

INCAPACITY PROCEEDINGS CHECKLIST

Note: The following is a very general checklist that may be helpful when preparing for a scheduled hearing before the court, but since each case is different, other documents/steps may be required.

Filing of Petition to Determine Incapacity	Attorney must determine proper jurisdiction/domicile and venue - §§ 744.1096 - .1097
Examining Committee Appointment (Handled by the Court)	Within five (5) days after Petition is filed - §744.331(3) Qualifications for members - §744.331(3)
Court-Appointed Attorney (Handled by the Court)	Regional Counsel or Attorney from the attorney registry - §744.331(2). AIP may choose private counsel
Notice to interested persons	Informal v. Formal - §744.331(1); Fla. Prob. R. 5.040, 5.041. Only to Interested Persons as defined in Fla. Prob. R. 5.041 and § 731.201(23).
Examining Committee Reports - one per member (Each member files their report with the Court)	Reports must be filed at least 5 days prior to the hearing - §744.331(3)(h). Reports must include the results of a comprehensive examination of the AIP as required per §744.331(f). If two reports recommend no incapacity the Court shall dismiss the petition §744.331(4)
Adjudicatory Hearing	Must be held no more than 14 days after the filing of the reports of the examining committee - §744.331(5). Can be open or closed at the AIP's request, and AIP has the right to remain silent - §744.1095
Order Determining Incapacity	Court must make specific findings - §744.331(6)
Alternatives to Guardianship (Copies should be provided to the Court & the AIP's attorney)	Guardian may not be appointed if there are alternatives to guardianship such as advance directives (DPOA, Living Trust, health care surrogate) - §744.331(6)(b). See also Chapters 709 & 765.
Court and Attorney Fees	Court Appointed attorney is entitled to reasonable fees to be determined by the Court. The Court may assess costs and attorney's fees, if the Court finds that the petition was filed in bad faith - § 744.331(7)
Appointment of Emergency Temporary Guardian (ETG)	Court must find that there appears to be imminent danger that the physical, mental health, or safety of the person will be seriously impaired or that the person's property is in danger of being wasted or misappropriated - §744.3031 Court shall appoint counsel and a hearing must be held. There must be at least 24 hours prior notice to the AIP as well as the AIP's attorney unless petitioner demonstrates that the AIP will be harmed by notice. ETG's authority expires ninety (90) days after the date of appointment, or when a guardian is appointed, whichever occurs first. ETG's authority may be extended for an additional ninety (90) days if shown that emergency condition still exists.

Once an incapacity order has been entered, a guardianship file that complies with Florida Law must be opened.