

**IN THE CIRCUIT COURT FOR PALM BEACH COUNTY,  
FLORIDA** **PROBATE DIVISION**

**IN RE: GUARDIANSHIP OF**

**CLARA FERNANDEZ**

**File No.  
502005GA000382XXXXSB**

**Division Judge Vonhof**

2005 JUL 15 AM 10:26

**AMENDED PETITION FOR APPOINTMENT OF  
EMERGENCY TEMPORARY GUARDIAN**

Petitioner, Dr. Manuel M. Pena, alleges:

1. Petitioner's residence is 210 Tupelo Road, Naples, Florida 34108, petitioner's post office address is same and petitioner's telephone number is (239) 596-0878.
2. A Petition for Determination of Incapacity has been filed in this Court with respect to Clara Fernandez, an alleged incapacitated person, but a guardian has not been appointed.
3. Petitioner is an adult interested in the welfare of the alleged incapacitated person.
4. There appears to be an imminent danger that the physical or mental health or safety of the alleged incapacitated person will be seriously impaired or that the property of that person is in danger of being wasted, misappropriated or lost unless immediate action is taken because: the alleged incapacitated person was involuntarily removed from her residence in Monroe County and is not receiving appropriate medical care. On the contrary, she has received harmful care which is evidenced by the fact that she was found to have received a substantial amount of Ambien, which she was specifically advised not to take. Additionally, the alleged incapacitated person's bank accounts and lines of credit have been accessed through undue influence thereby causing over the limit transactions and insufficient funds.
5. Clara Fernandez is an alleged incapacitated person whose date of birth was November 8, 1917 and who is 87 years of age. The legal residence of the alleged incapacitated person is 15-W Cypress Terrace, Key West, Florida 33040 (although she is presently located at 11920 Sunset Boulevard, Royal Palm Beach, Florida 33411), and the post office address of the alleged incapacitated person is same.
6. The nature of the alleged incapacitated person's alleged incapacity is Alzheimers, pseudo dementia, depression, and poor memory.

**ADRIAN PHILIP THOMAS, P.A. • ATTORNEY AT LAW**

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DR

7. The names and addresses of the next of kin of the alleged incapacitated person are:

<u>NAME</u>	<u>ADDRESS</u>	<u>RELATIONSHIP</u>
Dr. A.J. Fernandez, Sr.	156 Cypress Terrace Key West, Florida 33040	Spouse
Raul Fernandez	156 Cypress Terrace Key West, Florida 33040	Son
A.J. Fernandez, Jr.	11920 Sunset Boulevard Royal Palm Beach, FL 33411	Son

8. The proposed emergency temporary guardian, Dr. Manuel M. Pena, whose residence is 210 Tupelo Road, Naples, Florida 34108; whose post office address is same; and who is sui juris and otherwise qualified under the laws of Florida to act as guardian of the alleged incapacitated person is not a professional guardian. The relationship and previous association of the proposed emergency temporary guardian to the alleged incapacitated person is: Clara Fernandez is petitioner's maternal aunt. The proposed emergency temporary guardian should be appointed because he is the nephew of Clara Fernandez and a neutral party to these proceedings.

9. The nature and value of the property subject to guardianship is as follows:

<u>NATURE OF PROPERTY</u>	<u>VALUE</u>
a. Real and personal property	\$ unknown at this time

10. While petitioner is aware of alternatives to guardianship in the form of estate planning documents that may sufficiently address the problems of the alleged incapacitated person, for reasons set forth below, it is not believed that those estate planning documents would qualify as a least restrictive alternative means.

The alleged incapacitated person may have signed estate planning documents in favor of A.J. Fernandez, Jr., however, it is believed that those documents were executed after the alleged incapacitated person became incompetent to review, sign, and understand the nature of those documents and these documents were signed as a result of the undue influence of A.J. Fernandez against the best interest of Clara Fernandez.

Also, there are current estate planning documents that name Raul Fernandez as the fiduciary who would serve as a potential alternative to the appointment of a guardian; however, all of the powers, rights, and duties afforded to Raul Fernandez have no practical or legal effect, nor can Raul Fernandez exercise any authority under same because he has been prevented access to Clara Fernandez, her whereabouts have been kept secret from him, and thus, any rights afforded thereunder are illusory.

11. A Petition for Appointment of Emergency Temporary Guardian, together with a Petition to Determine Incapacity, was filed in Monroe County. Thereafter, an Objection to Jurisdiction, Service of Process and Venue was filed by Manuel Garcia, Esquire arguing that the alleged incapacitated person was not personally served, as she was located in Palm Beach County, Florida and that any proceedings regarding the incapacity and guardianship for Clara Fernandez must be heard in that county. The Honorable Judge Richard G. Payne signed an Order transferring the Emergency Temporary Guardian case to Palm Beach County, and in said Order appointed Manuel Garcia, Esquire as elisor for the purposes set forth in Rule 5.550(2), Florida Rules of Probate, requiring service of Petitions regarding Clara Fernandez on him (see Order attached hereto and incorporated herein as Exhibit "A").

Petitioner requests that summary proceedings be held upon this petition, that the court appoint an attorney to represent the alleged incapacitated person in these proceedings, and that an emergency temporary guardian of the person and property be appointed for the alleged incapacitated person.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on July 7<sup>th</sup>, 2005.



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Dr. Manuel M. Pena, Petitioner