

## **Eldercaring coordination.**

(1) Definitions. As used in this Chapter:

(a) “Eldercaring coordination” means an elder-focused alternative dispute resolution process during which an eldercaring coordinator assists elders, legally authorized decision-makers, and others who participate by court order, or invitation, in resolving disputes regarding the care and safety of an elder by: facilitating more effective communication, negotiation and problem-solving skills; offering education about elder care resources; facilitating the creation, modification, or implementation of an elder care plan if such a plan is necessary to reach a resolution; making recommendations for resolutions; and, with the prior approval of the parties or the court, making limited decisions within the scope of the court’s order of referral.

(b) “Eldercaring coordinator” means an impartial third person appointed by the court or chosen by the parties who meets all the qualifications established in this statute, is specifically trained in issues related to elders, and whose role it is to assist parties through the eldercaring coordination process in a manner that respects the elder’s need for autonomy and safety.

(c) “Elder care plan” means needed items, tasks or responsibilities to provide for the care and safety of the elder. The plan is continuously reassessed throughout the eldercaring coordination process to meet the changing needs of the elder, taking into consideration the preferences and wishes of the elder.

(d) “Elder” means a person 60 years of age or older who is alleged to be suffering from the infirmities of aging as manifested by a physical, mental, or emotional dysfunction, to the extent that the ability of the elder to provide adequately for the protection or care of his or her own person or property, is impaired.

(e) “Good cause” means any disqualifier of the eldercaring coordinator; circumstances that compromise the integrity of the eldercaring coordination process; or a finding that the eldercaring coordinator is not fulfilling the duties and obligations of the position, has failed to comply with any order of the court, unless the order has been superseded on appeal, or the eldercaring coordinator has conflicting or adverse interests that affect the impartiality of the eldercaring

coordinator. A party's disagreement with the eldercaring coordinator's methods and procedures would not constitute good cause.

(f) "Legally authorized decision-maker" is an individual who has been designated pursuant to Chapter 709, Chapter 744, Chapter 747, or Chapter 765, with the authority to make specific decisions on behalf of the elder who is the subject of the action. The designation shall be made by the elder such as a bona fide power of attorney or health care surrogate, or by the court such as a guardian or a conservator. These designations shall not include a personal representative designated in the elder's will.

(g) "Party" includes the elder who is the subject of an action, and any individual who has filed a pleading in the court action from which the referral to eldercaring coordination is made.

(h) "Participant" is any individual who joins the eldercaring coordination process by invitation of, or with the consent of, the eldercaring coordinator, but who has not filed a pleading in the action from which the case was referred to eldercaring coordination.

(i) "Eldercaring coordination communication" means an oral or written statement, or nonverbal conduct intended to make an assertion, by or to an eldercaring coordinator or individuals involved in the eldercaring coordination process made during an eldercaring coordination activity, or prior to the activity if made in furtherance of the eldercaring coordination process. The commission of a crime during an eldercaring coordination event is not an eldercaring coordination communication.

## (2) Referral

(a) If there has been a history of domestic violence, or exploitation of an elderly person by a party, the court may not refer the parties to eldercaring coordination unless the elder and parties consent. The court shall offer each party an opportunity to consult with an attorney or domestic violence advocate before accepting the party's consent. The court must determine whether each party's consent has been given freely and voluntarily.

(b) In determining whether there has been a history of domestic violence, the court shall consider whether a party has committed an act of exploitation of an elderly person as defined in section 415.102(8) or section 825.103(1), or domestic

violence as defined section 741.28 against another party or any member of another party's family; engaged in a pattern of behaviors that exert power and control over another party and that may compromise another party's ability to negotiate a fair result; or engaged in behavior that leads another party to have reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence. The court shall consider and evaluate all relevant factors, including, but not limited to, the factors listed in section 741.30(6)(b).

(c) If there is a history of domestic violence, or exploitation of an elderly person, the court shall order safeguards to protect the safety of the participants and the elder's property, including, but not limited to, adherence to all provisions of an injunction for protection or conditions of bail, probation, or a sentence arising from criminal proceedings.

(d) In any action in which a judgment or order has been sought or entered seeking to appoint or, remove a guardian, as a result of an investigation undertaken pursuant to section 415.104, upon a complaint made to the Office of Public and Professional Guardian pursuant to section 744.2004, upon advice from the clerk of court to the court pursuant to section 744.368(5), following the audit of an annual guardianship report, review of a proxy's decision pursuant to section 765.105, seeking appointment of a guardian advocate pursuant to section 393.12, seeking an injunction for the protection of an elder under section 825.1035, except for a domestic violence proceeding under chapter 741, and upon agreement of the parties, the court's own motion, or the motion of a party, the court may appoint and eldercaring coordinator and refer the parties to eldercaring coordination to assist in the resolution of disputes concerning the care and safety of the elder who is the subject of the action.

(3) Court Appointment. Appointment of an eldercaring coordinator is for a term of up to two years, with review hearings intermittently to determine the need to conclude or extend the term. Appointments shall conclude upon expiration of the term or upon discharge by the court, whichever occurs earlier.

(4) Qualifications for Eldercaring Coordinators. The court shall only appoint qualified eldercaring coordinators.

(a) To be qualified, eldercaring coordinators must:

1. Meet one of the following professional requirements:

- a. Be licensed as a mental health professional under Chapter 491 with at least a master's degree in the professional field of practice;
  - b. Be licensed as a psychologist under Chapter 490;
  - c. Be licensed as a physician under Chapter 458;
  - d. Be licensed as a nurse under Chapter 464 with at least a master's degree;
  - e. Be certified by the Florida Supreme Court as a family mediator with at least a master's degree;
  - f. Be a member in good standing of The Florida Bar; or
  - g. Be a professional guardian as defined by section 744.1085, Florida Statutes, with at least a master's degree.
2. Complete all the following:
- a. Three years of post-licensure or post-certification practice;
  - b. A family mediation training program certified by the Florida Supreme Court; and
  - c. An elder mediation training that meets the standards approved and adopted by the Florida Supreme Court. If the Florida Supreme Court has not yet adopted such guidelines, then the standards for elder mediation training approved and adopted by the Association for Conflict Resolution shall apply. The training shall include the Eldercaring coordination process; elder, guardianship and incapacity law and procedures, and less restrictive alternatives to guardianship, as it pertains to the eldercaring coordination process; implications of elder abuse, neglect and exploitation and other safety issues on the eldercaring coordination process; the elder within the eldercaring coordination process; family dynamics related to the eldercaring coordination process; eldercaring coordination skills and techniques; multicultural competence as it affects the eldercaring coordination process; ethical considerations

pertaining to the eldercaring coordination process; use of technology within the eldercaring coordination process; court specific eldercaring coordination procedures.

(b) Successfully pass a Level II background screening as defined in section 435.04(2) and (3), Florida Statutes, or meet the provisions of section 435.07.

(c) Never have been a respondent in a final order granting an injunction for protection against domestic, dating, sexual, or repeat violence or stalking, or exploitation of an elder or disabled person.

(d) The court may require additional qualifications to address issues specific to the parties.

(e) A qualified eldercaring coordinator must be in good standing, or in clear and active status, with all professional licensing authorities or certification boards.

(5) Disqualifications and removal of eldercaring coordinators.

(a) An eldercaring coordinator must resign and immediately report to the court if he or she no longer meets the minimum qualifications, or if any of the disqualifying circumstances occur.

(b) The court shall remove an eldercaring coordinator upon the eldercaring coordinator's resignation or disqualification; or a finding of good cause shown based on the court's own motion or a party's motion.

(c) Upon the court's own motion or upon the motion of a party, the court may suspend the authority of an eldercaring coordinator pending a hearing on the motion for removal. Notice of hearing on removal shall be timely served on the eldercaring coordinator and all parties.

(d) In addition to any other remedy authorized by law, a court may award reasonable attorney's fees and costs to a party or eldercaring coordinator who successfully challenges the motion for removal, if the motion was made in bad faith.

(6) Successor ElderCaring Coordinator. If an eldercaring coordinator resigns, is removed or suspended from an appointment, a successor qualified eldercaring coordinator shall be appointed by the court, or agreed to by all parties, and shall serve for the remainder of the term.

(7) Fees and Costs. The court may not order the parties to eldercaring coordination without their consent unless it determines that the parties have the financial ability to pay the eldercaring coordination fees and costs. The court shall determine the allocation of fees and costs for eldercaring coordination among the parties and has the discretion to allocate unequally based on the financial circumstances of each party, including the elder.

(a) In determining if a nonindigent party has the financial ability to pay the eldercaring coordination fees and costs, the individual asserting that status must complete a financial affidavit form approved by the presiding court. The court shall consider the party's financial circumstances, including income, assets, liabilities, financial obligations, resources including but not limited to whether the party can or is receiving trust benefits, whether the party is represented by and paying a lawyer, and whether paying the fees and costs of eldercaring coordination would create a substantial hardship.

(b) If a party is found to be indigent based upon the factors in section 57.082, the court may not order the party to eldercaring coordination unless funds are available to pay the indigent party's allocated portion of the fees and costs or one or more nonindigent party consents to paying all of the indigent party's share of the eldercaring coordinator's fees and costs. If financial assistance such as health insurance or eldercaring coordination grants are available, such assistance must be taken into consideration by the court in determining the financial abilities of the parties.

(7) Confidentiality.

(a) Except as otherwise provided in this section, all communications made by, between, or among any party, participant, or eldercaring coordinator during the eldercaring coordination process, are confidential. The eldercaring coordinator, participants and each party designated in the order appointing the eldercaring coordinator may not testify or otherwise offer evidence about communications made by, between, or among the parties, participants, and the eldercaring coordinator during eldercaring coordination process, except if:

(a) Necessary to identify, authenticate, confirm, or deny a written, signed agreement entered into by the parties during eldercaring coordination;

(b) The communications are necessary to identify an issue for resolution by the court without otherwise disclosing communications made by any party or the eldercaring coordinator;

(c) The communications are limited to the subject of a party's compliance with the order of referral to eldercaring coordination, orders for psychological evaluation, counseling ordered by the court or recommended by a health care provider, or for substance abuse testing or treatment;

(d) The eldercaring coordinator reports that the case is no longer appropriate for eldercaring coordination;

(e) The eldercaring coordinator reports that he or she is unable or unwilling to continue to serve and that a successor eldercaring coordinator should be appointed;

(f) The communications are necessary to determine the qualifications of the eldercaring coordinator or to determine the immunity and liability of the eldercaring coordinator;

(g) The eldercaring coordinator is not qualified to address or resolve certain issues in the case and a successor eldercaring coordinator should be appointed;

(h) The parties agree that the communications be disclosed;

(i) The communications are necessary to protect any person from future acts that would constitute domestic violence under chapter 741; child abuse, neglect, or abandonment under chapter 39; or abuse, neglect, or exploitation of an elderly or disabled adult under chapters 415 or 825, or an investigation under 744.2004 or 744.368(5);

(j) Offered to report, prove or disprove professional misconduct occurring during the eldercaring coordination process, solely for the internal use of the body conducting the investigation of the conduct;

(k) Offered to report, prove, or disprove professional malpractice occurring during the eldercaring coordination process, solely for the professional malpractice proceeding;

(l) Willfully used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence;

(m) Offered for the limited purpose of establishing or refuting legally recognized grounds for voiding, reforming, or modifying an Eldercare Plan or any Order of the Eldercaring Coordinator.

(8) Report of Emergency to Court.

(a) An eldercaring coordinator must immediately inform the court by affidavit or verified report, without notice to the parties, when:

1. the eldercaring coordinator has or will be making a report pursuant to Chapter 39; or

2. the eldercaring coordinator has or will be making a report pursuant to Chapter 415.

3. A party, including the elder, or someone acting on a party's behalf, is threatening or expected to confine, abduct, or imprison the elder as in section 787.01, or wrongfully remove or is wrongfully removing the elder from the jurisdiction of the court without prior court approval or compliance with the requirements of section 744.1098. If the eldercaring coordinator suspects that a party or family member has relocated an elder within the state to avoid domestic violence, the eldercaring coordinator may not disclose the location of the elder unless required by court order.

(b) An eldercaring coordinator shall immediately inform the court by affidavit or verified report, and serve a copy on each party, upon learning that a party is the subject of a final order or injunction of protection against domestic violence, or exploitation of an elderly person, or is arrested for an act of domestic violence or exploitation of an elderly person.

(9) Immunity and Limitation on Liability.

(a) A person appointed or employed to assist the body designated to perform duties relating to disciplinary proceedings involving eldercaring coordinators shall have absolute immunity from liability arising from the performance of that person's duties while acting within the scope of that person's appointed or employed function.

(b) An eldercaring coordinator appointed by the court is not liable for civil damages for any act or omission in the scope of his or her duties under an order of referral unless such person acted in bad faith or with malicious purpose

or in a manner exhibiting wanton and willful disregard for the rights, safety, or property of the parties.

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