

LEGAL AUTHORITY and LEGISLATION

Family members who are in conflict, sometimes for many years, may not be motivated to begin working with each other, even for the sake of their aging loved one. The court order of referral to eldercaring coordination provides a degree of accountability for their participation in the process. But where do courts get their authority to refer families to eldercaring coordination?

Florida is the first state in the USA to enact a statute on eldercaring coordination:

s. 44.407, F.S. An Elder Focused Dispute Resolution Process, effective July 1, 2021, provides specific statutory authority for judges to refer families to eldercaring coordination.

Previous to the statute, s. 744.1012, F.S. reinforced that the legislative intent of the Florida Guardianship and Incapacity statutes is to provide the least restrictive process to protect the rights of elders to participate as fully as possible in all decisions affecting them. Section 744.1012 provides:

The Legislature finds that:

- (1) Adjudicating a person totally incapacitated and in need of a guardian deprives such person of all her or his civil and legal rights and that such deprivation may be unnecessary.
- (2) It is desirable to make available the least restrictive form of guardianship to assist persons who are only partially incapable of caring for their needs and that alternatives to guardianship and less restrictive means of assistance, including, but not limited to, guardian advocates, be explored before a plenary guardian is appointed.
- (3) By recognizing that every individual has unique needs and differing abilities, it is the purpose of this act to promote the public welfare by establishing a system that permits incapacitated persons to participate as fully as possible in all decisions affecting them; that assists such persons in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regarding their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the form of assistance that least interferes with the legal capacity of a person to act in her or his own behalf.

Court authority to refer in Ohio, USA

Dispute Resolution, Ohio R. Prac. Law. Rules of Superintendence Jud. 79, 2019.

The probate division of a court of common pleas or a family court exercising probate jurisdiction may encourage the use of alternative dispute resolution in any matter the court deems appropriate. A judge is authorized to facilitate the use of voluntary alternative dispute resolution processes by taking any one or more of the following actions in disputes brought to the attention of the court:

- (A) Suggesting that the parties engage in settlement negotiations and appropriately participate in such negotiations;
- (B) Informing the parties about eldercaring coordination, if available, and, upon agreement of the parties, entering an appropriate order either referring the dispute to eldercaring coordination or implementing the result of the eldercaring coordination process. As used in this rule, “eldercaring coordination” means a dispute resolution process modeled after the concept of parenting coordination for high-conflict families regarding the care and safety of elders. . .



Order of Referral to Eldercaring Coordinator: Families who might benefit from eldercaring coordination can be identified by a judge or magistrate, attorney or guardian, Office of Aging/ Adult Protective Services, other professional or requested by the family. A standard Order of Referral to Eldercaring Coordination makes it easy for the court to provide the guidance needed about the eldercaring coordination, while providing a legal authority for the framework of the process.

- Judge determines who is court ordered: “Parties” are those people who have filed something with the court and thereby submitted themselves to the court’s jurisdiction; “Participants” are others invited to attend; attorney attendance is not required since the EC is addressing non-legal issues. The presumption is that the elder will participate in all cases to the extent possible.
- Judge does a summary assessment of risks such as elder abuse, history of domestic violence or substance abuse and advises if safety measures are necessary to protect anyone in the process.
- Scope of the EC ‘s authority: the EC does not make substantive decisions for the parties, the court should not authorize the EC to make any decisions beyond how the eldercaring coordination process will work best for the elder and family, and
- Allocation of the EC’s fee: the judge determines how the parties, including the elder, share in the responsibility for paying the EC’s fee, which becomes much less expensive than paying for individual costs of their own attorney, experts and court fees.

