

Bill No. CS for CS for SB 472, 1st Eng.

Barcode 403390

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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11 Senator Saunders moved the following amendment:

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13           **Senate Amendment (with title amendment)**

14           On page 23, line 30, through

15                 page 28, line 20, delete those lines

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17 and insert:

18           Section 11. Subsections (2), (3), (4), (5), and (7) of

19 section 744.331, Florida Statutes, are amended to read:

20           744.331 Procedures to determine incapacity.--

21           (2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.--

22           (a) When a court appoints an attorney for an alleged

23 incapacitated person, the court must appoint an attorney who

24 is included in the attorney registry compiled pursuant to ss.

25 27.40 and 27.42 by the circuit's Article V indigent services

26 committee. Appointments must be made on a rotating basis,

27 taking into consideration conflicts arising under this

28 chapter.

29           (b)(a) The court shall appoint an attorney for each

30 person alleged to be incapacitated in all cases involving a

31 petition for adjudication of incapacity. The alleged

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1 incapacitated person may substitute her or his own attorney  
2 for the attorney appointed by the court.

3 ~~(c)(b)~~ Any attorney representing an alleged  
4 incapacitated person may not serve as guardian of the alleged  
5 incapacitated person or as counsel for the guardian of the  
6 alleged incapacitated person or the petitioner.

7 (d) Effective January 1, 2007, an attorney seeking to  
8 be appointed by a court for incapacity and guardianship  
9 proceedings must have completed a minimum of 8 hours of  
10 education in guardianship. A court may waive the initial  
11 training requirement for an attorney who has served as a  
12 court-appointed attorney in incapacity proceedings or as an  
13 attorney of record for guardians for not less than 3 years.

14 (3) EXAMINING COMMITTEE.--

15 (a) Within 5 days after a petition for determination  
16 of incapacity has been filed, the court shall appoint an  
17 examining committee consisting of three members. One member  
18 must be a psychiatrist or other physician. The remaining  
19 members must be either a psychologist, gerontologist, another  
20 psychiatrist, or other physician, a registered nurse, nurse  
21 practitioner, licensed social worker, a person with an  
22 advanced degree in gerontology from an accredited institution  
23 of higher education, or other person who by knowledge, skill,  
24 experience, training, or education may, in the court's  
25 discretion, advise the court in the form of an expert opinion.  
26 One of three members of the committee must have knowledge of  
27 the type of incapacity alleged in the petition. Unless good  
28 cause is shown, the attending or family physician may not be  
29 appointed to the committee. If the attending or family  
30 physician is available for consultation, the committee must  
31 consult with the physician. Members of the examining

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1 committee may not be related to or associated with one  
2 another, ~~or~~ with the petitioner, with counsel for the  
3 petitioner or the proposed guardian, or with the person  
4 alleged to be totally or partially incapacitated. A member may  
5 not be employed by any private or governmental agency that has  
6 custody of, or furnishes, services or subsidies, directly or  
7 indirectly, to the person or the family of the person alleged  
8 to be incapacitated or for whom a guardianship is sought. A  
9 petitioner may not serve as a member of the examining  
10 committee. Members of the examining committee must be able to  
11 communicate, either directly or through an interpreter, in the  
12 language that the alleged incapacitated person speaks or to  
13 communicate in a medium understandable to the alleged  
14 incapacitated person if she or he is able to communicate. The  
15 clerk of the court shall send notice of the appointment to  
16 each person appointed no later than 3 days after the court's  
17 appointment.

18 (b) A person who has been appointed to serve as a  
19 member of an examining committee to examine an alleged  
20 incapacitated person may not thereafter be appointed as a  
21 guardian for the person who was the subject of the  
22 examination.

23 (c) Each person appointed to an examining committee  
24 must file an affidavit with the court stating that he or she  
25 has completed the required courses or will do so no later than  
26 4 months after his or her initial appointment. Each year, the  
27 chief judge of the circuit must prepare a list of persons  
28 qualified to be members of the examining committee.

29 (d) A member of an examining committee must complete a  
30 minimum of 4 hours of initial training. The person must  
31 complete 2 hours of continuing education during each 2-year

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1 period after the initial training. The initial training and  
2 continuing education program must be developed under the  
3 supervision of the Statewide Public Guardianship Office, in  
4 consultation with the Florida Conference of Circuit Court  
5 Judges, the Elder Law and Real Property, Probate and Trust Law  
6 sections of The Florida Bar, the Florida State Guardianship  
7 Association, and the Florida Guardianship Foundation. The  
8 court may waive the initial training requirement for a person  
9 who has served for not less than 5 years on examining  
10 committees. If a person wishes to obtain his or her continuing  
11 education on the Internet or by watching a video course, the  
12 person must first obtain the approval of the chief judge  
13 before taking an Internet or video course.

14 ~~(e)(b)~~ Each member of the examining committee shall  
15 examine the person. Each ~~The~~ examining committee member must  
16 ~~shall~~ determine the alleged incapacitated person's ability to  
17 exercise those rights specified in s. 744.3215. In addition to  
18 the examination, each ~~the~~ examining committee member must  
19 ~~shall~~ have access to, and may consider, previous examinations  
20 of the person, including, but not limited to, habilitation  
21 plans, school records, and psychological and psychosocial  
22 reports voluntarily offered for use by the alleged  
23 incapacitated person. Each member of the examining committee  
24 must ~~shall~~ submit a report within 15 days after appointment.

25 ~~(f)(c)~~ The examination of the alleged incapacitated  
26 person must include a comprehensive examination, a report of  
27 which shall be filed by each ~~the~~ examining committee member as  
28 part of his or her ~~its~~ written report. The comprehensive  
29 examination report should be an essential element, but not  
30 necessarily the only element, used in making a capacity and  
31 guardianship decision. The comprehensive examination must

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1 include, if indicated:

- 2 1. A physical examination;
- 3 2. A mental health examination; and
- 4 3. A functional assessment.

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6 If any of these three aspects of the examination is not  
7 indicated or cannot be accomplished for any reason, the  
8 written report must explain the reasons for its omission.

9 (g)(d) Each committee member's ~~The committee's~~ written  
10 report must include:

11 1. To the extent possible, a diagnosis, prognosis, and  
12 recommended course of treatment.

13 2. An evaluation of the alleged incapacitated person's  
14 ability to retain her or his rights, including, without  
15 limitation, the rights to marry; vote; contract; manage or  
16 dispose of property; have a driver's license; determine her or  
17 his residence; consent to medical treatment; and make  
18 decisions affecting her or his social environment.

19 3. The results of the comprehensive examination and  
20 the committee member's ~~members'~~ assessment of information  
21 provided by the attending or family physician, if any.

22 4. A description of any matters with respect to which  
23 the person lacks the capacity to exercise rights, the extent  
24 of that incapacity, and the factual basis for the  
25 determination that the person lacks that capacity.

26 5. The names of all persons present during the time  
27 the committee member conducted his or her examination. If a  
28 person other than the person who is the subject of the  
29 examination supplies answers posed to the alleged  
30 incapacitated person, the report must include the response and  
31 the name of the person supplying the answer.

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1           6.5. The signature of ~~each member~~ of the committee  
2 member and the date and time the member conducted his or her  
3 examination.

4           (h)(e) A copy of each committee member's ~~the~~ report  
5 must be served on the petitioner and on the attorney for the  
6 alleged incapacitated person within 3 days after the report is  
7 filed and at least 5 days before the hearing on the petition.

8           (4) DISMISSAL OF PETITION.--If a majority of the  
9 examining committee members conclude ~~concludes~~ that the  
10 alleged incapacitated person is not incapacitated in any  
11 respect, the court shall dismiss the petition.

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14 ===== T I T L E   A M E N D M E N T =====

15 And the title is amended as follows:

16           On page 3, line 26, after the semicolon

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18 insert:

19           providing for dismissal of a petition alleging  
20           incapacity based on the reports of the majority  
21           of the committee members;

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