



# Guardianship Task Force



**Preliminary Report**

**January 1, 2004**

# **MISSION STATEMENT**

- **To examine guardianship and incapacity**
- **Identify best practices in Florida Law**
- **Recommend specific statutory changes**
- **Achieve citizen access to quality guardianship services**

# **GUARDIANSHIP TASK FORCE**

## **Chairman**



**THE HONORABLE JED PITTMAN**  
**Clerk of Circuit Court**  
**Pasco County, Florida**

## **CHAIRMAN'S REMARKS**

**“On behalf of the Task Force, I extend our appreciation to Governor Jeb Bush and Secretary Terry White for the opportunity to effect positive change for the critical and growing needs of the incapacitated population of the state.**

**“It is our mission and hope that the preliminary report will appropriately inform and energize those who can implement these changes in a manner that will ultimately benefit our families, communities and all citizens of the state of Florida.”**

**THE HONORABLE TERRY WHITE,  
SECRETARY OF THE  
DEPARTMENT OF ELDER AFFAIRS**



**“The diversity of the members of the Guardianship Task Force will provide us insight into a myriad of issues relevant to public guardians.**

**“The Department looks forward to working with the Task Force as they work together to review current practices and suggest ways to recruit more guardians.**

**“The Department of Elder Affairs will support the Task Force recommendations made to the Legislature.”**



## Administrative Staff

**MICHELLE HOLLISTER, ESQUIRE**  
**Executive Director**  
**Statewide Public Guardianship Office**

**GUARDIANSHIP TASK FORCE  
PANEL MEMBERS**

# THE HONORABLE MEL GROSSMAN



**Administrative Judge, Probate Division  
17th Judicial Circuit, Broward County**

# DAVID BRENNAN, ESQUIRE



**Real Property & Trust Law Section, Florida Bar  
Orlando**

# PROFESSOR GORDON T. BUTLER



**School of Law  
St. Thomas University, Miami**

# KATE MINGLE, PROFESSIONAL GUARDIAN



**Florida State Professional Guardianship Association  
Port Orange**

# DR. KARL JONES, PSYCHIATRIST



**Examining Committee Member  
St. Petersburg**

# JUDY THAMES, PRESIDENT



**AARP of Florida  
Orlando**

# ENRIQUE ZAMORA, ESQUIRE



**Elder Law Section, Florida Bar  
Miami**

# **RANDY POPLER, PRESIDENT AND CEO**



**Capital City Trust Company  
Tallahassee**

# PROFESSOR REBECCA MORGAN



**Florida State Guardianship Foundation  
Stetson College of Law, St. Petersburg**

# ED BOYER, ESQUIRE



**Florida State Guardianship Foundation  
Sarasota**

Attorney Boyer resigned and was replaced by  
Professor Morgan

# GUARDIANSHIP TASK FORCE MEETINGS IN 2003



**Dade City, Florida  
October 4, 2003**



**Fort Lauderdale, Florida  
October 22, 2003**



**Tallahassee, Florida  
December 4, 2003**

# **KEY TASK FORCE EVENTS**

**Committee created by Senate Bill 2568**

**Effective May 30, 2003**

**Pasco County Meeting October 4, 2003**

**Broward County Meeting October 22, 2003**

**Tallahassee Meeting December 4, 2003**

**Preliminary Report Due January 1, 2004**

**Final Report Due January 1, 2005**

**Committee Sunsets May 6, 2005**

## **PRESENTATIONS AND TESTIMONY**

**Keynote presentations and public testimony occurred at the meetings held in 2003. Speakers covered the full spectrum of stakeholders engaged in the area of incapacity and guardianship.**

**The Task Force had the opportunity to consider enthusiastic and informative presentations by 26 individuals and two keynote speakers addressing objectives mandated by the Legislature.**

## KEYNOTE SPEAKERS

**The Honorable Susan Sexton  
October 4, 2003**

**The Honorable Maria Korvick  
October 22, 2003**

# THE HONORABLE SUSAN SEXTON



**Probate Judge  
13th Judicial Circuit  
Hillsborough County**

## Problems and Concerns



Judge Sexton's concerns focused on the Public Guardianship program, funding for public guardians, limited controls over guardianships, insuring protection for the ward, misuse of wards' assets and problems with incapacity hearings.

She stressed that there is a need for a higher level of supervision, state regulation and additional criteria to be a professional guardian.

**Judge Sexton pointed out that the requirements to become a professional guardian are less stringent than the requirements to become a licensed beautician.**

**She also stated that advanced directives are critical to the effective management of elderly citizens.**

**She believes that an ethical dilemma exists for guardian attorneys when responding to the court's review of problems in annual reports resulting in a conflict of interest and added costs to the ward.**

**She also feels that the court needs auditors to insure that wards' assets are spent appropriately pursuant to the law.**

**Finally, Judge Sexton expressed concern that the costs to start an incapacity are excessively high, ranging from \$3,500 to \$5,000.**

## Judge Sexton's Recommendations

- **Amend the law to enhance statutory regulations concerning guardians;**
- **Enhance professional guardianship training and requirements commensurate with actual duties and responsibilities;**
- **Educate the community regarding the benefits of advanced directives;**
- **Appoint counsel for the ward when conflicts of interest exist; and**
- **Establish networks to aid the court, related agencies and parties to obtain funding and support in guardianship case management.**

# THE HONORABLE MARIA KORVICK



**Administrative Judge, Probate Division  
11th Judicial Circuit  
Miami-Dade County**

## Judge Korvick's Recommendations

**Address the following issues:**

- **Increase the statutory amount for funeral expenses to allow for inflation and rising costs;**
- **Require examining committee member training, retention of a psychologist, and address the need for a training coordinator to assist with educational needs;**
- **Plan for the impact of the growth in the retiree population and the corresponding potential for an increased number of guardianships;**
- **Review Joint Application Development sessions and electronic filing as blueprint for implementation;**
- **Find ways to address lack of funding for guardianships;**

- **Increase availability of monitors to allow the court to better audit cases;**
- **Establish authority for counties to add on to filing fees or have funding provided by Tallahassee for the Statewide Public Guardianship Office;**
- **Consider professional guardianship internship programs;**
- **Establish grievance procedures for professional guardians;**
- **Modify the law to include a provision ensuring that the least restrictive alternative is used; and**
- **Consider the jurisdictional changes after the creation of a special needs trust.**

**PUBLIC TESTIMONY  
ON  
GUARDIANSHIP**

# **Insightful public testimony was presented by 26 citizens representing**

- **Guardianship Organizations**
- **Medical and Health Care Service Providers**
- **The Judiciary**
- **Court Professionals Specializing in Guardianship**
- **Mental Health Professionals**
- **Professional Guardians**
- **Citizen Action Groups**
- **Elder Law Attorneys**
- **State Agency Representatives**

## October 2, 2003 -- Dade City Meeting

<b>W.C. Jim Grimes</b>	<b>Long-Term Care Ombudsman</b>
<b>Paul McClintock</b>	<b>Citizen Advocate for the Elderly</b>
<b>Dr. Betty Davis</b>	<b>Public Guardian, Volusia County</b>
<b>Idella Valcourt</b>	<b>Professional Guardian</b>
<b>Keela Samis</b>	<b>General Master, Sixth Circuit</b>
<b>Honorable Trish Thomas</b>	<b>Judge, Fifth Circuit</b>
<b>Karen Patterson</b>	<b>Professional Guardian</b>
<b>Cyndi McCormick</b>	<b>General Master, Sixth Circuit</b>
<b>Patty Jarrel</b>	<b>Guardian Advocate</b>
<b>Tonya Baker Taft</b>	<b>Medicaid Waiver Provider</b>
<b>Nick Barton</b>	<b>Professional Guardian</b>
<b>Renita George</b>	<b>Probate Supervisor, Pasco County</b>

## October 22, 2003 -- Fort Lauderdale Meeting

<b>Stephanie Schneider</b>	<b>Chairperson Elder Law Section</b>
<b>Rosalyn K. Rudolph</b>	<b>MA Therapeutic Recreation, Boca Raton</b>
<b>Bruce Brister</b>	<b>Court Auditor, Collier County</b>
<b>Eloisa Roses Ramos</b>	<b>Public Guardian, Seventeenth Circuit</b>
<b>Howard Booser</b>	<b>Associate Director, Ann Stork Center</b>
<b>Pamela Kelley</b>	<b>Alzheimer's Association</b>
<b>Pamela Kyleennon</b>	<b>Department of Children &amp; Families</b>
<b>Susan Whetherby</b>	<b>Court Monitor, Palm Beach County</b>
<b>Knyvette Lee</b>	<b>Florida Guardianship Foundation</b>
<b>Barbara Riser</b>	<b>Professional Guardian</b>

## December 4, 2003 -- Tallahassee Meeting

**Aleisa C. McKinley, JD, MA**

**Director of Advocacy Center for  
Persons for Disabilities**

**Toni Nelson**

**President-elect, Florida State  
Guardianship Association  
Continuum Care of Tallahassee**

**Twyla Sketchley**

**Attorney Board Member,  
Florida State Guardianship Association**

**Karen Campbell**

**Executive Director of the Leon County  
Office of Public Guardian**

# **PUBLIC TESTIMONY PRIMARY FOCUS**

- **Incapacity**
- **Examining Committee procedures**
- **Funding and cost of incapacities and guardianships**
- **Audits and Reports**
- **Court procedures and related issues**
- **Developmentally disabled wards**
- **Education**
- **Medication policies**
- **Guardian issues**

# **AUDITS AND REPORTS**

## **Public Testimony Recommendations**

- **Address the need for greater standardization in forms and procedures;**
- **Provide copies of the initial and annual report to family members;**
- **Determine quality of the annual plan governing health, social and residential issues for the ward as part of the judicial review;**
- **Mandate the auditing of simplified accountings;**
- **Establish consequences for the delinquent filing of reports; and**
- **Enhance audit of routine transactions and activity to identify misuse of funds.**

# **COURT PROCEDURES AND RELATED ISSUES**

## **Public Testimony Recommendations**

- **Establish uniform procedures and forms throughout the state;**
- **Enhance case management through general masters, court monitors, court clerks and interns;**
- **Add resources for the Judiciary to review the quality of the annual plan;**
- **Minimize Probate Judges subject to bench rotation procedures; and**
- **More closely monitor Minor Guardianships.**

# **DEVELOPMENTALLY DISABLED WARDS**

## **Public Testimony Recommendations**

- **Increase funding sources for the management of developmentally disabled wards;**
- **Develop specialized training for the more effective management of developmentally disabled wards; and**
- **Utilize Medicaid Waiver Program to fund care of developmentally disabled.**

# **MEDICATION POLICIES**

## **Public Testimony Recommendations**

- **Enhance the court's review of the medications administered to wards by requiring it as a part of the annual plan, and allow additional reviews as needed; and**
- **Determine inappropriateness of “over-the-counter” or prescribed medications given to wards.**

# **EDUCATION**

## **Public Testimony Recommendations**

- **Enhance educational standards and requirements for guardians;**
- **Educate the community to create awareness of advanced directives and other alternatives to guardianship;**
- **Establish continuing education for examining committee members, guardians, attorneys, judiciary and the general public;**
- **Develop educational programs for restoration procedures.**
- **Provide mental health, financial management, and legal training for guardians;**
- **Expand existing training requirements for family guardians; and**
- **Increase availability of 40 hour guardianship course through state and local educational institutions.**

# **GUARDIANSHIP ISSUES**

## **Public Testimony Recommendations**

- **Develop higher levels of regulation and background investigations for guardians;**
- **Increase guardian compensation;**
- **Find ways to increase the number and availability of professional guardians;**
- **Develop guardian mentor, advocacy and internship programs;**
- **Enhance the definition of “professional guardian;” and**
- **Consider the licensing of professional guardians.**

# **FUNDING AND COSTS**

## **Public Testimony Recommendations**

- **Reinstate and create new funding provisions in the law for public guardianship programs; and**
- **Find ways to fund and reduce the high cost to determine incapacity.**

# **EXAMINING COMMITTEE**

## **Public Testimony Recommendations**

- **Address limited pool of resources to select committee members;**
- **Enhance evaluation process of alleged ward by committee members;**
- **Create uniform procedures for the appointment process and report forms; and**
- **Clarify payment procedures for examining committee members.**

# **INCAPACITIES**

## **Public Testimony Recommendations**

- **Consider least restrictive alternatives;**
- **Create statewide uniformity when selecting examining committee members;**
- **Improve examining committee reporting process; and**
- **Identify method for payment of fees for indigent wards.**

# Guardianship Task Force Work Session



# Guardianship Task Force Work Session

**The Task Force, pursuant to objectives for the preliminary report and review of the public testimony, developed 37 legislative proposals which focus on:**

- **Incapacity**
- **Examining committees**
- **Costs**
- **Medical examinations**
- **Emergency temporary guardians**
- **Least restrictive alternatives**
- **Advanced directives**

## Task Force Action Plan for 2004

After considerable discussion and analysis the Task Force:

- Approved 19 statutory amendments for the preliminary report and submission to the 2004 legislature;
- Identified seven items for continued review and potential legislative recommendations by the Task Force for 2004; and
- Noted six subjects requiring special commentary in the preliminary report.

**The Task Force placed an emphasis on incapacity, restoration, advanced directives and emergency temporary guardianship issues which include:**

- Need for uniform procedures in selection of examining committee members and court appointed attorneys;**
- Evaluation of examining committee process; and**
- Payment of examining committee and court appointed attorney when guardianship is not established.**

# Summary of 2004 Legislative Proposals

## 744.3031 Emergency Temporary Guardian (ETG) —

### (3) Authority of ETG:

Extend ETG authority from 60 to 90 days and ability to extend additional 30 to 90 days allowing for more sufficient time to address the needs of the ward.

## 744.3201 Petition to Determine Capacity —

### (2)(a) and (b) Content of Petition:

Add telephone number of petitioner.

**744.3215 Rights of persons determined  
incapacitated —**

**(1)(I) Rehabilitation:**

**Change language from “improve” to “maximize”  
quality of life.**

**(1)(o) Privacy:**

**To emphasize importance, move subsection (o)  
to (a) in statute.**

**744.3215 Rights of persons determined incapacitated —**

**(2) Rights removed by the court:**

**Clarify authority to act by adding language “but not delegated to a guardian.”**

**(2)(a) To marry:**

**Require court approval for right to marry if right to contract is removed.**

## **744.331 Procedures to determine incapacity —**

### **(2)(a) Attorney for alleged incapacitated person:**

**Create subsection that states: “The Chief Judge shall establish and maintain a list of attorneys from within the circuit to serve as court-appointed attorney for the alleged ward.”**

### **(2)(b) Selection of court appointed attorney:**

**Require that selection be made on a rotation basis, taking into consideration conflicts pursuant to this section, and allow alleged ward to substitute upon approval by the court.**

## 744.331 Procedures to determine incapacity —

### **(3)(a) Examining committee:**

**Expand language to prohibit members from also being associated with the “petitioner, petitioner’s counsel, or proposed guardian’s counsel.”**

### **(3)(b) Examination by committee:**

**Amend language to allow “each member of the” examining committee to submit a separate report rather than one report from the committee as in current law.**

## **744.331 Procedures to determine incapacity —**

### **(3)(\*b) Examining Committee Selection:**

**Create subsection directing the Chief Judge to appoint qualified examining committee members on an annual basis pursuant to this section and maintain a list of those members.**

**\* This will result in renumbering of section.**

## **744.331 Procedures to determine incapacity —**

### **(3)(d)(5) Signature of committee members:**

**Amend subsection to require the “date each member conducted his or her examination” of the ward.**

## **744.331 Procedures to determine incapacity —**

### **(7)(b) Examining Committee Fees:**

**Amend language to transfer payment of fees for indigent wards from the county to the State of Florida, provide procedures to process creditor claims filed by the State, and direct the Judicial Administrative Commission to maintain records of such payments.**

## **744.331 Procedures to determine incapacity —**

### **(7)(c) Dismissed petitions:**

**Add a provision to assess attorney fees against the petitioner if the court finds the petition to have been filed in bad faith.**

**Upon the dismissal of a petition for reasons other than bad faith, add a provision directing the state of Florida to pay the costs.**

**765.101 Definitions. —**

**(5)(a) Health care decision and informed consent:**

**Expand definition by adding “physical and mental” to the phrase health care.**

# **LEGISLATIVE ISSUES DEFERRED FOR DISCUSSION AND ACTION IN 2004**

## **Definitions**

**Establishment and definition of the word “biopsychosocial” to provide an integrated concept of biological, medical, psychological, mental health, social, cultural and family environmental factors as related to the overall health of a ward.**

## **Standards**

**The enhancement of standards to better define incapacity as related to health, safety and management of property issues.**

## Final Accounting for Emergency Temporary Guardianship

The requirement of a final accounting upon the termination of an emergency temporary guardianship.

## Late Filings

A definition of what is considered a late filing for the annual report and establishment of fines for reports not filed timely.

## Guardian Ad Litem

Development of a Guardian Ad Litem Program to monitor the status of the alleged incapacitated person during incapacity proceedings.

## Comprehensive Physical Exam

The requirement of a comprehensive physical exam of the alleged ward during the incapacity proceedings or within 60 days of the Order of Incapacity. Such an exam shall include prescriptions and over the counter medications.

## Reversible Medical Conditions

A requirement that the comprehensive physical exam determine whether reversible forms of dementia or treatable forms of medical illness affect the guardianship.

## Notice Requirements

Amends the notice requirements for Suggestion of Capacity Proceedings by adding any attorney who has filed an appearance on behalf of the ward.

# COMMENTARY

Other items discussed and identified as needing further consideration by the Task Force in 2004 for the final report are as follows:

## Physical Access to the Courts

It was noted that efforts are needed to insure that court facilities are accessible by individuals with disabilities and incapacities. Access to special administrative assistance should also be provided to wards needing such help.

## Education for Incapacity Proceedings

Training was a recurring theme voiced during the public commentary offered at each of the three meetings held in 2003.

The Task Force specifically noted that education was an essential component of incapacity and the incapacity process. Training for the court-appointed attorney representing an alleged incapacitated ward was critical in best preserving the least restrictive measures for the alleged ward.

It was determined that training programs for incapacity should be approved by the Chief Judge.

## **Education for Examining Committee Members**

**In response to the public testimony, the Task Force determined that targeted training was needed for members of the examining committee.**

**Examining committee members should be knowledgeable in stating facts and citing specific evidence of the person's incapacity to exercise informed decisions.**

**Periodic training should be provided to familiarize potential examining committee members with any forms or format used to present findings and advise the court.**

## Proposed Examining Committee Members

No party shall submit the names of proposed examining committee members to the court. The Task Force members determined that the selection process needs to be random and free of conflicts of interest. It was noted, however, that small counties with limited resources may not be able to fully meet this objective.

## Baker Act Proceedings

The Task Force members agreed that the Baker Act statute plays an important role in guardianships. However, the members felt that review of this section of the law exceeds the scope of the Task Force.

## **Future Need for Guardianships in the State of Florida**

**Research conducted by the National Alzheimer's Association indicates the following incidences of Alzheimer's disease in the general population:**

**10% of individuals reaching the age of 65**

**50% of individuals reaching the age of 85**

**National studies also indicate that the percentage of individuals living to the age of 85 is steadily increasing.**

**As Florida's population grows and people live longer, the need for guardianships will expand. Projections for the number of Alzheimer's cases in the State indicate a 90 percent increase in a 15 year period beginning in 2000:**

<u>Year</u>	<u>Alzheimer's Population</u>
2000	331,387
2010	541,898
2015	628,627

**Note: This information only identifies a portion of the population that may potentially need guardianship or other alternative services for their care and does not include other forms of incapacity such as dementia, physical disability and developmental disability.**

**Written and Produced by**

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**Special Thanks to  
Roz Fenton, Judy Kennedy, Paula O'Neil,  
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