# DECISION-MAKING STANDARDS IN GUARDIANSHIP

## COURT CLERKS AND COMPTROLLERS

## OFFICE OF PUBLIC & PROFESSIONAL GUARDIANS

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# IS MY JUDGMENT IN YOUR BEST INTEREST?

## HOW DECISIONS ARE MADE IN GUARDIANSHIPS

**(BY: ERIC VIRGIL, ESQ. AND STACY B. RUBEL, ESQ.)**

## I. Introduction

When Glenda Martinez and J. Alan Smith met in 2008 through a social media website, little did they know how that meeting would change the course of Florida guardianship law. The couple was engaged in 2009 but in January 2010 Smith was involved in an automobile accident in which he suffered head trauma. As a result, his daughter filed a petition to appoint a guardian of the person and property for Smith. That filing began seven long years of court proceedings and litigation that resulted in multiple appellate decisions on a variety of guardianship issues and a Florida Supreme Court decision on a ward's right to marry.[1] The *Smith* cases, especially the recent Florida Supreme Court case, are a good illustration of the clash between two strong public policies, namely the policy of protecting vulnerable persons from exploitation and harm versus the policy of upholding and preserving the rights, dignity, and autonomy of vulnerable persons as much as possible, and to have the court's intervention in cases of incapacity be limited to the greatest extent feasible.[2]

This clash of public policies has meant that guardianship matters have been frequently litigated in Florida over the past decade. These

disputes have led to substantial changes in Florida guardianship law, in particular as set forth in Chapter 744 of the Florida Statutes.[3] In light of the changing legal climate related to guardianships, it is vitally important for attorneys and guardians to understand how guardians should make decisions on behalf of wards and by what standard these decisions should be made.

## II. Starting Point - The Guardian as a Fiduciary

Guardians are appointed by the circuit court to exercise legal rights that have been removed from incapacitated persons and delegated to the guardian.[4] A guardian is a fiduciary and owes fiduciary duties to the ward.[5] Pursuant to F.S. § 744.361, the guardian's duties to the ward include acting in good faith and not in a manner that is contrary to the ward's best interests under the circumstances.

Since the guardian is a fiduciary, another duty owed by a guardian to the ward is the duty of loyalty.[6] In the guardianship context, though, what does that mean? Must the guardian attempt to determine the desires of the ward and follow those desires, even if they are not in the ward's best interests? How should a guardian even determine a ward's desires, given that the ward has at least some degree of incapacity? Can the guardian disregard the ward's desires if those desires are unwise or even harmful to the ward? Where does "loyalty" lie with regard to these questions?

As we will see, the guardian is expected to be loyal to the ward and many times that means determining the ward's desires and then doing what the ward would have wanted, even if that is not what the guardian would do or what a "reasonable person" would do in the same situation. However, under current Florida law, there are also many decisions in which the guardian and the court will be charged not with determining what the ward desired and would have wanted, but rather what is in the best interests of the ward. This is similar to a parent acting on behalf of a child and the guardian is to make an independent decision on behalf of the ward rather than acting as the guardian believes the ward would have acted.

## III. What Potential Decision-Making Standards Could Apply?

In order to better understand the decision-making standards it is useful to note that there are at least seven possible standards that could apply to how a guardian or court should make or review a decision on behalf of the ward: (1) Do what the ward would have done; (2) Do what is in the ward's best interests; (3) Do what is not contrary to the ward's best interests; (4) Do what is best for society; (5) Do what is best for those dependent upon the ward or those in closest relationship with the ward, such as a spouse; (6) Do what the guardian believes is best based on the guardian's experience and values; and (7) Do what the judge believes is best based on the experience and values of the judge.[7]

The first two standards are the *substituted judgment* standard and the *best interest* standard and are regularly set forth in Chapter 744 of the Florida Statutes and in case law. The third standard arises in the context of whom to appoint as guardian, particularly when there is a preneed designation, but will not be discussed further here since this article will concentrate on decisions to be made during the pendency of the guardianship itself.[8] The fourth and fifth standards have arisen by implication in cases[9] that will be discussed later in this article. Finally, the sixth and seventh standards are possible options but are not supported by Florida law.[10]

## IV. The Two Primary Decision-Making Standards – *Substituted Judgment* and *Best Interest*

Once a guardian is appointed to exercise rights removed from a ward and delegated to the guardian, decisions on behalf of the ward will inevitably arise that will require the guardian to make a choice between several alternatives. Some of these decisions relate to life and death situations while others are routine decisions on behalf of the ward, but in each scenario, the question arises: "How does a guardian make decisions on behalf of the ward?" In Florida, there are two primary decision-making standards: the *best interest* standard and the *substituted judgment* standard. [11] This article will explain these standards and then set forth when and how guardians should use each standard in exercising their authority on behalf of a ward. In addition, in order to clarify the law for

guardianship stakeholders and to improve the decision-making process, the authors will propose that Florida enact a new statutory decision-making standard for all non-health care decisions made by guardians on behalf of their wards. The proposed standard would not put the guardian in the position of choosing either *substituted judgment* or *best interest* but rather would place guardianship decision-making on a continuum that incorporates both standards to protect the ward's autonomy while still allowing the guardian to consider what is objectively wise for the benefit of the ward.

Under current Florida law, in each situation where a guardian has to make a decision on behalf of their ward, the guardian must decide whether the decision should be made using the *best interest* standard or the *substituted judgment* standard. The *best interest* standard requires the guardian to choose the alternative that produces the greatest good or benefit for the ward.[12] The *substituted judgment* standard requires the guardian to choose the alternative that the ward would have chosen if still able to make decisions.[13] Florida statutory and case law apply both standards[14], depending upon the situation, so how can a guardian know which standard to apply?

## V. Rule 58M-2.009 and Standards of Practice for Professional Guardians

The recent adoption of Rule 58M-2.009 Standards of Practice, by the Department of Elder Affairs, Office of the Public and Professional

Guardians (the "OPPG") adds further complexity to this issue due to its potential conflict with Florida statutory and case law. On June 23, 2017, Governor Scott signed into law the Office of Public & Professional Guardians Standards of Practice on Guardianship ("OPPG Standards").[15] The OPPG Standards regulate professional guardians in Florida and Section 7 specifically sets forth the standards for decision-making for professional guardians.[16] Under the OPPG Standards, to the extent that a ward's goals and preferences have been made known to a professional guardian, they should honor those goals or preferences, except when they would cause "significant impairment to a Ward's physical, mental, or emotional health."[17] Therefore, the default standard is *substituted judgment*, requiring the professional guardian to consider the decision their ward would have made when the ward had capacity.[18] The OPPG Standards require professional guardians to use *substituted judgment* as the guiding principle in any surrogate decision a guardian makes.

Under the OPPG Standards, only in situations where the ward has never had capacity, their preferences cannot be ascertained even with support, or when their wishes would cause significant impairment to the ward's health or property, can the *best interest* standard be used.[19] Even under a *best interest* decision-making framework, the OPPG Standards require the guardian to consider the ward's past practice and weigh evidence of their choices which are concepts more properly related to *substituted judgment.*[20]

Should professional guardians and non-professional guardians be legally required to use different standards to make similar decisions on behalf of their wards? The authors believe there should be uniformity regarding how all guardians, whether professionals or not, make choices on behalf of their wards, and the proposed change to the law set forth in this article will accomplish this goal. However, in the absence of uniformity, the authors argue that existing Florida statutes governing guardianship proceedings must be followed wherever they may conflict with Rule 58M-2.009.[21]

## VI. Where to Look for the Appropriate Standard

In order to determine which standard should apply, the first place to look is in the Florida Statutes, Chapter 744, to see if a statutory decision-making standard is applicable to the decision in question. While not all decisions can be specifically covered by statute, the statutes do address a broad range of potential decisions to be made on behalf of a ward. Where the decision does not seem clearly addressed by a statutory standard, then Florida common law should be reviewed. Finally, Rule 58M-2.009 provides standards for professional guardians and guidance to all guardians although the authors believe it applies the *substituted judgment* standard too broadly.

*Lefebvre v. North Broward Hosp. Dist.*, 566 So. 2d 568 (Fla. 4th DCA 1990), is instructive by way of illustration. In *Lefebvre*, Ms. Lefebvre was committed to the hospital under the Baker Act and, while

involuntarily placed there, the issue arose as to whether to terminate her pregnancy. During the trial court proceedings there was a dispute as to which standard should be used for surrogate decision-making on behalf of Ms. Lefebvre. On appeal, the Fourth District held that normally when a patient is incapacitated the surrogate decision-maker must make a decision for the patient based on a *substituted judgment* or subjective test; that is, on the basis of what choice the patient would make if he or she were competent to do so.[22] However, the Court then went on to note that there were four applicable statutes relevant to the decision to terminate a pregnancy[23] and that therefore the common law application of *substituted judgment* in this instance had been superseded by the statutory standard.[24]

## VII. Application of the *Substituted Judgment* Standard

### A. Health Care Decisions

The substituted judgment standard arose in healthcare decision-making on behalf of wards, although it has advanced into property-management decisions as well.[25] As explained in the *Browning* case, a person with capacity has the constitutional right to choose or refuse medical treatment, and that right extends to all relevant decisions concerning one's health. The Florida Supreme Court held in *John F. Kennedy Memorial Hosp., Inc. v. Bludworth,* 452 So. 2d 921 (Fla. 1984) that an incapacitated person has the same right to refuse medical treatment as a person with full capacity. A guardian, in making these

health-care decisions for a ward, should use the *substituted judgment* standard where there is no contrary statutory standard. The *Browning* court described the standard as follows: "…when the patient has left instructions regarding life-sustaining treatment, the surrogate must make the medical choice that the patient, if competent, would have made, and not one that the surrogate might make for himself or herself, or that the surrogate might think is in the patient's best interests.[26] *Browning* further indicates that Florida has adopted a concept of "substituted judgment" and that "[o]ne does not exercise another's right of self-determination or fulfill that person's right of privacy by making a decision which the state, the family, or public opinion would prefer. The surrogate decision maker must be confident that he or she can and is voicing the patient's decision."[27]

In the authors' opinion, the court in *Browning* was not intending to hold that the concept of substituted judgment had been adopted for all guardianship decisions but rather was reiterating and confirming that it was the applicable standard for health-care decision-making.

### B. Gifts of the Ward's Property and Estate Planning

In 1980, the Second District considered the authority of a guardian to make gifts of a ward's property.[28] Prior to 1980 there were no reported Florida decisions on the issue. The Court first noted that even without specific statutory authorization, a number of states have recognized the inherent power of the court to permit a guardian to make applications of

funds of a ward for the benefit of the ward's relatives.[29] Where the ward had a legal obligation of support, the question was easy. However, in those cases in which there was no legal obligation of support, the courts generally have based their power or that of the guardian upon findings with respect to what provision the ward herself would have made if she had capacity. The Court noted that this principle has been called the "doctrine of substituted judgment."[30] Further, the Court indicated that Florida has adopted a specific statute to deal with gifts for tax purposes, F.S. § 744.441(17), and that while the statute authorizes the court to approve gifts for the purpose of income and estate tax planning, such approval is necessarily predicated upon the court's determination that this is what the ward would want to do if she had capacity.[31]

The later case of *Goeke v. Goeke*, 613 So. 2d 1345 (Fla. 2d DCA 1993), concluded that a guardian with court approval could designate the estate of the ward as the primary beneficiary of an IRA account in order for the retirement account assets to be distributed pursuant to the ward's existing will. This seems like a further application of *substituted judgment*, but the court used both *substituted judgment* language and *best interest* language in the opinion and never articulated the guardian's standard for decision-making.[32] However, this principle does not extend to authorizing a guardian to make gifts of the ward's property that are not supported by evidence of the ward's donative intent or that are contrary to the ward's intent.[33] A guardian is not authorized to create a

trust that changes the ultimate beneficiary of the ward's property.[34] This is consistent with the general principle that a guardian cannot exercise a purely personal right of the ward."[35]

### C. Medicaid Planning

The issue of Medicaid planning for a ward was addressed by the Fourth District Court of Appeal in 2000 when it determined that an evidentiary hearing applying the *substituted judgment* standard is required to obtain authority for such planning.[36]

### D. Suspension of a Power of Attorney During Incapacity Proceedings

At any time during proceedings to determine incapacity but before the entry of an order determining incapacity, the authority granted under an alleged incapacitated person's power of attorney to a parent, spouse, child, or grandchild may be suspended, among other reasons, if the agent's decisions are not in accord with the alleged incapacitated person's known desires.[37]

### E. Summary - Substituted Judgment Decision-Making

The cases and statutes cited above are those areas under Florida law where the *substituted judgment* standard clearly applies. It is most readily applicable to healthcare decisions but its application to many property-related decisions is also well established. However, in cases where it is not possible to determine what decision a ward would have desired to make if the ward had capacity, then the *best interest* standard will apply.[38]

## VIII. Application of the *Best Interest* Standard

### A. Requests for Extraordinary Authority

Before the court may grant authority to a guardian to exercise any of the rights specified in F.S. § 744.3215(4), such as seek a divorce from the ward's spouse, consent to certain medical procedures, or terminate parental rights, the court must follow the procedure for extraordinary authority set forth in F.S. § 744.3725. This procedure is a blend of *substituted judgment* and *best interest* decision making, as the court is directed to see if the ward can express his views and desires with regard to the decision at hand and then must determine if the authority sought is in the best interest of the ward.[39] The statutory language seems limited to seeking the ward's views currently (i.e., after incapacity) but arguably should be applied to allow evidence of the ward's views prior to incapacity. The statute could be read as unconstitutional otherwise, at least with regard to healthcare decisions.

### B. Powers of a Guardian with Court Approval, Settlements, and Petitions for Interim Review

The omnibus F.S. § 744.441, which is a long list of actions or decisions a guardian may make or take on behalf of the ward, upon court approval, uses the *best interest* standard in several subsections and does not mention *substituted judgment* or use *substituted judgment* language such as references to the ward's views, wishes, or desires.[40] F.S. § 744.441 was recently applied in *Hancock v. Share*, 67 So. 3d 1075 (Fla. 5th DCA 2011), which authorized the guardian to enter into a proposed

annuity contract as part of a settlement on behalf of the ward after finding the contract was in the best interest of the ward. In addition, under F.S. § 744.387, settlement by the guardian of claims related to the ward is governed by the *best interest* standard.[41] A Petition for Interim Review, through which an interested person, including the ward, may petition the court for review of the guardian's decisions, is also governed by the *best interest* standard.[42]

### C. Amending the Ward's Trust

In *In re Guardianship of Muller*, 650 So.2d 698 (Fla. 4th DCA 1995), the Court allowed a guardian to amend a trust pursuant to F.S. § 744.441(2). The guardian showed that the current trustee had a conflict of interest, and it was in the ward's best interest to amend the trust and remove the trustee. Then, in *Reddick v. SunTrust Bank*, 718 So. 2d 950 (Fla. 5th DCA 1998), the court refused to allow a spouse who was a guardian to replace a corporate fiduciary trustee with herself as trustee on the grounds the change was not in the ward's best interest.

### D. Changing the Residence of the Ward/Termination of a Guardianship

At least one reported case, *Montejo v. Martin Mem'l Med. Center, Inc.*, 935 So. 2d 1266 (Fla. 4th DCA 2006), appears to treat the decision to change the ward's residence as one governed by the *best interest* standard.

In a case where the ward was moved permanently from Florida to Wales without court authority and then a petition was later filed to terminate the guardianship of the property, the court held that the *best interest* standard applied with regard to the decision whether to terminate the guardianship.[43]

### E. The Right to Marry

*Smith*, the recent Florida Supreme Court decision discussed at the beginning of this article, appeared to treat the decision-making standard for analyzing whether a guardian should seek permission for a ward to marry as a decision governed by the *best interest* standard. The statutory rationale for court approval of the marriage, and for the Court requiring approval in order for the marriage to be valid, is rooted in a desire to protect the ward from exploitation.[44] However, the Court's opinion noted that the ward was engaged to Glenda Martinez prior to his incapacity and that he desired to marry her.[45] These facts are relevant to *substituted judgment*. It is not inconsistent with the *best interest* standard of review, though, to note that a decision that is in the ward's best interest is also what the ward would desire under the *substituted judgment* standard.

### F. Summary – *Best Interest* Decision-Making

The *best interest* standard applies where directly applicable under the statutes and case law set forth above and applies as the default standard for decision-making when the guardian is unable to determine

what decision a ward would have made under *substituted judgment*. Its most common application is with regard to contract and legal transactions on behalf of the ward.

## IX. Proposed New Standard for Guardianship Decision-Making – Honoring the Ward's Self-Determination While Providing Clarity to Guardians

The authors propose the following standard for decision-making on behalf of a ward, and suggest that F.S. § 744.361(4) be amended to reflect the new standard:[46]

***A guardian shall exercise reasonable care, diligence, and prudence and, when making decisions on behalf of a ward, shall use the following decision-making standards:***

***(a) Consistent with the ward's constitutional rights of privacy and self-determination, health care decisions shall be based on substituted judgment if there is evidence of what the ward would have wanted; if not, then the decisions shall be based on the ward's best interest.***

***(b) All other decisions shall be based on substituted judgment if there is evidence of what the ward would have wanted and the decision also promotes the ward's best interest. If there is no evidence to support substituted judgment, or the decision does not promote the ward's best interest, then the decision should be based on best interest.***

This proposed reform would address current lack of clarity in Florida guardianship law, and reconcile the potential conflict between that law and the OPPG Standards. It would provide that self-determination is the primary decision-making objective; provide that non-health care decisions based on *substituted judgment* should be reasonable to protect the guardian and ward; provide that guardians should attempt to ascertain information upon which to base a *substituted judgment*; and prioritize the *substituted judgment* standard over *best interest* while still maintaining a role for *best interest* decision-making as a fall-back when *substituted judgment* is unavailable.

## X. Conclusion

Florida has not settled on any one decision-making standard for all guardianship decisions, in spite of the recent passage of the OPPG Standards for professional guardians. The authors' proposed new decision-making standard would create a uniform standard and reconcile the potential conflict between current law and the OPPG Standards. In the meantime, there is support in the case law and statutes for both the *substituted judgment* and *best interest* standards and they both have their appropriate place. The ward's health care and many estate planning matters are governed by the *substituted judgment* standard where the ward's wishes can be determined, while most contractual and legal matters on the ward's behalf are governed by the *best interest* standard. Finally, regardless of the decision-making standard, guardians must be

aware of the requirements under law for court approval for certain decisions and act accordingly.

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[1] *Smith v. Smith*, 224 So. 3d 740 (Fla. 2017); Smith *v. Smith*, 199 So. 3d 911 (Fla. 4th DCA 2016); *Martinez v. Guardianship of Smith*, 159 So. 3d 394 (Fla. 4th DCA 2015); *Martinez v. Cramer*, 121 So. 3d 580 (Fla. 4th DCA 2013); *Martinez v. Cramer*, 125 So. 3d 974 (Fla. 4th DCA 2013).

[2] *Smith v. Smith*, 224 So. 3d 740, 749 (Fla. 2017) ("The legislative intent, as declared in section 744.1012, Florida Statutes (2016), further illustrates the goal of protecting incapacitated persons from exploitation while upholding their rights").

[3] *See, e.g. The Shifting Landscape of Guardianship Law: Three Consecutive Years of Changes*, Hung V. Nguyen and Stacy B. Rubel, The Florida Bar Journal, September/October 2016.

[4] *See* FLA. STAT. § 744.361(1) ("The guardian of an incapacitated person is a fiduciary and may exercise only those rights that have been removed from the ward and delegated to the guardian.")

[5] FLA. STAT. § 744.361(1). *See also Saadeh v. Connors*, 343 So. 2d 916, 917 (Fla. 4th DCA 2014) (where the Court noted that "we find that [the ward] and everything associated with his well-being is the very essence i.e. the exact point, of our guardianship statutes. As a matter of law, the ward … is both the primary *and* intended beneficiary of *his* estate.")

[6] *Capital Bank v. MVB, Inc.*, 644 So. 2d 515, 520 (Fla. 3d DCA 1994).

[7] *See* Lawrence A. Frolik, *Is a Guardian the Alter Ego of the Ward?* 37 STETSON LAW REVIEW 53, 61 (2007).

[8] *See Koshenina v. Buvens*, 130 So. 3d 276 (Fla. 1st DCA 2014) (designated preneed guardian must be appointed by the court unless the appointment would be contrary to the ward's best interest). The *Koshenina* court takes pains to explain that this standard is different from a generalized best interest standard and that this standard protects the ward's personal preferences as to the choice of guardian.

[9] *See e.g. In re Guardianship of Browning*, 568 So. 2d 4 (Fla. 1990) (State's interest in preserving life versus and individual's right of privacy) and *Rainey v. Guardianship of Mackey*, 773 So. 2d 118 (Fla. 4th DCA 2000) (State's interest in reserving Medicaid benefits to certain beneficiaries and protecting wards from impoverishment versus individual's right to engage in Medicaid planning to gain eligibility to benefits).

[10] *See In re Guardianship of Schiavo (Schiavo IV)*, 851 So. 2d 182, 186 (Fla. 2d DCA 2003) (role of the court is not to substitute its judgment for that of the ward with regard to healthcare decisions); *In re Guardianship of Sherry*, 668 So. 2d 659 (Fla. 4th DCA 1996) (guardian not authorized to create a trust that changes the ultimate beneficiary of the ward's property).

[11] In addition to the two main standards, discussed above, there is a corollary standard, "contrary to the best interests of the ward," that appears in FLA. STAT. § 744.312(4) and is discussed in detail in the *Koshenina* case. This standard is used when reviewing the validity of a designation of preneed guardian, which should be upheld unless doing so would be "contrary to the best interests of the ward."
[12] *See* Linda S. Whitton and Lawrence A. Frolik, *Surrogate Decision-Making Standards for Guardians: Theory and Reality*, 2012 UTAH L. REV. 1491, 1492 (2012).
[13] *Id.*
[14] In fact, FLA. STAT. § 744.361, titled "Powers and Duties of Guardian," contains language from both standards in different subsections. Subsection (4) states "a guardian may not act in a manner that is contrary to the ward's best interests under the circumstances." Subsection 13(a) requires a guardian to "consider the expressed desires of the ward as known by the guardian when making decisions that affect the ward."
[15] 58M-2.009.
[16] 58M-2.009(7).
[17] 58M-2.009(7)(d)(4).
[18] 58M-2.009(7)(e).
[19] 58M-2.009(7)(f).
[20] 58M-2.009(7)(3).
[21] FLA. STAT. § 744.361(1)
[22] *Id.* at 571.
[23] FLA. STAT. §§ 390.001(4), 744.331, 744.3215(4)(e), and 744.3725.
[24] As a final note on *Lefebvre*, it should be noted that the procedure for granting extraordinary authority under F.S. § 744.3725 includes aspects of both substituted judgment and best interests standards insofar as it requires the court to personally meet with the ward so the ward can express their personal views or desires, and also requires clear and convincing evidence that the request is in the best interests of the ward. A problem with that statute is that it appears to limit the inquiry to the ward's current views, as opposed to a determination and analysis of the ward's intent prior to incapacity, in situations where the ward cannot currently express his or her desires. There are also potential constitutional infirmities with the decision and F.S. § 744.3725 in health care contexts in light of *In re Guardianship of Browning*, 568 So. 2d 4 (Fla. 1990), discussed further in this article.
[25] Lawrence A. Frolik, *Is a Guardian the Alter Ego of the Ward?* 37 STETSON L. REV. 53, 66 (2007).
[26] *Browning*, 568 So. 2d at 13.
[27] *Id.* (quoting *In re Guardianship of Barry*, 445 So.2d 365, 370-71 (Fla. 2d DCA 1984)).
[28] *See In re Guardianship of Bohac*, 380 So. 2d 550 (Fla. 2d DCA 1980)
[29] *Id.* at 552.
[30] *Id.*
[31] *Id.* at 553 (Specifically, the court should consider, among other things, the ward's donative intent and prior pattern of giving, the permanency of the ward's condition, the size and nature of the ward's estate, the needs of the ward and the proposed recipients, the affinity or intimacy between the ward and the recipients, and whether they are dependent upon the ward for support.)
[32] The mixed discussion of standards likely derives from using the ward's will as the basis for the beneficiary designation (substituted judgment), while part of the statutory authority to grant the approval for the designation arose from F.S. § 744.441(21), which allows the guardian to enter into contracts that "are appropriate for, and in the best interest of, the ward."
[33] *See In re Guardianship of Sherry*, 668 So. 2d 659 (Fla. 4th DCA 1996).
[34] *Id.* at 660.
[35] *Id.*
[36] *See Rainey v. Guardianship of Mackey*, 773 So. 2d 118 (Fla. 4th DCA 2000).
[37] *See* FLA. STAT. § 744.3203. A motion must be filed alleging that the power of attorney should be suspended for any of the reasons set forth in the statute. A power of attorney naming any person other than a parent, spouse, child or grandchild is automatically suspended upon the initiation of incapacity proceedings until the petition is dismissed, withdrawn or the court enters an order authorizing the agent to act. *See* FLA. STAT. § 709.2109(3).
[38] *See* FLA. STAT. § 744.361(4)
[39] *See e.g. Vaughan v. Guardianship of Vaughan*, 648 So. 2d 193 (Fla. 5th DCA 1994) (divorce); *Lefebvre*, 566 So. 2d at 571.

[40] *See* FLA. STAT. §§ 744.441(2), (11), and (21) (relating to a decision to (1) execute, exercise or release any powers as a fiduciary, such as trustee or personal representative, the ward may have lawfully exercised, consummated or executed if not incapacitated, (2) enter into contracts for the ward, and (3) prosecute or defend proceedings on behalf of the ward).
[41] *See also Buncayo v. Dribin*, 533 So. 2d 935 (Fla. 3d DCA 1988*)*
[42] FLA. STAT. § 744.3715.
[43] *See In re Guardianship of Walpole*, 639 So. 2d 60 (Fla. 4th DCA 1994).
[44] *Id.* at 748.
[45] *Id.* at 744
[46] In addition to amending FLA. STAT. § 744.361(4), there conforming amendments should be made to the other statutes that currently reference any of the standards in Chapter 744.