

## PROCEDURES FOR PROCEEDINGS TO DETERMINE INCAPACITY

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Proceedings to determine incapacity follow expedited statutory guidelines requiring the prompt appointment of a three person examining committee who is tasked with conducting a comprehensive examination of the alleged incapacitated person, which includes a physical examination, a mental health examination, and a functional assessment no later than fifteen days following their appointment. Since the onset of the COVID-19 pandemic in the State of Florida, conducting proceedings to determine incapacity has proven difficult due to limitations imposed on those who may gain access to nursing homes, assisted living facilities, hospitals, and other locations, including personal residences, where alleged incapacitated persons reside, thus requiring the court to consider alternative methods to performing incapacity evaluations.

The implementation of procedures authorizing the examining committee to perform remote evaluations of alleged incapacitated persons is necessary pursuant to Florida Supreme Court Administrative Order AOSC21-17, which states that all trial court proceedings be conducted using remote technological means to the fullest extent feasible. As a result, the following procedures are to be used in connection with petitions to determine incapacity and the appointment of the three person examining committee as a result thereof:

- (1) Evaluations of alleged incapacitated persons for incapacity may be performed using remote technological means.
- (2) All petitions to determine incapacity shall include specific information as to whether or not the petitioner approves of the examining committee performing remote evaluations of the alleged incapacitated person.
- (3) All petitions to determine incapacity shall specify where the alleged incapacitated person resides and whether or not the examining committee will be permitted access to the place where the alleged incapacitated person resides.
- (4) Any party objecting to remote evaluations of an alleged incapacitated person shall schedule a hearing before the assigned judge for a determination whether the remote evaluation may proceed or the petition for incapacity will remain in pending status.