beneficiaries
- 10 Petition for Discharge
- 11 Schedule of Distribution (Unless Waived)
- 12 Report of Distribution (Unless Waived)
- 13 Order of Discharge

*Effective January 1, 2000, for small estates only, the Department of Revenue will no longer require the filing of a tax return and the personal representative may execute an affidavit attesting that the estate is not taxable. The form of the affidavit is prescribed by the Department of Revenue. In the case of a nontaxable estate, the court may consider the affidavit prepared pursuant §198.32(2), Fla. Stat., as evidence of the non-liability for tax. Contact the

Department of Revenue for further information.

VII. DISCRETIONARY DETERMINATION OF SECURITY FOR ESTATES & GUARDIANSHIPS

A. TYPES AND DETERMINATION OF SECURITIES

Security for estates and guardianships, as determined by the Court, shall be by bond or depository for probate estates and guardianships. Security is mandatory in all estates when a personal representative is not a resident of the State of Florida. Some factors in determining securities by the Court, but not all, are as follows:

- 1 Residence of the personal representative
- 2 The fiduciary qualifications of the personal representative
- 3 The size of the estate
- 4 The liquidity of the estate
- 5 Types of assets consisting of the estate
- 6 The number of beneficiaries
- 7 Whether the decedent has been dead for more than two years
- 8 Types of beneficiaries (minors, incapacitated, etc.)
- 9 The interest the personal representative has in the estate
- 10 The role the attorney plays in the estate
- 11 Meeting time standards promulgated by the Supreme Court

B. DEPOSITORIES IN GUARDIANSHIPS

All depositories must be a designated financial institution under the same conditions and limitations as contained in §69.031, Fla. Stat. A designated financial institution shall also include a dealer, as defined in §517.021(6), Fla. Stat., if the dealer is a member of the Security Investment Protection Corporation and is doing business in the state.

VIII. SALE OF REAL PROPERTY IN ESTATES AND GUARDIANSHIPS

The Probate Division requires the following terms included in a Petition for an Order to Sell Real Property and the proposed Order authorizing the sale:

- 1 Contract price in the petition and order;
- 2 Statement the contract price is the fair market price for the real property and how that conclusion was reached, i.e. an appraisal;
- 3 Statement that the transaction is an arm's length transaction;

- 4 The legal description and the street address of the property;
- 5 The scheduled closing date (if known);
- 6 The order stating that it applies only to the specific sale that is the subject of the petition; and
- 7 If the sale transaction is for property sought to be identified as "homestead" property, and if the claims period has not expired, then the order needs to state that the sale proceeds will be held in either the attorney's trust account or the estate or guardianship restricted depository account until further order of the court.

IX. GUARDIANSHIPS

A. EMERGENCY TEMPORARY GUARDIANSHIPS

Prior to the appointment of a guardian but after a Petition for Determination of Incapacity has been filed, the Court may appoint an Emergency Temporary Guardian (ETG). The Court must specifically find that there appears to be imminent danger that the physical or mental health or safety of the person will be seriously impaired or that the person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.

ETG hearings are heard by a General Magistrate. The petitioning attorney must file the appropriate paperwork with the Clerk. The Clerk's office will then process the filing so that an attorney is appointed to represent the Respondent in the proceedings. The petitioning attorney should immediately contact the court appointed attorney. Although the General Magistrate has specific days and times set aside to conduct ETG hearings, due to their inherent emergent nature, the General Magistrate will hear ETGs most anytime.

B. BACKGROUND INVESTIGATION

Guardians are required to submit to an initial as well as annual background investigation. Each application package, per administrative order, must be submitted with a mandatory checklist for guardianship applications.

The Mandatory Checklist accounts for the following items:

- 1 Application for Appointment (Disclosure Statement for Nonprofit Corporate Guardians)
- 2 \$50 Investigatory Cost payable to the Clerk of Court
- 3 Fingerprint Card
- 4 \$54.25 Fingerprint Card Processing cost payable to FLDE

5 Professional guardians must pay an additional \$7.50 to the Clerk for processing each file.

1. *Prospective Guardians*

Prospective guardians must submit the mandatory checklist for guardianship applications along with an application for investigation, application for appointment and the \$50 investigatory cost directly to the Clerk's office. The investigatory cost is payable to the Clerk of Court. Prospective guardians may submit their fingerprint card and \$54.25 fingerprint card cost directly to FDLE, although for expediting the appointment process, all guardians are encouraged to submit the cards and fees directly to the Clerk's office.

The fees are the same regardless of where the card is submitted. A guardian submitting his/her fingerprint card and \$54.25 cost directly to the Clerk's office must send two separate checks, (1) \$50 made payable to the Clerk of Court and (2) \$54.25 made payable to FDLE.

2. *Appointed Guardians*

Appointed nonprofessional guardians must submit the mandatory checklist for guardianship application along with an application for investigation, application for appointment and the \$50 investigatory cost every year with the filing of their annual accounting. If an extension of time has been granted for the filing of the annual accounting only, the above referenced documents must be filed at the time the annual plan is due.

3. *Professional Guardians*

Professional guardians and employees of professional guardians who owe a fiduciary responsibility to a ward must submit on or before January 15th of every year a mandatory checklist, application for appointment (disclosure statement for nonprofit corporate guardians and, for each employee a statement), \$50 investigatory cost, fingerprint card, and the \$54.25 fingerprint card processing fee as well as the \$7.50 clerk's processing fee. Applications for appointment that fall within the year of a completed investigation must still be accompanied by a mandatory checklist.

Professional guardians may submit their fingerprint card and \$54.25 fingerprint card cost directly to FDLE, although for expediting the appointment process, all guardians are encouraged to submit the cards and fees directly to the Clerk's

office. The fees are the same regardless of where the card is submitted. Guardian's submitting their fingerprint card and \$54.25 fee directly to the Clerk's office must send two separate checks, (1) \$54.25 made payable to FDLE, and (3) \$57.50 made payable to the Clerk of Court.

C. SETTLEMENTS

It is the policy of the probate division that all settlements arising out of an action filed in civil court must be approved by the civil court judge.

D. GUARDIAN AD LITEMS

In accordance with §744.301, Fla. Stat., cases involving a minor in which the gross settlement is an amount that is equal to or exceeds \$15,000, the Court, may appoint a guardian ad litem to represent the minor's interests. In cases involving a minor in which the gross settlement is equal to or exceeds \$50,000 the Court shall, prior to approval of the settlement, appoint a guardian ad litem. In cases requiring the appointment of a guardian ad litem be sure to submit a Petition and Order for Appointment of Guardian Ad Litem. Please do not place a name in the space provided for the appointment, the Court will appoint an individual they deem best suited to address the issue(s).

E. FEES

1. Attorneys and Guardians

Petitions for Guardians and Attorneys fees must be accompanied by a detailed itemization of the task and the amount of time spent on said task in addition to all other requirements of §744.108, Fla. Stat. All petitions for fees must include the total amount of prior fees awarded. In addition, all fee petitions must contain the following certification clause:

Annual Application for Investigation, court appointed attorney fees, and examining committee member fees, if applicable, have been filed and paid and I have not received notification that any filing(s) are non compliant. The guardian has completed and filed with the court proof of completion of the guardian education requirement.

Per probate administrative order dated March 4, 1999, all guardians are required to sign in and out of the visitor's log book at every facility, for every visit, for which they will be seeking compensation. Attorney's fee petitions must have consents from the ward or guardian and if a Veteran's

Administration guardianship, from the Veteran's Administration.

2. Special Court Monitors

Special Court Monitors shall serve a copy of their fee petition on the guardian and guardian's attorney. There will be a 30 day period in which a party may file an objection. If, after the 30 days has passed, no objection has been filed, the petition and order will be sent to the Judge for consideration. If an objection is timely filed, the file will be referred to a General Magistrate for a hearing.

F. REPORTING REQUIREMENTS

Pursuant to administrative order, inventories, plans and accountings must be filed on the appropriate Broward county form. These forms are available free of charge off the Internet at www.17th.flcourts.org on the Probate and Guardianship site. The forms may also be purchased at the county law library located in room 1800 of the courthouse. The forms are available in hard copy (paper form) for \$20 or on a CD ROM for \$10. For an additional \$3.00, the forms can be ordered by mail from the county law library.

Additionally, you may also eFile your guardianship reports. For information and to learn how to eFile, please visit http://www.17th.flcourts.org/probate_e_filing.html.

When filing an accounting, plan or inventory, please remember the following:

- All audit fees are due at the time of filing.
*Audit fees are located in the Guardianship Accounting Forms section at www.17th.flcourts.org on the Probate and Guardianship page.
- Statements from financial institutions verifying amounts for inventories as well as for the period ending for accountings must be attached to the report.
- Period ending dates on the annual accounting and annual plan should be the end of the anniversary month of the Guardian's appointment date.
- The inventory must be valued as of the Letters of Guardianship date.
- All reports that are submitted for filing must contain the original
- signatures of all guardians and attorneys.
- The physician's report for the annual plan must contain the date of the exam as well as the date the physician signed the report.

G. SHOW CAUSE PROCEDURES

1. Failure to File

Failure to file an inventory, plan, accounting or any other pleading or pay any fee or cost will result in the issuance of an Order to Show Cause. The Show Cause hearing will be held before a General Magistrate and appearance is mandatory even if you should file or pay prior to the hearing date as you will be required to show good cause for the delay in filing. Fees will not be granted for time attending a show cause hearing unless exceptional circumstances are presented to the General Magistrate.

2. Non Compliant Filing

If the Guardianship Audit division of the Clerk's Office finds any inventory, plan or accounting to be non compliant they will provide the attorney and guardian with the information and request compliance within approximately 15-30 days. If, after that time the file is still non compliant, an Order to Show Cause will issue. The Show Cause hearing will be held before a General Magistrate and appearance is mandatory even if you should file prior to the hearing date as you will be required to show good cause for the delay in filing. Fees will not be granted for time attending a show cause hearing unless exceptional circumstances are presented to the General Magistrate.

H. CLOSING GUARDIANSHIPS

A Judge may consider a Petition for Discharge if waivers are filed with regard to all non-compliant matters by all interested persons. A Judge will not consider a Petition for Discharge if the file is non compliant.

X. MENTAL HEALTH

A. INCAPACITY

§§744.3201, 744.3215, 744.331, Fla. Stat.

Filing Fee: \$231

Petitions for Incapacity must be completely and accurately filled out before filed. The alleged incapacitated person's (AIP) address must be his/her present address, not providing the most current address delays the examining committee. If an AIP is moved from the address provided in the petition, please notify the Clerk's office, examining committee, and the court appointed attorney immediately. In addition, all next of kin should be listed in the petition and must be provided with notice and copies of the petition.

B. BAKER ACT

Chapter 394, Fla. Stat.

INVOLUNTARY

EXAMINATION Filing Fee:

None

A Petition for Involuntary Examination for mental illness may be obtained in the Mental Health Division of the Probate Clerk's office. The Petition shall be filed in accordance with §394.463, Fla. Stat. The Petition must contain sworn testimony. If a Judge grants the petition and enters an ex parte order for involuntary examination, Henderson Mental Health Mobile Unit will go to the individual and assess the situation. If the Mobile Unit finds that further treatment is needed, the individual will be brought to a receiving facility.

C. MARCHMAN ACT

CHAPTER 397

Filing Fee: None

A Marchman Act Petition is for involuntary assessment and/or treatment for substance abuse. A Petition to Marchman Act may be obtained in the Mental Health Division of the Probate Clerk's Office. A hearing will be set before a General Magistrate and the petitioner must be present at that hearing. In addition, the alleged substance abuser must be served the Notice of Hearing or there must be proof that service was attempted.

XI. COMMON PROBATE MISTAKES

- Omitting the attorney's Florida Bar Number
- Omitting the date of death on Petition for Administration
- Omitting consents from both parents if they are not petitioning to be

- appointed guardian(s) in minor guardianships
- Improper venue
- Requesting to waive the investigatory cost in cases where the ward is indigent (the investigatory cost is to be borne by the guardian)
- Sending original pleadings to the Judge's office. All original pleadings must be sent to the Clerk.
- Incorrect filing fees
- Omission of attorney or personal representative's signature on pleadings
- Filing the incorrect proposed orders for entry by the Court
- Submitting paperwork with the incorrect case numbers
- Failing to file Inventories with the Department of Revenue. Any inventory filed by a fiduciary in an estate proceeding with the Court, must be sent to the Department of Revenue at: Florida Department of Revenue, General Tax Administration Center, Tallahassee Central Service Center, P.O. Box 6417, Tallahassee, Florida 32314-6417
- Failing to redact all but the last four digits of social security numbers on pleadings or papers to be contained in the publicly available file.

XII. FREQUENTLY ASKED QUESTIONS

A. ESTATES & TRUSTS

Why is the Judge requiring the personal representative to post bond?

According to § 733.403, Fla. Stat., the Court has the discretion to waive the requirement of filing a bond, require a personal representative to give bond, increase or decrease the bond, or require additional surety. The Court may determine to require bond based on the residency of the personal representative, size, nature and liquidity of estate assets. Even when the personal representative is the only beneficiary, the Court may still require the posting of bond because it views creditors as other interested persons. The Court has the discretion to require bond even when the will waives the requirement of bond or the other beneficiaries have signed waivers and consents.

What are the filing fees for the various estate administration proceedings?

Disposition of Personal Property Without Administration: \$232

Summary Administration:

Probate Assets less than \$1,000: \$236

Probate Assets greater than \$1,000.00 and less than \$75,000.00: \$346

Formal Administration, Ancillary or Conservatorship: \$ 401

What is required to be filed when all the assets are in a Trust ?

§ 737.308, Fla. Stat., requires the trustee to file with the Probate Court a Notice of Trust for a trust described in §733.707(3), Fla. Stat. The filing fee is \$42.

My client is pursuing a lawsuit against the decedent for personal injuries; do I need to open an estate? Who can be appointed the personal representative ?

You will need to open a Formal Administration proceeding and have a personal representative appointed by the Court. The personal representative will stand in the decedent's shoes for purposes of the civil lawsuit including serving the complaint on the personal representative. Normally, the Court prefers to appoint an independent personal representative to represent the decedent's estate if the decedent's relatives are unwilling. Generally, the Court would prefer not to appoint the person recommended by the Plaintiff's attorney due to the potential for a conflict of interest.

How do I eFile?

The Probate Court accepts eFilings for new and existing cases in Probate and Guardianship (excluding Civil Involuntary Commitment cases). For information and to learn how to eFile, please visit http://www.17th.flcourts.org/probate_e filing.html.

B. GUARDIANSHIPS

Why do I need an attorney?

Florida Probate Rule 5.030 requires that every guardian must be represented by an attorney admitted to practice in Florida unless the guardian is an attorney admitted to practice in Florida.

Who may be appointed Guardian?

Any Florida resident who is 18 years of age or older or any nonresident of Florida that is:

- 1) related by lineal consanguinity to the ward
- 2) a legally adopted child of the ward or adoptive parent of the ward

- 3) a spouse, brother, sister, uncle, aunt, niece, or nephew of the ward, or someone related by lineal consanguinity to any such person or
- 4) the spouse of a person otherwise qualified.

Who may not be appointed Guardian?

No person who has been convicted of a felony or has a confirmed report of abuse, neglect, abandonment, or exploitation. In addition, no person who may be incapable to perform the duties of guardian due to incapacity or illness or is otherwise unsuitable. Reference should also be made to §§744.309, 744.446, Fla. Stat.

What needs to be filed to open a guardianship?

The following forms are required to open a guardianship file: Petition for Appointment Order on Petition for Appointment Letters of Guardianship Oath of Guardian Investigatory Package (see section IX, Guardianships) *If the guardianship being opened is for an incapacitated individual, an incapacity file must first be opened. *Minor guardianships where the parents are petitioning for guardianship are to be filed for the property only.

Why must I be investigated every year?

The 17th Circuit investigates guardians at least once a year as part of the Court's responsibility in ensuring that the best interests of the wards are being met.

What is required to be filed for my background investigation?

Nonprofessional Guardians being investigated for the first time must file the following:

- Mandatory Checklist
- Fingerprint Card (\$54.25 fingerprint card processing cost made payable to FDLE)
- Court Monitor Investigatory Cost (\$50 made payable to Clerk of Court)
- Application for Appointment

Nonprofessional Guardians filing for their annual reinvestigation must file the following:

- Mandatory Checklist
- Court Monitor Investigatory Cost (\$50 made payable to the Clerk of Court)

- Application for Appointment

Professional Guardians filing for their annual investigation must file the following:

- Mandatory Checklist
- Fingerprint card (\$54.25 fingerprint card processing cost made payable to FDLE) (the professional guardian and each employee with a fiduciary obligation to the ward)
- Court Monitor Investigatory Cost (\$50 made payable to the Clerk of Court)
- A Employee Statement with a Fiduciary Obligation to a Ward (for each employee with a mandatory checklist)
- Application for Appointment (Disclosure Statement if nonprofit corporate guardian)
- Clerk's Office Processing Fee (\$7.50 payable to the Clerk of Court)

Professional Guardians filing for a new case within the year of their annual investigation must file:

- Mandatory Checklist
- Clerk's Office Processing Fee (\$7.50 payable to the Clerk of Court)

Where can I get an Application for Appointment?

The Application for Appointment may be obtained from the Clerk's office or on the Circuit's website - www.17th.flcourts.org on the Probate and Guardianship site. You will find the form under administrative orders (probate) IV-01-A-26.

Where can I get fingerprinted?

As a courtesy, guardians may be fingerprinted in the main courthouse by Judge Grossman's Court Deputy, Murray Oback. Deputy Oback fingerprints in room 826 Mondays -Thursdays from 2:00 p.m. to 4:00 p.m. and on Fridays from 9:00 a.m. to noon and 2:00 p.m. to 4:00 p.m.

When must I be reinvestigated?

For nonprofessional guardians, re-investigations are due at the time of the filing of your annual accounting. If you do not file an annual accounting or if the time to file the annual accounting has been extended then you must

file with your annual plan. For professional guardians, annual investigations are due on or before every January 15th.

I have received Letters of Guardianship, now what are my responsibilities?

As not all guardianships have the same requirements, your attorney should provide you with all of your specific duties. In general you may have to file an initial inventory and initial plan. Annually you may be required to file annual accountings and annual plans as well as submit to annual re-investigations. If you are a nonprofessional guardian, you may also be required to attend a 4 or 8 hour guardianship course that will provide you with much of the information necessary to fulfill your fiduciary obligation.

Where and when can I take the nonprofessional guardianship course?

The nonprofessional guardianship course has been designed to provide nonprofessional guardians with the information necessary to ensure their ward's best interest are being met. Currently, this course is offered through The Broward County Bar Association. You can contact The Broward County Bar Association at 954-764-8040 ext 201. Please note, this is not the 40 hour class required to be a professional guardian.

Where can I get the Broward County accounting forms?

These forms are available online at www.17th.flcourts.org. CD ROM (\$10) and hard copy format (\$20) of these forms are available in the law library located in the courthouse. The phone number for the law library is (954) 831-6226.

Alternatively, accounting forms may be eFiled (along with all other pleadings in Probate and Guardianship excluding Civil Involuntary Commitment cases). For information about eFiling, please visit http://www.17th.flcourts.org/probate_efiling.html

Can I close out a guardianship if my ward has died or turned 18 even though I am non compliant in an old filing?

Maybe. A waiver from all interested persons must be filed with the Court. If waivers are not filed, a case must be in compliant status for an Order of Discharge to be considered by the Judge.

C. AUDITING

Where can I get the Broward County accounting forms?

These forms are available online at www.17th.flcourts.org. CD ROM (\$10) and hard copy format (\$20) of these forms are available in the law library located in the courthouse. You can also order the forms by mail for an additional \$3.00. The phone number for the law library is (954)831-6226.

Which forms must I file?

Please consult your attorney regarding your duty as a guardian and the forms you are required to file.

The guardianship software won't download from the Internet site to my computer or I can't get the link to the Broward County web site. What do I do?

You must have the second edition (SE) of Windows 98 or higher. To check which Windows version you have installed on your computer, click on My Computer, click on Help in the tool bar and click on About Windows. You must have Windows 98 SE or second edition. The forms cannot be downloaded to an Apple Personal Computer.

I cannot see the entire form on my monitor when I start the Guardianship Reports program.

You must set your monitor to the industry standard of 800 x 600 pixels. To do this, right click on your desk top screen, then go to properties, then settings. Change your settings by moving the arrow to 800 x 600.

Where can I get answers to questions about preparing the annual accounting, initial inventory, annual plan or initial inventory?

In Broward County you may call the guardianship audit division at (954) 831-5512.

How do I save my work?

To save your work, you must go into the report that you want to prepare and then you will see a save button on the top of the screen. There is no save button in the information worksheet.

When I save the file, a screen appears (Validation Screen), that says THE FOLLOWING DATA FIELDS ARE MISSING OR ARE INCORRECT, what does this mean?

That is a validation screen to remind you that you have not filled out those fields. The program is saving your work.

Where do I get information for the Uniform Case Number?

Contact your Clerk of the Court Probate division.

County Designator: Select the county where you file.

Year Designator: The year the case was opened

Sequential Number: This number is the case number.

Party/Defendant Identifier: If not assigned by the Clerk, leave blank.

Branch Location: If not assigned by the Clerk, leave blank.

How much is the audit fee?

It is based on the estate value as outlined in Chapter 744, Fla. Stat.

When are my reports due?

The reporting due dates are based on the day Guardianship Letters were issued. More specifically, the Initial Inventory and Plan are due sixty (60) days following the issuance of the Guardianship Letters. The Annual Accounting & Plan are due on the first day of the fourth month following the anniversary month (which is the month Guardianship Letters were issued).

What is the Guardianship Inception Date?

The Guardianship Inception Date is the day Letters are signed by a Judge appointing an individual guardian over a minor child or someone declared incapacitated.

I attached a copy of the renewal notice for the CD, is that sufficient?

No. We need a statement or letter (on bank letterhead) that states what the balance was in the accounting as of the period ending date, so we can verify the

amount stated on your Accounting or Inventory.

When is my next report due and what period should it cover?

That depends on your Letters of Guardianship date. All reports are due the first day of the fourth month after your anniversary month. For example, if your Letters were issued June 15, 1999, your first Annual Accounting would be due October 1, 2000, for the period of June 15, 1999, through June 30, 2000. The first Annual Plan will be due the same time, October 1st but it covers July 1, 2000, through June 30, 2001, since the plan covers the coming year and your Initial Plan covered June 15, 1999, through June 30, 2000.

Can I file a simplified accounting?

You must meet the following criteria:

- 1) Guardian of the property
- 2) All assets in the estate are in restricted or frozen accounts
- 3) The only transactions that occur are interest accrual, deposits pursuant to settlement or financial institution service charges.

The ward has individual stocks that I will place into an investment account. Do I record each individual stock or the total of the investment account on the annual accounting?

If you have a consolidated statement from the broker for one investment account and the statement shows each individual stock by number of shares and value, you may use the total of the investment account on the annual accounting. The transfer of the stock to the investment account is recorded on Schedule E (Bank Transfer Schedule). The stock and the investment account are intangible assets.

How do I record the transfer of cash assets in an investment account and stock is subsequently purchased?

If an investment account is opened with cash assets and stocks are purchased through the account, this would be recorded as a decrease in cash assets (Schedule D-1) and increase in intangible assets (Schedule D-2). Again, if you have a consolidated statement from the broker for one investment account and the statement shows each individual stock by number of shares and value, you may use the total of the investment account on the annual accounting.

How do I report the sale of real estate or personal property?

First, determine the gain or loss by subtracting the sale price from the value listed on the prior accounting or inventory, i.e. if the personal residence was valued at \$50,000 on the initial inventory or prior accounting and the residence was sold for \$40,000, there is a \$10,000 loss which is listed on the capital transaction page, Schedule C. You do not list the \$40,000 received from the sale as income on Schedule A. You do not list the costs associated with the sale as a disbursement on Schedule B this is taken into consideration when determining the loss.

How do I report the purchase of personal property, such as a computer?

On Schedule C, write a full description of the personal property, the date the item was purchased and in the gain column list the purchase price. List the purchase price as a disbursement on Schedule B-3 or B-4. List the computer as a remaining personal asset on schedule D-2 .

On the annual accounting form there is only one Schedule A page for income. Do I report each separate receipt?

Report income that is received on a regular basis and in the same amount, such as social security income as 12 X \$400, in the description column. The total \$4,800 is listed in the total column. To report income that changes with each receipt, such as interest and dividends, provide the yearly amount and indicate in the description the number of times the interest or dividend was received during that year. For example, interest from a savings account received 12 times for a total of \$200.

Can I attach a form that lists income and disbursements and place the total in the schedules?

No. Each receipt of income and disbursement must be input in the guardianship software program. The form automatically calculates each page and places the total in the summary page.

Why can't I type any information in the summary page?

The summary page is completed from the information you input in the forms. Please make sure that line 9 equals line 13. This shows that the account is balanced.

Is a money market investment account a cash asset or an intangible asset?

If the account is an investment consider it as an intangible asset. Certificates of Deposit are intangible assets, too.

Where do I report the type of account on the report?

Until the forms are revised, please report the type of account on the same line as the bank name.

On the annual accounting report, Schedule F-1, do I report the actual sale price of real property or the amount received after closing costs?

On Schedule F-1 lists the sale price of the real property. The amount of proceeds received after closing costs is listed as a capital gain on Schedule C. You also list the loss of the property and an increase in the bank account in which the proceeds were deposited.

In the annual plan, does the guardian list all medications taken by the ward during the year or the only the medications the ward is currently taking?

The guardian must list all types of medications taken by the ward in the preceding year.

The Probate Court Judges of Broward County, Florida and their staff are pleased to present this handbook. The handbook is a basic outline, it is not a "do-it-yourself" guide and cannot be used as a substitute for attorneys, accountants, trust officers and other professional advisors necessary for proper guardianship administration. Nothing contained in this handbook constitutes legal advice. Legal advice should be obtained from your own attorney. This is not an official record of any court. Portions of the material on this Web site may be incorrect or not current. Any person or entity who relies on any information obtained on the Web site does so at his or her own risk.