

**BRIEF POSITION PAPER
FOR DRAFT BILL FOR EXPANDED CLERK AUTHORITY**

Intent

All agree that the purpose of Florida's guardianship laws is to provide the least restrictive option to protect the health safety and general welfare of Florida residents.

Opinionated statements which assign a broad brush of ill motives to the professionals of this state fail to advance this legislative intent and should be stricken.

Purpose

Florida Statute section 744.368(5) already authorizes the Clerk to request records when the Clerk believes a need exists for further review. Random audits without any reasonable basis to sustain the action is abhorrent to due process, ripe for abuse, and unduly strains the resources of both the Ward and the Clerk of Court.

Florida Statute section 744.446(3) already authorizes the Court to attach personal liability to a guardian for a breach of fiduciary duty.

Florida Statute section 744.368(3) already requires the Clerk to communicate the results of the audit to the court. Clerks are not litigants or parties to the proceedings but participants within the same branch of government. It is confusing and nonsensical to cast their statutory obligation as a protected communication reserved to parties of a controversy.

Confidentiality is a hallmark individual right and entitled to due process considerations. The Clerk of Court is not a judge. Florida Statute 744.3701 already authorizes the Court, upon a showing of good cause, to direct disclosure of otherwise confidential information pursuant to 744.3701.

The Bill

The addition to Florida section 744.2104 is opposed.

OPPG investigates complaints of guardians. OPPG does not have the authority to delegate its statutory authority to other individuals or entities styled as "delegates".

The addition to Florida section 744.368(5) is opposed.

The Clerk already has the authority pursuant to Florida Statute section 744.368(5) to request records when the Clerk believes a need exists for further review. Random audits without any reasonable basis to sustain the action is abhorrent to due process, ripe for abuse, and unduly strains the resources of both the Ward and the Clerk.

Florida Statute section 744.446(3) already authorizes the Court to attach personal liability to a guardian for a breach of fiduciary duty.

The addition of Florida section 744.368(7) is opposed.

Florida Statute section 744.368(3) requires the Clerk to communicate the results of the audit to the court. Clerks are not litigants or parties to the proceedings. It makes no sense to cast their statutory obligation as a protected communication reserved to parties of a controversy.

The addition to Florida section 744.3701 is opposed.

Confidentiality is a hallmark individual right and entitled to due process considerations. The Clerk of Court is not a judge. The Court already has the specific authority, upon a showing of good cause, to direct disclosure of otherwise confidential information pursuant to 744.3701. This safeguard is necessary prior to authorizing the Clerk of Court to disclose confidential information concerning a Ward.

An expansion of Florida section 744.444(17) to authorize release of confidential information in response to a Clerk or OPPG request is not objectionable.

Confidentiality is a hallmark individual right and entitled to due process considerations. The authority to release confidential information must be narrowly construed. An additional express authorization allowing the guardian, *without prior court approval*, to release confidential information to the Clerk of Court in response to a request made by the Clerk pursuant to Florida Statute section 744.368, or in response to an inquiry from the Office of Public and Professional Guardianship pertaining to an authorized investigation, is not objectionable.