

Supreme Court of Florida

No. SC20-21

**IN RE: AMENDMENTS TO THE FLORIDA PROBATE RULES—
VULNERABLE ADULTS.**

September 24, 2020

PER CURIAM.

Before the Court is the report of the Florida Probate Rules Committee (Committee) proposing amendments to the Florida Probate Rules. *See* Fla. R. Jud. Admin. 2.140(e). We have jurisdiction. *See* art. V, § 2(a), Fla. Const.

The Committee proposes the addition of new rule 5.920 (Forms Related to Injunction for Protection Against Exploitation of a Vulnerable Adult) to the Florida Probate Rules. The proposal is in response to the 2018 enactment of section 825.1035, Florida Statutes (2019), which established an injunction process for vulnerable adults. *See* ch. 2018-100, § 2, Laws of Fla. The Committee and the Board of Governors of The Florida Bar unanimously approved the proposed new rule.

The Committee published its proposal for comment prior to filing it with the Court. One comment was received. Upon consideration of the comment, the Committee modified its proposal. After the Committee filed its report, the Court republished the proposal for comment. No comments were received.

Having considered the Committee's report, the Court hereby adopts new rule 5.920 as proposed by the Committee. Subdivision (a) (Petition for Injunction) contains a form petition for injunction against the exploitation of a vulnerable adult. Subdivisions (b) (Temporary Protective Injunction Against Exploitation of a Vulnerable Adult), (c) (Order Denying Injunction and Notice of Hearing), and (d) (Final Protective Injunction) contain form orders for use by a court in ruling on petitions for injunction against the exploitation of a vulnerable adult.

Accordingly, new rule 5.920, as reflected in the appendix to this opinion, is added to the Florida Probate Rules. The new rule shall become effective immediately upon the release of this opinion.

It is so ordered.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, MUÑIZ, and
COURIEL, JJ., concur.
GROSSHANS, J., did not participate.

**THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE
EFFECTIVE DATE OF THESE AMENDMENTS.**

Original Proceeding – The Florida Probate Rules Committee

Robert L. McElroy IV, Chair, Palm Beach Gardens, Florida, Jeffrey Scott Goethe, Past Chair, Florida Probate Rules Committee, Bradenton, Florida, Joshua E. Doyle, Executive Director, and Krys Godwin, Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

Appendix

RULE 5.920. FORMS RELATED TO INJUNCTION FOR PROTECTION AGAINST EXPLOITATION OF A VULNERABLE ADULT

(a) Petition for Injunction. Petitioners should take steps to protect confidential information within the petition for injunction pursuant to Florida Rule of Judicial Administration 2.420 and minimize sensitive information within the petition for injunction pursuant to Florida Rule of Judicial Administration 2.425.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

In re: Protection of

Case No.: _____

Adversary Proceeding

Vulnerable Adult

Petitioner,

and

Respondent.

PETITION FOR INJUNCTION FOR PROTECTION AGAINST EXPLOITATION OF A VULNERABLE ADULT UNDER SECTION 825.1035, FLORIDA STATUTES

Before me, the undersigned authority, personally appeared petitioner _____ who has been sworn and says that the following statements are true:

1. The vulnerable adult, _____, whose age is _____, who resides at (address): _____

2. Section 825.101(14), Florida Statutes, provides that a vulnerable adult is a person whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. Please describe the vulnerable adult's inability to perform the normal activities of daily living. _____

3. The petitioner's relationship to the vulnerable adult is: _____, and the petitioner has the right to bring the petition because: _____

4. The respondent, _____, resides at (last known address): _____

5. The respondent's last known place of employment is: _____

6. The physical description of the respondent is:

Race: _____ Sex: _____ Date of Birth: _____

Height: _____ Weight: _____ Eye Color: _____

Hair Color: _____ Distinguishing Marks/Scars: _____

7. Aliases of the respondent are: _____

8. The respondent is associated with the vulnerable adult as follows: _____

9. The following describes other causes of action:

(a) _____ there is/are 1 or more cause(s) of action currently pending between the petitioner and the respondent, and/or a proceeding under the Florida Guardianship Code, chapter 744, Florida Statutes, concerning the vulnerable adult. Describe causes of action here: _____

(b) Related case numbers and county where filed, if available: _____

(c) _____ there are previous or pending attempts by the petitioner to obtain an injunction for protection against exploitation of the vulnerable adult in this or any other circuit. Describe attempts here: _____

(d) The results of any such attempts: _____

10. The following describes the petitioner's knowledge of:

(a) Any reports made to a government agency, such as the Department of Elder Affairs or the Department of Children and Families: _____

(b) Any investigations performed by a government agency relating to abuse, neglect, or exploitation of the vulnerable adult: _____

and

(c) The results of any such reports or investigations: _____

11. The petitioner knows or has reasonable cause to believe the vulnerable adult is either a victim of exploitation or is in imminent danger of becoming a victim of exploitation, because the respondent (include a description of any incidents or threats of exploitation by the respondent here): _____

12. The following describes:

(a) The petitioner's knowledge of the vulnerable adult's dependence on the respondent for care: _____

(b) Alternative provisions for the vulnerable adult's care in the absence of the respondent, if necessary: _____

(c) Available resources the vulnerable adult has for such alternative provisions: _____ ; and

(d) The vulnerable adult's willingness to use such alternative provisions: _____

13. The petitioner knows the vulnerable adult maintains assets, accounts, or lines of credit at the following institutions:

<u>Institution</u>	<u>Address</u>	<u>Account Number</u>

<u>Institution</u>	<u>Address</u>	<u>Account Number</u>

_____ Providing any terms the court deems necessary for the protection of the vulnerable adult or his or her assets, including any injunctions or directives to law enforcement agencies, including: _____

17. If the court enters an injunction freezing assets, accounts, and credit lines:

(a) the petitioner believes that the critical expenses of the vulnerable adult will be paid for or provided by the following persons or entities: _____

OR

(b) The petitioner requests that the following expenses be paid notwithstanding the freezing of assets, accounts, or lines of credit from the following institution(s): _____

I ACKNOWLEDGE THAT PURSUANT TO SECTION 415.1034, FLORIDA STATUTES, ANY PERSON WHO KNOWS, OR HAS REASONABLE CAUSE TO SUSPECT, THAT A VULNERABLE ADULT HAS BEEN OR IS BEING ABUSED, NEGLECTED, OR EXPLOITED HAS A DUTY TO IMMEDIATELY REPORT SUCH KNOWLEDGE OR SUSPICION TO THE CENTRAL ABUSE HOTLINE. I HAVE REPORTED THE ALLEGATIONS IN THIS PETITION TO THE CENTRAL ABUSE HOTLINE.

I HAVE READ EACH STATEMENT MADE IN THIS PETITION AND EACH SUCH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY PUNISHABLE AS PROVIDED IN SECTION 837.02, FLORIDA STATUTES.

Signature of Party

Printed Name:

Address:

City, State, Zip: _____
Telephone Number: _____
Designated E-mail Address(es): _____

STATE OF FLORIDA

COUNTY OF _____

Sworn to or affirmed and signed before me on(date).....

Printed Name

Notary Public or Deputy Clerk

Personally known or Produced identification

Type of identification produced: _____

(b) Temporary Protective Injunction Against Exploitation of a Vulnerable Adult.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

In re:

Case No.: _____

Vulnerable Adult

Petitioner,

and

Respondent.

TEMPORARY PROTECTIVE INJUNCTION AGAINST EXPLOITATION OF A VULNERABLE ADULT AND NOTICE OF HEARING

This cause came before the court, which has jurisdiction over the parties and subject matter under state law. The court having reviewed the petition and affidavits and considered argument of counsel, finds as follows:

1. _____ Reasonable notice and opportunity to be heard was given to the respondent in a manner sufficient to protect his or her due process rights. Date of service _____

OR

2. _____ The court conducted its review ex parte.

3. _____ An immediate and present danger of exploitation of the vulnerable adult exists.

4. _____ There is a likelihood of irreparable harm and unavailability of an adequate legal remedy.

5. _____ There is a substantial likelihood of success on the merits.

6. _____ The threatened injury to the vulnerable adult outweighs possible harm to the respondent.

7. _____ Granting a temporary injunction will not disserve the public interest.

8. _____ This injunction provides for the vulnerable adult's physical or financial safety.

9. These findings were based on the following facts: _____

Accordingly, it is hereby ADJUDGED that:

The petitioner's request for a temporary protective injunction is GRANTED. This injunction is valid for 15 days from the date of this order or _____ . The full hearing is set for(date)....., at(time)..... The hearing will be held before the Honorable _____ at _____, Florida.

It is further ordered that:

_____ The respondent shall not commit any act of exploitation against the vulnerable adult.

_____ The respondent will have no contact with vulnerable adult.

_____ The vulnerable adult is awarded temporarily exclusive use and possession of any dwelling he or she shares with the respondent.

_____ The respondent is barred from entering the residence of the vulnerable adult.

_____ The vulnerable adult's assets, accounts, and/or credit lines are hereby frozen until further court order except: _____

_____ Institution(s) served on(date).....

_____ The following institution(s) _____ holding the vulnerable adult's assets shall use his or her unencumbered assets to pay the clerk of court the following filing fee:

_____ \$75.00 (if assets are between \$1,500-\$5,000)

OR

_____ \$200.00 (if assets are more than \$5,000).

If the court enters an injunction, these fees will be taxed as costs against the respondent.

Law enforcement is hereby directed to: _____

Other relief: _____

This injunction is valid and enforceable in all Florida counties, does not affect title to real property, and law enforcement may use their section 901.15(6), Florida Statutes, arrest powers to enforce its terms.

DONE and ORDERED on(date)..... at(time).....

Judge

CC: All parties and counsel of record

COPIES TO: (Check those that apply)

Petitioner:

_____ by U. S. Mail

_____ by hand delivery in open court (Petitioner must acknowledge receipt in writing on the original order—see below.)

Vulnerable Adult (if not petitioner)

_____ by U. S. Mail

_____ by hand delivery in open court

Respondent:

_____ forwarded to Sheriff for service

_____ by U. S. Mail

_____ by hand delivery in open court (Respondent must acknowledge receipt in writing on the original order—see below.)

_____ by certified mail (May only be used when respondent is present at the hearing and Respondent fails or refuses to acknowledge the receipt of a certified copy of this injunction.)

_____ Other: _____

Petitioner's Attorney: _____ by e-mail

Respondent's Attorney: _____ by e-mail

I CERTIFY the foregoing is a true copy of the original as it appears on file in the office of the clerk of the circuit court of _____ County, Florida, and that I have furnished copies of this order as indicated above on(date).....

CLERK OF THE CIRCUIT COURT

By: _____
Deputy Clerk

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

(c) Order Denying Injunction and Notice of Hearing.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

In re:

Case No.: _____

Vulnerable Adult

Petitioner,

and

Respondent.

**ORDER DENYING REQUEST FOR TEMPORARY INJUNCTION AND SETTING
HEARING ON PETITION FOR INJUNCTION FOR PROTECTION AGAINST
EXPLOITATION OF A VULNERABLE ADULT**

A petition for injunction for protection against exploitation of a vulnerable adult has been reviewed. This court has jurisdiction over the parties and of the subject matter. Based upon the facts stated in the petition, the court finds:

The facts supporting the denial of the request for an ex parte injunction are: _____

The court finds that based upon the facts, as stated in the petition alone and without a hearing in the matter, there is no appearance of an immediate and present danger of exploitation of a vulnerable adult.

IT IS THEREFORE ORDERED:

The request for a temporary injunction for protection against exploitation of a vulnerable adult is **denied**. A hearing is scheduled on the petition for injunction for protection against

exploitation of a vulnerable adult. The petitioner has the right to promptly amend any petition consistent with court rules.

NOTICE OF HEARING

A hearing is scheduled regarding this matter on(date)....., at(time)....., when the court will fully hear the allegations in the petition for injunction for protection against exploitation of a vulnerable adult. The hearing will be before The Honorable(name)....., at the following(address)....., Florida. All witnesses and evidence, if any, must be presented at this time.

IF EITHER PETITIONER OR RESPONDENT DO NOT APPEAR AT THE FINAL HEARING, HE OR SHE WILL BE BOUND BY THE TERMS OF ANY INJUNCTION OR ORDER ISSUED IN THIS MATTER.

Nothing in this order limits petitioner's rights to dismiss the petition.

DONE AND ORDERED in, _____ Florida, on(date).....

JUDGE

COPIES TO:

Sheriff of _____ County

CERTIFICATE OF SERVICE:

Petitioner: _____ by U. S. Mail _____ by e-mail to designated e-mail address(es)

Respondent will be served by sheriff.

Vulnerable Adult will be served by sheriff.

The financial institution will be served by sheriff. (If any assets, accounts, or lines of credit are requested to be frozen, insert names of the financial institutions.)

I CERTIFY the foregoing is a true copy of the original as it appears on file in the office of the clerk of the circuit court of _____ County, Florida, and that I have furnished copies of this order as indicated above.

CLERK OF THE CIRCUIT COURT

(SEAL)

By: _____
Deputy Clerk or Judicial Assistant

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to

the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

(d) Final Protective Injunction.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

In re:

Case No.: _____

Vulnerable Adult

Petitioner,

and

Respondent.

**PERMANENT INJUNCTION FOR PROTECTION AGAINST
EXPLOITATION OF A VULNERABLE ADULT**

This cause came before the court, which has jurisdiction over the parties and subject matter under state law. The court having reviewed the petition and affidavits and considered the testimony presented and argument of counsel, finds as follows:

1. Reasonable notice and opportunity to be heard was given to the respondent in a manner sufficient to protect his or her due process rights. Respondent was served with the petition for injunction, notice of hearing, and temporary protective injunction, if issued.

2. A hearing was held on(date).....

3. The vulnerable adult is a victim of exploitation or in imminent danger of becoming an exploitation victim.

4. There is a likelihood of irreparable harm and unavailability of an adequate legal remedy.

5. The threatened injury to the vulnerable adult outweighs possible harm to the respondent.

6. With regard to freezing the respondent's assets, accounts, and/or lines of credit that were the proceeds of exploitation, there is probable cause that exploitation has occurred and a substantial likelihood that such assets, accounts, and/or lines of credit will be returned to the vulnerable adult.

7. This injunction provides for the vulnerable adult's physical or financial safety.

8. These findings were based on the following facts: _____

Accordingly, it is hereby ADJUDGED that:

The petitioner's request for a protective injunction is GRANTED. This injunction remains in effect until it has been modified or dissolved, and it is further ordered that:

_____ The respondent shall not commit any acts of exploitation against, or have any direct or indirect contact with, the vulnerable adult.

_____ The vulnerable adult is awarded exclusive use and possession of any dwelling he or she shares with the respondent.

_____ The respondent is excluded from the residence of the vulnerable adult.

_____ The respondent shall, at his or her own expense, participate in all relevant treatment, intervention, or counseling services to be paid for by the respondent.

_____ Unless ownership is unclear, any temporarily frozen assets, accounts, and credit lines of the vulnerable adult are to be returned to the vulnerable adult.

If not already paid pursuant to the order granting temporary protective injunction against exploitation of a vulnerable adult, a final cost judgment is hereby entered against respondent and in favor of the clerk of courts in the amount of (check one):

_____ \$75.00 (if assets are between \$1,500–\$5,000)

OR

_____ \$200.00 (if assets are more than \$5,000).

All for which let execution issue forthwith.

If the amount set forth above has already been paid to the clerk of courts, a final cost judgment is hereby entered against respondent and in favor of the vulnerable adult in the amount set forth above, all for which let execution issue forthwith.

Any other costs associated with this judgment, including filing fees and service charges, are to be paid by the respondent.

Other: _____

This injunction is valid and enforceable in all Florida counties, does not affect title to real property, and law enforcement may use section 901.15(6), Florida Statutes, arrest powers to enforce its terms.

DONE and ORDERED on(date).....

Judge

CC: All parties and counsel of record

COPIES TO: (Check those that apply)

Petitioner:

_____ by U. S. Mail

_____ by hand delivery in open court (Petitioner must acknowledge receipt in writing on the original order—see below.)

Vulnerable Adult (if not petitioner)

_____ by U. S. Mail

_____ by hand delivery in open court

Respondent:

_____ forwarded to Sheriff for service

_____ by U. S. Mail

_____ by hand delivery in open court (Respondent must acknowledge receipt in writing on the original order—see below.)

_____ by certified mail (May only be used when respondent is present at the hearing and respondent fails or refuses to acknowledge the receipt of a certified copy of this injunction.)

_____ Department of Agriculture and Consumer Services

_____ Other:

Petitioner's Attorney: _____ by e-mail

Respondent's Attorney: _____ by e-mail

I CERTIFY the foregoing is a true copy of the original as it appears on file in the office of the clerk of the circuit court of _____ County, Florida, and that I have furnished copies of this order as indicated above on(date).....

CLERK OF THE CIRCUIT COURT

By: _____
Deputy Clerk