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PROPER PLANNING MAY CREATE PEACE OF MIND



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What Is A Guardian Advocate Proceeding?

A well kept secret and often underutilized is the guardian advocate proceeding of Chapter 393, F.S. This law was specifically written to address the needs of *developmentally disabled* individuals which is different than Chapter 744, F.S. that is meant for incapacitated adults or, minors.

The Tale: John Smith is a 28 year old mentally retarded man who lives at home with his parents. While being fitted for a hearing aide he suffered a personal injury. Due to Mr. Smith's diminished intellectual capacity he could not sign the complaint; neither could his parents as he was an adult. The trial attorney contacted me to file a guardianship proceeding. I met with Mr. Smith and his parents. They provided me with a copy of an assessment that had been performed by the school board as well as a report of a licensed physician both of which established the diagnosis of mental retardation.

The Tale: Nancy Jones is a 22 year old woman diagnosed with Prader-Willi syndrome. Her parents came to me at the suggestion of Ms. Jones' dentist. Nancy had gone to the dentist for treatment

however, the dentist refused to provide services as Nancy could not comprehend or give informed consent. Since Nancy was a legal adult her parents could not provide consent on her behalf.

The Tip: I explained to both families that a guardianship proceeding actually removes a person's legal rights—a *guardian advocate* proceeding does not. A guardian advocate proceeding does not involve an adjudication process (i.e. an examining committee), although the evidence code applies and the standard of proof is clear and convincing evidence.

Its goal is to designate a Guardian Advocate to provide assistance and guidance to the developmentally disabled person in those areas where the person lacks capacity to do some but not all tasks necessary to care for his person, property or estate.

“A Guardian Advocate provides assistance to the developmentally disabled person in those areas where the person lacks capacity to do some but not all tasks necessary to care for person & property.”

“Developmental disability” includes mental retardation, cerebral palsy, autism, spina bifida, Prader-Willi syndrome and that constitutes a substantial handicap that can be expected to last indefinitely.

A Guardian Advocate has the same authority, duties and responsibilities as a Guardian.

Firm Facts:

Stephanie is the Former Chair of The Florida Bar Elder Law Section.

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“People are marvelous in their generosity if they just know the cause is there.”— Will Rogers

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