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IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR CLAY COUNTY, FLORIDA

FILED
JUL 02 2009
CLERK CIRCUIT COURT

ADMINISTRATIVE ORDER NO. 2009-5

IN RE: EXAMINING COMMITTEE TO DETERMINE INCAPACITY

WHEREAS, several Administrative Orders that are specifically identified below, need to be revised regarding certain procedures and fees applicable to Guardianship cases;

WHEREAS, Administrative Order 86-20, which was entered on July 10, 1986, must be updated to expand the list of individuals qualified pursuant to § 744.331(3)(a), Florida Statutes, who are currently available in this County to serve as members of the Examining Committee;

WHEREAS, § 744.331(3)(a), Florida Statutes requires the Court to appoint an examining committee for examination of allegedly incapacitated persons upon the filing of a petition to determine incapacity and a petition for the appointment of a guardian;

WHEREAS, § 744.331(3)(a), Florida Statutes requires that such examining committee must consist of three members, one of which must be a psychiatrist or other physician, while the "remaining members must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion;"

WHEREAS, § 744.331(3)(a), Florida Statutes requires that "[o]ne of three members of the committee must have knowledge of the type of incapacity alleged in the petition."

WHEREAS, the Court, has personally verified that all of the individuals listed below are qualified, willing, able and capable of serving as members of the Examining Committee in Clay County pursuant to § 744.331, Florida Statutes;

NOW THEREFORE, by the authority vested in me as the Chief Judge of the Fourth

Judicial Circuit and pursuant to the Florida Rules of Judicial Administration, it is

ORDERED:

1) That this Administrative Order supersedes Administrative Order 86-20, entered on July 10, 1986, which appointed the original examining committee members;

2) That this Administrative Order also supersedes all of the following Administrative Orders, which address the examining committee's fees and general procedures in Guardianship cases: (a) Administrative Order 2003-10, entered on November 19, 2003; (b) the Fifth Amended Administrative Order 89-20 entered on February 16, 1999; (c) the Fifth [sic] Amended Administrative Order 89-20 entered on August 15, 1997; and (d) the Fourth Amended Administrative Order 89-20, entered on June 20, 1997.

3) That upon the filing of a Petition to Determine Incapacity, the Court shall appoint an examining committee from the following list, which shall consist of all individuals available to serve on the Examining Committee for Clay County, Florida, in accordance with Florida Statutes § 744.331:

PSYCHIATRISTS OR PHYSICIANS CATEGORY

David W. Cheshire, M.D.
Jacksonville Mental Health
3599 University Blvd. S, S-400
Jacksonville, FL 32216

James L. Larson, M.D.
1543 Kingsley Avenue #14
Orange Park, FL 32073

Sook Marino, M.D., J.D.
3818 Eldridge Avenue
Orange Park, FL 32073

George Platt, M.D.
705 Ferris St.
Green Cove Springs, FL 32043

John J. Rahaim, M.D.
3300 Atlantic Blvd.
Jacksonville, FL 32207

Jaya R. Shekar, M.D.
2554 Blanding Blvd., Suite M
Middleburg, FL 32068

OTHER CATEGORY

Stephen I. Bloomfield, Ed.D.
Bloomfield Psychological Services
3725 Dupont Station Court South
Jacksonville, FL 32217

Tracy Ann Clemans, MSW, MA
Psych.Resident – Spinal Cord Injury Prog.
Brooks Rehabilitation Hospital
3599 University Blvd. South
Jacksonville, FL 32216

William C. Devereux, PhD, JD
The Counseling Group Network
943 Cesery Blvd - Building G
Jacksonville, FL 32211

Ethel Fessopulos
1233 River Oaks Rd.
Jacksonville, FL 32207

Jeremy Love
2132 Bets Court
Orange Park, FL 32073

Susan McGill, BSN, RN
1305 E. Chinaberry Ct.
Saint Johns, FL 32259

4) That the members of the Examining Committee shall be awarded the following compensation for appointment as payment for services rendered and for any and all reports prepared and filed with the Court in each case, after the date of this Order:

a) fees in the amount of $250.00 per case, paid to each psychiatrist, physician and psychologist serving on the Examining Committee; and

b) fees in the amount of $175.00 per case, paid to each of the other individuals serving on the Examining Committee.

5) That each member of the Examining Committee shall independently sign and file a separate comprehensive, written report with the Court as required by Florida Statute § 744.331(3)(f);

6) That in cases where the ward has been determined not to be indigent and the Examining Committee finds the ward is *not* incapacitated, the case will be dismissed and the Court shall order the Petitioner to pay the court costs, Examining Committee's fees, and such other fees and costs as the Court deems appropriate, regardless of whether the Petition to Determine Incapacity had been filed in bad faith. Fla. Stat. § 744.331(7)(c).

7) That if the Court appoints private counsel in a Guardianship case filed under Chapter 744, Florida Statutes, where Regional Counsel is unable to provide representation due to a conflict of interest, such court-appointed counsel will be compensated by the Justice Administrative Commission. Currently, the compensation is a flat rate of $400.00 per case. However, this flat fee is subject to change each year, pursuant to Florida Statutes § 27.5304(7) and the General Appropriations Act. In rare, extraordinary and unusual circumstances, court-appointed counsel may seek compensation that exceeds the statutory limits by following the procedures set forth in Florida Statutes § 27.5304(12).

8) That in cases where the ward has been determined not to be indigent, the Examining Committee shall be paid in full by the Guardian from the property of the ward within ten (10) days from the date that the Guardian is appointed.

9) That neither the Guardian nor the Guardian's attorney may be awarded fees for services provided unless and until payment in full is made to the Examining Committee as well as to the ward's attorney.

10) That unless and until payments have been made to the Examining Committee and to the ward's attorney, the Court shall disapprove the one year accounting and may take any other action as the Court may deem appropriate, including a finding of contempt of court and/or imposing sanctions, attorney's fees and costs, personally upon the Guardian (which shall not be paid out of the ward's estate).

11) That, pursuant to § 744.365(1), Florida Statutes, a guardian of the property shall file a verified Inventory of the ward's property for auditing the inventory. Upon filing a verified Inventory where the value of the ward's property exceeds $25,000, a Guardian will pay from the ward's property to the Clerk of the Circuit Court a fee of $85 unless it is waived upon a showing of insufficient funds in the ward's estate. Fla. Stat. § 744.365(6).

12) That, pursuant to § 744.3678(1), Florida Statutes, the Guardian of the property must file an annual accounting with the Court. Also, as authorized by § 744.3678(4), Florida Statutes, upon filing the annual financial return, for the auditing of the return, the Guardian shall pay from the ward's estate to the Clerk of the Circuit Court, a fee based upon the following graduated fee schedule:

(a) for estates with a value of $25,000 or less, the fee shall be $20.00;

12) (b) for estates with a value of more than $25,000 up to and including $100,000, the fee shall be $85.00;

(c) for estates with a value of more than $100,000 up to and including $500,000, the fee shall be $170.00; and

(d) for estates with a value exceeding $500,000, the fee shall be $250.00.

Such fees may be waived and upon petition by the Guardian and a proper showing of insufficient funds in the ward's estate, in accordance with § 744.3678(4), Florida Statutes.

13) That when the Court terminates the guardianship, the Guardian shall promptly file the final report in accordance with Florida Statutes § 744.527 and pay from the ward's estate a fee to the Clerk of the Circuit Court to cover the cost of auditing as set forth in the graduated fee for the annual accounting in the preceding paragraph.

14) That this Administrative Order shall take effect immediately and remain in full force and effect unless and until otherwise ordered by this Court.

15) That this Administrative Order shall be recorded by the Clerk of the Court, in the Official Records of Duval and Clay Counties, in the State of Florida.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 2 day of July, 2009.

DONALD R. MORAN, JR.
CHIEF JUDGE

Copies furnished to:
All Judges of the Fourth Judicial Circuit, in Duval County
The Honorable Peter L. Dearing, Administrative Judge, Probate Court
The Honorable Robert M. Foster, Administrative Judge, Nassau County
The Honorable William A. Wilkes, Administrative Judge, Clay County
The Honorable Jim Fuller, Clerk of the Circuit Court, Duval County
The Honorable John Crawford, Clerk of the Courts, Nassau County
The Honorable James B. Jett, Clerk of the Courts, Clay County
Joseph Stelma, Fourth Judicial Circuit Trial Court Administrator
Mia Heiney, Chief Deputy Court Administrator
Caroline C. Emery, Court Counsel
The Jacksonville Bar Association
Fourth Circuit Court Law Library, Duval County
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