

**SUPREME COURT OF THE  
STATE OF NEW YORK**

**APPELLATE DIVISION:  
SECOND JUDICIAL DEPARTMENT**

**Hon. Hector D. LaSalle,  
Presiding Justice**



**BEST PRACTICES**

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**GUARDIANSHIP PROCEEDINGS**

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**SECOND JUDICIAL DEPARTMENT**

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**GUARDIANSHIP TASK FORCE REPORT**

**May 2022**

## TABLE OF CONTENTS

Table of Contents .....	I
Introduction.....	ii, iii
Task Force Committee Membership.....	iv, v
Task Force Sub-Committees - Membership .....	v-vii
I. Guardianship Compliance - Personnel and Recommended Procedures .....	1-8
II. Continuing Legal Education (CLE) .....	9
III. Compensation of Court Examiners.....	10-13
IV. Compensation of Guardians .....	14
V. Duties of Guardianship Referee .....	15-16
VI. Uniform Practices and Procedures .....	17-20
VII. Court Evaluators .....	21-22
VIII. <i>Pro Bono</i> Guardians .....	23
IX. <i>Pro Se</i> Applicants - Assistance .....	24
X. Legislative Action .....	25
XI. Model Guardianship Part .....	26-28

### **Appendix**

- A. Court Examiner and Accounting Fee Schedule
- B. Model Guardianship Forms
  - (1) Order to Show Cause to Appoint Guardian
  - (2) Petition for Appointment of a Guardian of the Person an Property
  - (3) Designation
  - (4) Commission for Guardian
  - (5) Statement Identifying Real Property
  - (6) Initial Report
  - (7) Application for Approval of Expenditures / Order
  - (8) Annual Report of Personal Needs Guardian
  - (9) Annual Report of Guardian
  - (10) Order and Judgment for Appointment of Successor Guardian

# Introduction

This Task Force was constituted by then Presiding Justice of the Appellate Division, Second Department, Alan D. Scheinkman, and concluded under Presiding Justice Hector D. LaSalle.

We heartily thank them - both for their commitment to those with incapacities and their assistance with the creation of this Report.

This Task Force was comprised of members of the Court - from judges to clerks who are assigned to Guardianship matters primarily under Mental Hygiene Law Article 81 ("Article 81"). Additionally, members of the Elder Law / Guardianship bar, various bar associations, and the Article 81 Guardianship Roundtable were consulted and provided their views and recommendations.

Before we begin this Report, we wish to note that the success of our Court in Guardianship matters lies in the dedication of the attorneys, judges and clerks that practice in this area. The bar - both individually and through its associations - continually give of their time to assist the Court and those that we serve. The commitment of the judges and Court staff is, indeed, remarkable.

Initially, when we began this Report, our purpose was to re-examine how Guardianship Parts are functioning within the Second Department since the Report of the first Task Force was issued in 2005, and to make recommendations for changes that we felt might be appropriate. However, in March 2020, when the global health pandemic struck, both our focus and insight broadened considerably. As with the rest of our Courts in the Unified Court System, we faced unprecedented challenges and adapted through both conventional and unconventional means.

Unfortunately, the pandemic affected those that we serve the hardest. Most of these people are either elderly or are afflicted with pre-existing medical conditions, and a majority - who either reside in a residential health care or are isolated at home - were considered "high risk" members of society for this pandemic. Our Court staff and judges rose to the occasion. There were always individuals available in the courthouses to provide assistance. Judges and lawyers found ways to be available, whether in-person (behind masks and plexiglass ) or *via* telephone or video technology. Countless hours were spent trying to ensure that our wards were safe, as well as making certain that those who did not survive were treated with the utmost dignity. Many emergency hearings were held for those who never expected to find themselves in such dire circumstances. With the assistance of our bar, Court staff and our judges, we proudly remained vigilant in serving our wards.

This Report provides a great deal of comments and recommendations regarding the various aspects of our Guardianship system. However, there are certain areas we would like to highlight.

First, we believe that it is crucial to expand services to accommodate those that seek to bring these cases *pro se*. The need to seek the appointment of a Guardian is not based on the financial means of an individual, and the process can be overwhelming and costly. An individual that commences a Guardianship proceeding *pro se* not only must navigate the preparation of the petition, but also must determine who must receive notice of the hearing and how these interested parties must be served. If the petition is granted, then comes the complexities of drafting a judgment, as well as obtaining a bond and the commission. Although our *pro se* offices do offer some assistance, the extent of assistance required exceeds that which these offices can or should provide.

We strongly recommend the creation of a system where *pro se* petitioners in Guardianship matters can be referred directly to practicing attorneys for *pro bono* legal assistance.

Second, we believe that there is a dire need for a system that can provide the appointment of Guardians to individuals who are residing in long term residential health care facilities and do not have an appropriate family member who can qualify and serve as a Guardian. To date, service to these individuals has been limited to a small number of not-for-profit organizations, which are all overwhelmed with cases and significantly understaffed and underfunded. All too often, we have come close to some of these organizations not being able to remain viable service providers to our wards. Since the Court has the obligation to appoint appropriate individuals to serve as Guardians, we believe that we should strive to establish a system that assists in meeting this task.

Third, the diversity of prospective appointees on the approved fiduciary list must be expanded. Specifically, we should strive to increase the diversity of cultures, languages and professions of the fiduciaries on the Part 36 fiduciary list. Individuals that speak languages in addition to English and that are aware of the nuances of other cultures would greatly assist the Court and, therefore, those that we serve. An expansion to recruitment of nurses, social workers and students would also enhance the expertise of Court Evaluators. At a minimum, we must seek to provide more information to Court users as to how to navigate the Guardianship process in languages other than in English - particularly for those who are acting *pro se*.

Fourth, as a consequence of the pandemic, Guardianship proceedings are now “e-filed”. While this administrative modification has certainly resulted in greater efficiency and ease of handling a Guardianship case, it also raises concerns as to maintaining the privacy of an individual’s medical and financial information. We believe that appropriate security measures must be developed and implemented in this respect.

Finally, we recommend a change in the manner in which Guardianship case inventories are recorded statistically. Currently, once a hearing is held and a decision rendered, the case is considered disposed and is no longer carried on a Guardianship Judge’s open inventory. Yet, if someone is found to be incapacitated and a Guardian is appointed, in essence, the case has just begun. The Court has exclusive and continuing jurisdiction over every aspect of a guardianship matter. (MHL 83.21) The Court will have many motions and conferences pertaining to this file for years to come. For example, the Court will deal with Medicaid planning, selling/purchasing real property, managing real property, care management and residential placement issues, approving settlements, resolving family disputes, and a host of other issues. This is in addition to reviewing and approving annual accountings, initial reports, expense requests and applications for professional fees. Accordingly, it is recommended that if a petition to appoint a Guardian is granted, the case remain on a Guardianship Judge’s case inventory until a final accounting is approved and the Guardian is discharged.

We encourage all to review our assessments, recommendations and ideas. The Task Force has put a great deal of thought and effort into this Report, with the goal of improving the way the Court can best serve our constituents - attorneys, Court users, and incapacitated persons alike.

**The Guardianship Task Force**

**SECOND DEPARTMENT**  
**GUARDIANSHIP TASK FORCE**

**COMMITTEE MEMBERSHIP**

**Hon. Betsy Barros (Co-Chair)**  
**Associate Justice, New York State Appellate Division, Second Department**

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**Acting Justice, Richmond County, Supreme Court**

**Hon. Robert A. Onofry (Co-Chair)**  
**Surrogate, Orange County, Supreme Court**

**Hon. Michael G. Hayes**  
**Surrogate, Dutchess County, Acting Supreme Court Justice**

**Hon. Arthur M. Diamond-Retired**  
**Justice, Nassau County, Supreme Court, Supervising Judge Guardianship Matters**

**Hon. Richard I. Horowitz**  
**Acting Justice, Suffolk County, Supreme Court**

**Hon. Lee A. Mayersohn**  
**Justice, Queens County, Supreme Court**

**Hon. Leon Ruchelsman**  
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**Guardianship Task Force**  
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**Preface/Introduction**

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Richard Adler  
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Michele L. Gartner, Esq.

Committee Subjects:

- A. **Compliance with Court Orders**
  - B. **Termination of Inactive and/or Abandoned Cases**
  - C. **Court Examiners**
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**Continuing Legal Education Committee**

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**Duties of Guardianship Referees Committee**

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**Court Evaluators Committee**

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Hon. Charles M. Troia

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**Uniform Practice and Procedure Committee**

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Margherita Rancanelli, Esq. (Chair)  
Hon. Michael G. Hayes  
Joseph Musolino  
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**Pro-Bono Committee**

Members:

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**Model Guardianship Part Committee**

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Hon. Richard I. Horowitz  
Jeffrey T. Grabowski, Esq.

**I**  
**GUARDIANSHIP COMPLIANCE:**  
**Personnel and Recommended Procedures**

Active case management is essential to effectively monitor the status of Guardianship proceedings, to assure **compliance** with all court directives, laws and rules and, most importantly, to protect a Person In Need of a Guardian (“PING”) or an Incapacitated Person (“IP”). Since 2005, each Judicial District has developed systems and a structure to track the proliferation and ever-increasing complexity of Guardianship matters. While ensuring compliance ultimately resides with the Guardianship Judge, the process to ensure compliance falls primarily upon Part 36 Court appointees (i.e. the **Guardian** and the **Court Examiner**) and Court personnel (i.e., the **Guardianship Referee** or a **Court Attorney/Referee** and clerical staff specifically appointed to monitor and review Guardianship matters). Accordingly, it is essential that the structure ultimately adopted ensures the accountability of Guardians respecting financial transactions and personal decisions.

This section will attempt to set forth uniform roles for the two most significant Court-appointees (the **Guardian** and the **Court Examiner**), the most significant Court personnel (**Guardianship Referee or Court Attorney/Referee, and Court Analyst**) - whom, where resources permit, should comprise the minimum staff members assigned in each Judicial District’s Guardianship Part - and ideal procedures to be developed and implemented by the Administrative Judge in each Judicial District based on the resources available in each Court and, in some instances, on a District-wide basis to achieve judicial **compliance** during the course of Article 81 Guardianships. **Compliance** is best defined as ensuring reporting accountability by Guardians to Court Examiners, at statutorily-defined periodic intervals, or as directed by the Court, as to the personal decisions and/or financial transactions made by the Guardian on behalf of a PING and/or IP, all ultimately approved by the Court.

**Appointees and Court Personnel**

**Guardian:**

On occasion, upon the initial filing of the Guardianship petition and before the Guardianship hearing is completed, exigent circumstances may exist which must be addressed immediately. In those cases, the Court may appoint a Temporary Guardian of the Person and/or Property for the Alleged Incapacitated Person (“AIP”) / PING (Mental Hygiene Law [“MHL”] § 81.23). A Court Certified Copy of the Order Appointing Temporary Guardian shall act as the Commission. In most instances, following a hearing (MHL §§ 81.11 - 81.15), and, in the case of a PING, upon the PING’s consent, the Guardianship Judge will determine whether the AIP requires the appointment of a Guardian, upon review and assessment of the criteria set forth in MHL § 81.02. In the event the appointment of a Guardian is warranted and the Guardianship Judge is satisfied as to the eligibility of the proposed Guardian to serve (MHL § 81.19), the Court will render its decision - most often, on the record immediately following the hearing - appointing the Guardian and providing the Guardian with the powers defining the Guardian’s authority attendant to the PING/IP’s personal needs (MHL § 81.22) and/or property management (MHL § 81.21). These powers will ultimately be set forth in the Findings of Fact, Conclusions of Law and Judgment (“Judgment”) or Order & Judgment, which is typically noticed for settlement upon the parties / counsel / Court-appointees (i.e., Court Evaluator [MHL § 81.09] and/or Counsel for the AIP [MHL § 81.10]) no later than 30 days from the date the Guardianship Judge renders a decision.

### **Court Examiner:**

In most Judicial Districts, once there has been an appointment of a *permanent* Guardian for the IP's personal needs and/or property management, the Court will appoint a Court Examiner, who is a Part 36 appointee duly-qualified under the training requirements established and promulgated by the Appellate Division governing the Judicial District where the Guardianship has been established. In essence, the Court Examiner assists the Court by monitoring the administration of the Guardian's duties and obligations to the PING/IP (MHL § 81.20). Among the critical responsibilities innate to the Court Examiner's oversight of the Guardianship is the protection and preservation of the PING/IP's personal needs and finances by ensuring the Guardian's completion of all statutory requirements imposed by the Court in the Judgment, with the guidance of the Court whenever necessary.

### **Guardianship Referee / Court Attorney Referee and Court Analyst:**

As set forth, *supra*, when the Court Examiner ultimately requires Court intervention to attain compliance from a delinquent Guardian, there should be a structure in place in each Guardianship Court / Judicial District by which the Court Examiner is able to bring the Guardian before the Court. The primary Court personnel who are typically assigned to undertake and assist with these "quasi-judicial" responsibilities are: (i) the *Guardianship Referee*, or, in Judicial Districts where none has been designated, a *Court Attorney/Referee*, who will be authorized to supervise and, if necessary, conduct *Compliance Conferences*, at which the Court Examiner and the Guardian appear and discuss the measures required to rectify any delinquencies noted by the Court Examiner; and (ii) a *Court Analyst* (or other qualified clerical staff member), whose primary responsibilities are to: (i) interface with the Court Examiners regularly to ensure that Court support is available, when necessary; (ii) compile case rosters and pertinent information related to the Court Examiners appointed in each Court / Judicial District; and (iii) establish and schedule individual *Compliance Calendars* and conferences for each Court Examiner, which are required until each Court Examiner has gained full compliance from the Guardian in each assigned file. These calendars and conferences will also serve as the active "tracking system" for the Court's periodic review of the Court Examiner's diligence in filing Court Examiner Reports (i.e., review of Court's correspondence and other communications with the Court Examiner for updates in advance of the Court Examiner's annual Inventory Reports), which is a crucial component in the annual performance evaluation performed by the Court / Judicial District for the Court Examiner's prospective re-appointment by the appropriate Appellate Division the following year.

The role of each of these Court appointees/Court personnel and the procedures recommended to ensure compliance may vary at different phases of each Guardianship, as set forth, *infra*.

### **Phase I - Important Early Requirements For Guardians**

The Court Examiner's oversight of the Guardianship typically commences immediately upon the Court's issuance of the Judgment (where the Court Examiner's appointment is typically set forth), as there are certain documents the Guardian must file and certain obligations the Guardian must fulfill shortly thereafter.

#### **Commission / Designation of the Clerk to Receive Process :**

Notwithstanding the Court's execution of the Judgment, the Guardian is not authorized to act on behalf of the PING/IP until the Guardian has timely filed a Designation of Clerk to Receive Process, which ensures that the County Clerk can be served with process in the event a Guardian cannot, upon diligent search, be found in New York (MHL § 81.26), and the County Clerk issues

the Guardian a Commission, which serves as documentary evidence of the Guardian's authority to act (MHL § 81.27). Court Examiners should closely monitor these filings and immediately report any delinquencies to the Court, which will then determine what, if any, additional action is necessary at that time.

**Bonds:**

When imposed by the Court in the Judgment, a surety bond ensures that the PING/IP's assets are protected from a Guardian's misfeasance/malfesance (MHL § 81.25). The bond is typically set at or around the value of the PING/IP's known assets, and the County Clerk will not issue a Commission to a property management Guardian until the Guardian procures the bond.

**Education Requirement:**

Unless the Court waives the education requirement, all non-institutional Guardians must complete an approved Guardianship training course (MHL § 81.39) and file a certificate of proof of attendance with the County Clerk, providing a copy to the Court Examiner. Guardianship training is typically provided through virtual/on-line programs administered by bar associations and other Guardianship assistance resources and organizations.

**Initial Reports:**

The Guardian's Initial Report is due no later than 90 days after the issuance of the Guardian's Commission (MHL §81.30). The Initial Report should not be marked off the Court's calendar until it has been appropriately filed, reviewed and approved. It serves as the "preview" for the Guardian's first Annual Report, and should provide an overview of the PING/IP's current physical/mental condition and assets marshaled to date. Depending on when a Guardian's Commission is issued, an Initial Report serves as the Court Examiner's sole review of the Guardianship until the first Annual Report is filed, which, in some cases, could amount to over a year's time. As such, the Court Examiner must carefully review the Initial Report to ensure not only that any and all assets marshaled by the Guardian are consistent with assets previously reported in the Judgment, but also that there is full compliance with any specific directives of the Court, as set forth in the Judgment.

**Phase I - Recommended Compliance Procedures:**

It is the Guardian's failure to timely meet any of the foregoing requirements which will likely trigger the Court Examiner's first foray into the Compliance procedures established by the Guardianship Court and/or Judicial District.

To avoid these issues in the early stages of each Guardianship, it is crucial that the Court Examiner immediately implement a personal "tracking" system to: (i) identify the statutory deadlines attendant to each of the aforementioned filings/events; (ii) maintain current contact information for each Guardian - *especially home address of record, viable telephone number(s), and a viable e-mail address*; and (iii) regularly engage in written communications with the Guardian (perhaps on a monthly or quarterly basis) to inquire if any problems are arising in the Guardianship and, more crucially, to offer assistance to Guardians who are delinquent in these preliminary responsibilities.

Once the Court Examiner has identified a situation where there is a delinquency and has engaged in several written communications with the Guardian, to no avail, the Court Examiner should notify the Court Analyst of the delinquency and request the Court to schedule an "*ad hoc*" compliance conference for this matter.

In this respect, the virtual technology that has emerged during the Court's implementation of COVID-19/pandemic procedures are valuable means of communication in scheduling compliance conferences and holding regular compliance "calendars" (as described, *infra*) for a Court Examiner in lieu of requiring physical appearances at the Court, provided that the Court Examiner has been diligent in maintaining viable contact information of the Guardian. More specifically, the Court Analyst is able to schedule a compliance conference via teleconference or Microsoft TEAMS video conference at the mutual convenience of the Guardian and Court Examiner, sending a teleconference number or video link with instructions, while setting forth the reason for the necessity of the conference and suggestions for appropriate preparation therefor. Notably, once the conference is scheduled, a delinquent Guardian will often rectify all outstanding preliminary issues prior to the scheduled conference date, as a means of avoiding a "Court appearance".

In the event that the conference must occur, the TEAMS platform, when used, provides a virtual, non-confrontational forum for the Court Examiner to identify the delinquencies and prospective solutions, provide follow-up deadlines, and schedule subsequent telephone/video conferences before the Guardianship Referee/Court Attorney/Referee. At that juncture, if non-compliance remains, the Court Examiner has the authority to commence a proceeding for appropriate relief, including removal of the Guardian (MHL § 81.35) - a proceeding which will be heard by the Guardianship Judge and may result in monetary consequences for the Guardian.

## **Phase II - Annual Reports / Accountings**

Assuming the Guardian meets all of the aforementioned early requirements, the Court Examiner's oversight of the Guardianship continues with the monitoring of the Guardian's next set of reporting requirements.

### **Annual Accountings:**

Following the Court's approval of the Initial Report, the Guardian must file an Annual Report for the preceding year with the County Clerk, no later than May 31<sup>st</sup> of each calendar year (MHL § 81.31). The Guardian must provide the Court Examiner with a copy of the Annual Report and all supporting documentation (i.e., receipts, invoices, bank statements, etc.) necessary for the Court Examiner to complete an examination of the Annual Report and assess the sufficiency of its content. The Court Examiner is required to examine and confirm an Annual Report within 30 days from the date the Guardian files it.

However, if the Guardian has not filed an Annual Report by May 31<sup>st</sup>, the Court Examiner must send the Guardian a written demand and file a copy of that demand with the Court (MHL §§ 81.31, 81.32). If the Guardian does not file the outstanding Annual Report within 15 days from the date of service of the demand (see MHL §81.32), compliance proceedings should ensue.

It should be noted that, during COVID-19/pandemic protocols, while many Judicial Districts adopted the use of e-filing for the submission of Guardian's reports/accountings, uniformity in this practice has not yet been achieved, due, in part, to logistical issues of sharing e-filed documents between/among counties located in the Judicial Districts which administer compliance procedures in multiple counties. Until uniformity is ultimately achieved in this procedure, Court Examiners should continue to be aware of and monitor the filing process being administered in the counties where they have received assignments.

### **Annual Visitation Requirements:**

The Guardian is required to visit with the PING/IP no less than four (4) times per calendar year, or more frequently as may be specified by the Court (MHL § 81.20). Since it is preferred that visits should occur periodically during the calendar year and not over one brief period, the Court Examiner should require the Guardian to include any actual dates of visitation in the Guardian's Report, unless the PING/IP resides with the Guardian, in which case compliance with visitation is assumed. In this respect, visitation which has occurred virtually/electronically during the COVID-19 pandemic has served as a viable means of meeting these visitation requirements, and the Court Examiner will be required to report whether, in the Court Examiner's discretion, the Guardian met the statutory visitation requirements.

### **Phase II - Recommended Compliance Procedures:**

In the event of the Guardian's non-compliance with the Annual Reporting process, the Court Examiner must be prepared to move forward with the compliance procedures established by the Court/Judicial District.

To effectively undertake the compliance procedures for delinquent Annual Reports, it is suggested that, no later than a deadline established by the Court/Judicial District (typically no later than June 30), the Court Examiner communicate with the Court Analyst to: (i) identify all cases (*by PING/IP Name / County-Index #*) for which the Annual Report has not yet been filed, with specific reference to the reason(s) for non-compliance (i.e., no report filed; improper format; lack of adequate documentation, etc.); (ii) provide the Court Analyst with the Court Examiner's unsuccessful documentary requests for compliance; (iii) request a monthly date/time for the Court Analyst to set an individual compliance calendar for each Court Examiner to appear before the Guardianship Referee or Court Attorney/Referee with any delinquent Guardian (and/or, if applicable, counsel for the Guardian); and (iv) cooperate with the Court Analyst by providing the Court Analyst with pertinent information for each Guardian (*i.e., name, viable telephone numbers and e-mail addresses*) to schedule the compliance calendars, which should be held via teleconferences/TEAMS video conferences on the designated dates/times.

In advance of a scheduled compliance calendar, it is incumbent upon the Court Examiner to communicate with each delinquent Guardian (and, if applicable, the Guardian's counsel), to attempt to achieve compliance prior to the calendar date. Again, with diligence (and a looming Court appearance), the Court Examiner will often achieve success in advance of the calendar. Regardless of pre-calendar success or failure, in advance of the compliance conference, the Court Examiner should apprise the Court Analyst (or the Guardianship Referee/Court Attorney) of any updated information regarding the status of any matters that have been scheduled, so as to maximize the efficiency of the Court's resources in assisting the Court Examiner in conducting these conferences. The Court should not relieve the Court Examiner of any obligation to conduct and appear at a monthly compliance conference until all matters are brought into full compliance, or are otherwise before the Guardianship Judge, for good cause.

Often, requests are made by the Guardian for an adjournment of a scheduled compliance calendar. These requests for an adjournment - which should be in writing (including fax, e-mail requests) - should be presented to the Court solely through the Court Examiner, and the Guardianship Referee and/or Court Attorney/Referee should evaluate these requests based on all circumstances presented, with the length and history of non-compliance typically remaining the crucial factor in determining whether to grant the requested adjournment.

In the event that the Guardian (with or without counsel) must appear at a scheduled compliance conference, the Court Examiner will identify and discuss the deficiencies in the method/format of reporting and/or documentation furnished with an incomplete Guardian's report or other pertinent reasons for non-compliance, and reset an appropriate deadline for filing an Annual Report. It is suggested that if the Guardian is required to appear for three successive monthly compliance calendars without achieving compliance, absent extraordinary circumstances, the Court Examiner will need to commence a proceeding for appropriate relief, including removal of the Guardian (MHL § 81.35), which will be heard by the Guardianship Judge and may result in monetary consequences for the Guardian.

### **Phase III - Intermediate and Final Reports**

Assuming the Guardian meets all of the aforementioned requirements, the Court Examiner's oversight of the Guardianship concludes with the monitoring of the Guardian's filing of an Intermediate / Final Report (MHL § 81.33), which occurs upon: (i) the resignation, removal or death of a Guardian; (ii) the termination of a Guardianship due to changed circumstances by which the PING/IP no longer requires a Guardian (MHL § 81.36); or (iii) most commonly, upon the death of the PING/IP (MHL § 81.44).

In the event of the resignation, removal or death of the Guardian, the Court Examiner must ensure that a Final Report has been filed by or on behalf of the former/deceased Guardian, and the Guardianship assets on hand are properly transferred to and secured by the Successor Guardian appointed by the Court. In the case of the termination of the Guardianship due to changed circumstances by which the PING/IP no longer requires a Guardian (MHL § 81.36), the Court Examiner must ensure that a Final Report has been filed by the Guardian, and that the Guardianship assets on hand are properly transferred to the PING/IP. In some jurisdictions, a referee is appointed to hear and report on final accounts for matters where the guardianship is terminated for reasons other than the death of the PING/IP.

In the event of non-compliance in either of these two situations, the scope of the Court Examiner's duties and available Compliance procedures are handled as described, *supra*, in Phase I of the Guardianship, as the Court Examiner first actively pursues compliance from the former Guardian (or a designee reporting on behalf of a deceased Guardian) and, having failed to gain compliance, then invokes the "*ad hoc*" Compliance procedures with the Court, through the Court Analyst, Guardianship Referee or Court Attorney / Referee.

Upon the death of a PING/IP, the Court Examiner must ensure that the Guardian has fulfilled several specific obligations: (i) within 20 days of the date of the PING/IP's death, the filing of a Statement of Death; (ii) within 150 days of the PING/IP's death, the filing of a Statement of Assets and Notice of Claim and delivery of all Guardianship property not retained to secure satisfaction of the administrative costs of the Guardianship to a duly-appointed representative for the PING/IP's estate or, if none has been appointed, the Public Administrator or Chief Fiscal Officer of the County of the deceased PING/IP's domicile; and (iii) within 150 days of the PING/IP's death, the filing of a Final Report, on notice to those entitled thereto (MHL § 81.44).

In some Counties/Judicial Districts, upon receiving the Guardian's notification of the PING/IP's death, the Court Examiner will make an *ex parte* request for the Guardianship Judge to sign an Order by which the Court confirms its receipt of documentary evidence of the PING/IP's death (i.e., a Death Certificate or the Statement of Death ultimately required to be filed under MHL § 81.44[c]), and sets forth the Guardian's responsibilities as to the "150-day" requirements under

MHL §§ 81.44 (d), (e) and (f) to, *inter alia*, (i) file a Statement of Assets and Notice of Claim and delivery of all Guardianship property not retained to secure satisfaction of the administrative costs of the Guardianship to duly-appointed estate representative for the PING/IP's estate or, if none has been appointed, the Public Administrator or Chief Fiscal Officer of the County of deceased PING/IP's domicile; and (ii) file the Final Report, on notice to those entitled to receive notice thereof. This Order is extremely useful, inasmuch as it provides an explicit notice to the Guardian of the responsibilities entailed in finalizing the Guardianship, and also serves as an initial component of the active role the Court Examiner must assume to ultimately ensure the Guardian's compliance with those responsibilities. It is recommended that the Guardianship Courts adopt, as a uniform procedure, the implementation of an Order of this nature, along with a compliance calendar for Final Orders in conjunction with each Court Examiner receiving appointments, to gain the most stringent oversight and the highest likelihood of compliance at this stage of the Guardianship.

As a practical matter, in many cases, the statutory period of 150 days is not a sufficient period of time for a Guardian to complete all of the statutory requirements. Accordingly, the Court Examiner must assume the responsibility of monitoring this post-mortem period, and be prepared to immediately report any delinquencies to the Court. The scope of the Court Examiner's duties and available compliance procedures will be handled as described in Phase I of the Guardianship. The Court Examiner will first actively pursue compliance from the Guardian and, if unable to gain compliance, will then invoke the "*ad hoc*" compliance procedures with the Court, through the Court Analyst, Guardianship Referee or Court Attorney/Referee. The Court Examiner should continue to undertake the applicable compliance procedure until all of the statutory requirements are met, so that the Court Examiner is able to complete and file a Final Examiner's Report, and have the Court render its Final Order.

#### **Phase IV - Ex Parte Orders and Inactive/Abandoned Cases**

Subsequent to the Court's issuance of its Final Order, the final step leading to the Court's ultimate discharge of the Guardian (and any surety for a bond imposed) is the Guardian's submission of an *Ex Parte* Order, which the Guardian files for the Court's review, along with documentary evidence of the Guardian's disposition of Guardianship assets remaining on hand, as set forth in the Final Order.

Notably, once the Court signs the Final Order, the Court Examiner is not required to be involved in this final stage of compliance. While certain Guardianship Courts and Judicial Districts have requested Court Examiners to track their files through the Guardian's submission of the *Ex Parte* Order and attendant documents, there is no statutory mandate to require the Court Examiners to do so. It is suggested that the Legislature consider an amendment to the applicable statutes governing the Court Examiner's duties to mandate this oversight, to alleviate the burden on the Guardianship Court's staff to do so.

In any event, until the Guardian complies with these outstanding matters, it is suggested that, within the Final Order, the Court set forth an "ORDERED" paragraph, requiring the Guardian to provide documentary proof that the requirements of disposition/turnover of assets have been fulfilled by the filing of an *Ex Parte* Order by the stated deadline (typically 60 days following the entry of the Final Order), or else the Guardian will be subject to appear at a designated ***Ex Parte Compliance Calendar*** that the Court should establish *once per month*. These monthly calendars should require virtual appearances before the Guardianship Referee or Court Attorney/Referee, at which time the Guardian will be provided with guidance, if necessary, and a deadline by which to fulfill these *Ex*

*Parte* obligations.

Finally, it is strongly suggested that, in the event a Guardian has failed to appear at/achieve compliance with these *Ex Parte* obligations after three successive *Ex Parte* compliance calendars, the Court enter an ***Order of Abatement***, with service being effectuated upon all necessary parties, pursuant to which the Guardianship is deemed terminated and/or abandoned, and the Guardian is explicitly not discharged from any liability as to the Guardian's stewardship of the now-deceased PING/IP's assets. The implementation of this procedure would prevent many cases from remaining on the Court's docket indefinitely, and allow any parties aggrieved by the Guardian's failure to fulfill these *Ex Parte* obligations to explore an appropriate remedy against the Guardian (and, where applicable, the surety) in an appropriate forum.

Periodic reviews of Guardianship inventories should be conducted by the Court Examiner and the Court's staff to identify cases which may be abandoned. In this respect, some simple but effective measures can be adopted by Court Examiners and the Court to ensure that cases do not become abandoned/inactive at critical junctures.

For instance, the Court Examiner and the Court can develop a tracking system to follow cases after the filing of a Final Accounting has been directed to ensure that Final Accountings are filed timely. A tracking calendar approximately 60 - 90 days after direction to file the Final Accounting is suggested.

Additionally, the Court Examiner and the Court can track cases after approval of a Final Accounting to ensure that a discharge order has been filed. A tracking calendar of approximately 60 - 90 days after the Court's approval of the Final Accounting is suggested.

In sum, tracking cases for compliance at these two important junctures is critical in reducing the number of potentially abandoned/inactive cases on the Guardianship docket.

## II

### CONTINUING LEGAL EDUCATION (CLE)

#### **A. Training for Part 36 Appointees:**

1. The cost of mandatory training serves as a barrier to recruiting and retaining Part 36 appointees. By reimbursing appointees for the cost of mandatory training (as New York State already does for criminal defense attorneys who participate in the 18-b program), the State can remove this barrier in a manner that would be far more cost-effective than hiring additional institutional providers to fill the gap caused by a lack of qualified Part 36 appointees;
2. The quality of the representation, independent evaluation, and Guardianship services that the vulnerable MHL article 81 population receives will be vastly improved if additional, practical training opportunities are provided, such as a State-funded “mentoring” program, pairing experienced Part 36 appointees with novice appointees or appointees who need extra support or remediation (similar to the “mentoring” program that the State already provides for criminal defense attorneys who participate in the 18-b program);
3. Each Judicial District should sponsor informal programs, held in individual courthouses or virtually *via* TEAMS, including “meet and greet” functions hosted by the Guardianship Judges and Court staff; and
4. Add post-judgment compliance education to the Part 36 training curriculum, consistent with the practices and requirements of each jurisdiction.

#### **B. Training for Court Personnel:**

1. MHL article 81 programs should be provided more frequently by / through the New York State Judicial Institute (either in-person or virtually); and
2. There should be an additional MHL article 81 curriculum established and presented during educational seminars for new judges and at summer judicial conferences, and these separate conferences should then be made available for “on-line” training purposes.

#### **C. Guardianship Roundtables / Database for Unpublished Decisions:**

There should be reinforcement of the recommendations of the 2005 Task Force for Guardianship Judges to:

1. Maintain a regular schedule of roundtable discussions on at least a quarterly basis; and
2. Forward noteworthy decisions which they consider instructional to Mental Hygiene Legal Service (“MHLS”) for posting on the Guardian and Fiduciary Services website (<http://www.nycourts.gov/ip/gfs/LandingCollected.shtml>).

### III

## COURT EXAMINER COMPENSATION

### Overview/Introduction

By Order dated May 29, 2019 [effective June 3, 2019], Presiding Justice Alan Scheinkman implemented a schedule of increases for Court Examiner and Accounting fees in the Second Judicial Department - increases that were generally recognized as long overdue. The previous schedule of Court Examiner and Accounting fees had remained fixed since 2005.

In furtherance of those compensation adjustments, the Task Force Sub-Committee on Compensation for Court Examiners was charged with formulating a series of recommendations with the intent of improving and expanding the changes implemented by Presiding Justice Scheinkman in 2019.

In this respect, input was solicited from various Article 81 Guardianship professionals engaged as Court Examiners, Court Evaluators, Guardians and Attorneys who regularly serve as Attorneys for AIPs - input that was subsequently formalized in roundtable discussions, and further supplemented by post-roundtable submissions and commentary.

While the central focus of the discussions related to issues of Court Examiner compensation, there was universal recognition that issues of adequate Court Examiner compensation are closely intertwined with, and dependent upon, others areas being addressed by the Task Force - i.e., Uniform Practices and Procedures, Compliance issues, CLE considerations, and the ability of Lay Guardians to discharge their duties in a timely and competent matter, particularly where property Guardianships involve complex financial issues.

In formulating its 2005 Report, the Second Department's Guardianship Task Force recognized and concluded that while the Article 81 structure must be sensitive to practices and procedures that unnecessarily deplete an IP's assets, increases in compensation are, nevertheless, necessary in order to ensure not only that quality Court Examiners are retained, but also that newly-qualified Court Examiners are attracted to this area of practice. Those considerations and objectives remain just as compelling today.

### Compensation

Building upon the 2005 recommendations, and the 2019 amendment to the Court Examiner and Accounting Fee Schedules, it is recommended that the issue of ensuring adequate compensation for Court Examiners be addressed through a pragmatic, two-pronged approach:

1. By the systematic implementation of a schedule of periodic increases to the Court Examiner and Accounting Fee Schedules - increases which provide for, and implement, automatic adjustments that take into account inflationary factors; and
2. By ensuring that Court Examiners are awarded additional compensation for additional services rendered [separate and distinct from the accounting function] - services necessitated by a variety of issues they are forced to confront, including, but not limited to: enforcement, compliance, and/or the removal of a Guardian for malfeasance or misfeasance.

### **Court Examiner and Accounting Fee Schedules**

As previously noted, the schedule of increases implemented by Presiding Justice Scheinkman in the May 29, 2019 Order constituted the first such adjustment in 14 years and amounted to a compounded inflationary adjustment of approximately 1.8% per year.

Accordingly, the Task Force recommends the following:

1. That future increases/adjustments to the Court Examiner and Accounting Fee Schedules be implemented automatically at defined intervals (3 to 5 years), at least for a defined period of time, pending further re-assessment and review regarding the adequacy of the compensation levels;
2. The scheduled increases/adjustments mirror the model implemented by Presiding Justice Scheinkman in the 2019 adjustment;
3. The designated benchmark adjustments/increases, when implemented, computationally equate to either a 1.8% annual increase or a cost of living increase derived from an analysis of the consumer price index (CPI) for the preceding defined adjustment period, whichever is greater; and
4. The provisions for automatic periodic increases not remain open-ended. Such increases should be subject to further re-assessment and re-evaluation concerning the adequacy of the compensation and fee schedules, with such reassessment being undertaken at no less than 10-year intervals.

Utilization of the 2019 Schedule, coupled with the prospective periodic adjustments for inflation, should provide an adequate framework within which Court Examiners can perform their core duties (i.e., the review, analysis and approval of Guardianship reports and annual accountings) and be adequately compensated for the discharge of these essential duties.

### **Compensation for Additional Services**

The issue of awarding Court Examiners additional compensation for services rendered above and beyond their core duties is, and remains, an area of concern. This issue becomes considerably more acute when dealing with lay Guardians, particularly in situations where a property Guardian is entrusted with the management of assets of significant value and where the composition of those assets may be considerably more complex.

This concern touches upon three core considerations:

1. The applicable standard to be applied in awarding such additional compensation;
2. The procedural posture for the application - i.e. should it be routinely presented to the Court that conducted the hearing, considered the Court Evaluator's Report, and issued the original Judgment, or at the District level as a compliance matter; and
3. The level of scrutiny that should be employed at the hearing/trial level - even if a hearing must be delayed - to ensure that the capability and qualifications of the Guardian are commensurate with the level of complexity of the Guardianship.

Ensuring that the Guardian's Reports are timely filed and are complete remains a paramount and time-consuming issue for Court Examiners. In fact, the prevailing view is that, in many instances, the services rendered and the time expended by the Court Examiner in ensuring the Guardian's compliance is not only separate and distinct from the time actually expended in conducting the core duties of review, analysis, and approval of the accountings themselves, but also that such services invariably become more time consuming and, in most instances, are uncompensated. Yet, there is also a commonly held, contrary belief that such additional services should not be labeled as "extraordinary" in nature, since these services are typically undertaken by the Court Examiner to either compel or ensure the Guardian's compliance with applicable reporting requirements and the proper discharge of fiduciary duties.

As a practical matter, while uniformity of Guardianship practice and procedure is sought and encouraged throughout the Second Judicial Department, the reality is that Guardianship administrative structures differ widely among the Judicial Districts and, in some instances, among the counties within those Districts - a divergence that is particularly acute when comparing urban and rural Counties. Thus, the establishment and/or implementation of uniform practices and procedures for the filing of such applications may be more appropriately reserved for each respective Judicial District.

To that end, the Task Force recommends the following:

1. Requests by the Court Examiner for additional compensation, which emanate from additional services that are rendered and necessarily incurred to ensure or to compel compliance by the Guardian should be routinely permitted and considered;
2. Applications for additional compensation should be evaluated by utilizing generally recognized standards - the time and labor expended, the complexity of the issues presented, the fees customarily charged, the nature of the services rendered (i.e., whether the services rendered were legal or ministerial in nature, which in turn drives the appropriate compensation rate) and whether the services rendered were "necessarily incurred";
3. The Court Examiner should be granted, to the extent possible, the option of filing such fee applications, on notice to the Guardian, with either the Court that conducted the initial hearing (the "Trial Court") and issued the original appointment order/judgment, or at the District level - as a matter of compliance - consistent with the administrative structure, practices and procedures established by each particular Judicial District; and
4. To the extent that the Court Examiner must commence an enforcement and/or removal proceeding necessitated by the Guardian's non-compliance, adjudication of both the enforcement/removal proceeding and the Court Examiner's companion application for additional compensation should, in the interest of judicial economy, be tried before the Trial Court, and District-wide practices and procedures should be developed and implemented consistent with that consideration.

### **Further Observations:**

Implicit in the development and issuance of these recommendations is the Task Force's view that the Trial Court is the preferred venue for the adjudication of these issues and for the consideration and approval of the Court Examiner's application for additional compensation.

The Trial Court, which conducted the initial hearing and made the initial appointment, is typically in a better position to determine, within the context of such a proceeding, whether further guidance - including a more detailed mechanism for compliance - should be provided for the Guardian or whether surcharge and/or removal constitutes the more appropriate remedy. Such scrutiny and curative action by the Trial Court should serve the added benefit, in most instances, of ameliorating the necessity for (and the number of) prospective applications of this nature by the Court Examiner.

Furthermore, while possibly viewed as a self-evident dynamic, the Trial Court's role in determining the level and sophistication of the Guardianship and whether the proposed guardian is capable of assuming the task is an important one. Indeed, a common and recurring theme of the Court Examiners surveyed by the Task Force revealed that non-compliance and enforcement issues (and, thus, the necessity of rendering additional services and fee applications) are typically driven not by the Guardian's unwillingness or refusal to comply, but by the Guardian's inability or lack of expertise - a recurring and glaring dynamic particularly with lay Guardians.

## IV

### GUARDIAN COMPENSATION

A plan of compensation should be set at the time of the appointment of a Guardian. The compensation plan may be modified by further Court order, due to a change in circumstances, which might include a depletion/increase of the IP's assets.

A plan of compensation may be set in one of the following ways:

1. Annual Commissions, based upon a formula derived from the Surrogate's Court Procedure Act Section 2307 or 2309;
2. *Quantum meruit* for specific hours worked, which must be supported by an Affirmation of Services; (Note that the hourly rate of pay should be set by the Court and should be less than the rate set for attorney's fees. The last published rate of \$90/hour was contained in the 2005 Guardianship Task Force's Report. A current recommended rate would be in the range of \$130-150/hour.); or
3. A monthly stipend, based upon the IP's needs and financial means.

In all cases, the Guardian may apply for additional compensation based upon "extraordinary circumstances." This should be done on a case-by-case basis, and awarded only upon prior Court approval.

There are some distinct advantages for using stipends when setting fees for Part 36 Guardians, Community Guardians and Not-for-Profits Guardians. If the IP has monthly income or significant assets, not including Social Security, some of those funds can be earmarked for the Guardian at the inception of the Guardianship. Stipends provide a consistent stream of income for professional Guardians and avoid the delay of waiting for commissions to be paid out on an annual basis. Payment by stipend, as opposed to commission, also ensures a professional Guardian's compensation will not be depleted as Guardianship assets are spent down. Stipends can be set to reflect the actual work being done, which avoids a potential windfall for the Guardian in Guardianships where there are significant assets and helps to preserve the IP's assets. Also, stipends may sometimes not be considered an "available asset" when a local Medicaid coordinator (i.e., New York City HRA, a county DSS, etc.) is calculating Net Available Monthly Income ("NAMI"). Municipalities which fund Community Guardians and Not-for-Profits will be better able to budget their costs going forward when predictable stipends are used. Stipends can also be adjusted throughout the Guardianship process. For example, a stipend can be set at a higher rate for the first six months when the bulk of the transitional work is undertaken. It can then be reduced to a "maintenance" rate thereafter (e.g. \$750/ month for the first 6 months and \$450/month thereafter). Finally, the use of stipends avoids the time-consuming procedures involved in assessing appropriate *quantum meruit* payments and ensuring the accurate calculation of commissions by the Court Examiner and verification by the Court's staff.

Each case is unique, and the available assets of the IP must be considered in conjunction with the tasks that must be undertaken by the Guardian to ensure that the IP is safe and secure.

## V

### **DUTIES OF THE GUARDIANSHIP REFEREE**

In 2005, the Guardianship Task Force of the Second Judicial Department acknowledged the need for active Guardianship case management - particularly the need for additional oversight in monitoring compliance with post-judgment Guardianship orders and statutory requirements. In order to address these needs, the Task Force recommended the creation of the position of Court Examiner Specialist. As a Court Attorney-Referee, the Court Examiner Specialist would have the requisite authority to conduct post-judgment compliance conferences. Additionally, the Court Examiner Specialist would serve as a direct link between the individual Court Examiners, Guardians, and the appointing Court. Through its District Administrative Judge, each Judicial District would choose whether to utilize the Court Examiner Specialist or other member of the Court's staff to actively monitor compliance. At that time, most, if not all, of the Judicial Districts within the Second Judicial Department retained a Court Examiner Specialist - now referred to as the Guardianship Referee.

Over 15 years after the initial Guardianship Task Force's recommendations, the need for continued oversight of post-Judgment Guardianship orders and monitoring compliance remains strong. Currently, while several Judicial Districts have an assigned Guardianship Referee or Judicial Hearing Officer ("JHO") to monitor compliance with post-judgment Guardianship orders and statutory requirements, some of the Judicial Districts no longer have a individual or JHO fulfilling the oversight functions typically assigned to a Guardianship Referee/JHO, causing, in some instances, oversight inconsistencies and backlogs. As our predecessor did, this Guardianship Task Force recommends that all Districts in the Second Judicial Department designate a Guardianship Referee or JHO to monitor the timely filing and review of accountings and reports, along with other post-judgment statutory requirements for Guardians and Court Examiners.

As previously indicated in the Compliance section of this Report, the Guardianship Judge's signing of the final Order and Judgment appointing the Guardian marks the beginning of years and, in some instances, decades of Court oversight and monitoring of many Guardianships. The initial step in such monitoring occurs by the Court Examiner - the "eyes and ears of the Court" for compliance issues - to ensure that the personal needs and finances of PINGs/IPs are being adequately protected. Indeed, the primary responsibility of the Guardianship Referee/JHO is to ensure that the Court Examiners are monitoring the filing of the Guardian's accountings and reports, and that these accountings and reports are timely reviewed and evaluated by Court Examiners.

In this respect, as recommended in the Compliance section of this Report, the Guardianship Referee/JHO should be empowered to conduct compliance conferences. Moreover, since the issues that arise during these conferences may be complex, it is imperative that any person designated as Guardianship Referee/JHO must have a background in Article 81 Guardianship practice and procedures. Indeed, as the volume of Guardianship cases continue to grow, and the myriad issues that develop post-Guardianship hearing continue to do so as well, a majority of these issues can be and, in fact, are often resolved by the Guardianship Referee / JHO at these conferences, thereby avoiding further congestion of the Guardianship Judge's calendars. More importantly, the earlier any irregularities are detected and addressed by the Guardianship Referee/JHO, the more likely it is that harm to the PING/IP can be prevented.

It is also crucial that the Guardianship Referee/JHO remain readily available to assist the Court Examiner in obtaining compliance from the Guardian when compliance conferences prove to be ineffective. In this respect, since the Court Examiner is vested with the authority to serve demands/requests on the Guardian for any failure to comply with statutory and/or Court-mandated requirements, the Court Examiner should immediately report to the Guardianship Referee/JHO any failure by the Guardian to comply with any prospective demands/requests.

Finally, each County should establish procedures by which the Guardianship Referee/JHO reports to the Guardianship Judge any continued failures by Guardians and, when applicable, by Court Examiners, to comply with the Guardianship Referee/JHO's post-judgment compliance conference directives, so that the Guardianship Judge can determine if the parties should be required to appear. While the Guardianship Referee/JHO may conference this matter with the Guardian and the Court Examiner prior to seeking judicial relief, the Guardianship Referee/JHO should ultimately apprise the Guardianship Judge assigned to the matter of any non-compliance by either the Guardian or the Court Examiner, as the ultimate responsibility of ensuring compliance lies with the Guardianship Judge - not the Guardianship Referee/JHO. In this process, the Guardianship Referee/JHO must remain mindful that, in accordance with the Rules of the Chief Administrative Judge with respect to Referees, orders directing compliance must be signed by a Guardianship Judge, and at no time should an order be issued by anyone other than the Guardianship Judge presiding over the case in question.

## VI

### **GUARDIANSHIP UNIFORM PRACTICES AND PROCEDURES**

In order to insure uniformity, consistency and judicial economy, it is recommended that a set of uniform Article 81 forms and orders be established, expanded and maintained in an online database. This will result in increased efficiency for both the Court and the practicing bar, as well as potentially decreased costs to be borne by an IP's estate. Uniform forms would also serve as a starting point for legal practitioners, ensuring that both novice and seasoned Guardianship practitioners present proper applications and orders for the Court's consideration.

Recognizing that the different counties and Judicial Districts within the Second Judicial Department vary with respect to caseload, resources, staffing, and numerous other factors, it is recommended that each Judicial District within the Second Department develop a set of uniform forms and orders. More specifically, each Judicial District should form its own Committee to expand the uniform form applications and orders currently available on their respective websites. It is recommended that these Committees should complete the expansion of their respective online forms within 90-120 days from their formation.

Additionally, it is recommended that Judicial Districts which share geographical proximity and Guardianship practitioners (i.e., Kings [Brooklyn], Queens and Richmond [Staten Island] Counties in New York City, and within the Ninth Judicial District [Westchester, Putnam, Rockland, Orange and Dutchess Counties]) designate a liaison from their Committees to compare and contrast their respective sets of uniform forms with those being promulgated in other Judicial Districts and Counties, with the ultimate goal of promoting as much similarity and uniformity as possible between and among those particular Judicial Districts.

While individual Guardianship Judges would retain the discretion to make changes to a form order, as warranted by the facts and circumstances of a particular case, the submission of these uniform applications and orders should be accepted, as long as they are properly completed and filed by the Court user.

Below is a list of websites and/or sample applications and forms currently available to the general public in the First and Second Judicial Departments:

#### **FIRST JUDICIAL DEPARTMENT** (included for reference only)

##### **New York County [Manhattan]:**

##### **General:**

- Order and Judgment;
- Initial Report (with instructions);
- Annual Report;
- Simplified Annual Report for Guardianships of \$100K or less;
- Short Form Application to Authorize Expenditures (with Court Examiner Approval line);

**Release/Discharge Guardian:**

Petition;  
Order Waiving Filing of Formal Account;  
Order Discharging Guardian and Surety;  
Consent to Informal Account.

**Final Report:**

Order To Show Cause - Settle Final Report;  
Verified Petition to Settle Final Accounting;  
Final Account Verification;  
Statement of Death;  
Statement of Assets - Notice of Claim;  
Final Report (Sample);  
Order Settling and Approving Final Report;  
Affidavit in Support of Discharge of Guardian and Cancellation of Bond;  
Order Discharging Guardian and Surety;  
Instructions for Submission of a Proposed Order Discharging Guardian and Surety.

**Bronx County:**

**General:**

Initial Report;  
Annual Accounting / Report;  
Final Accounting / Report;  
*Ex Parte* Application for Approval of Secondary Fiduciary Appointment;  
Article 81 Judgment.

**SECOND JUDICIAL DEPARTMENT**

**2<sup>nd</sup> Judicial District - Kings County [Brooklyn]:**

**Website:**     <http://ww2.nycourts.gov/courts/2jd/kings/civil/guardianship.shtml#sampleform>

**General:**

Instruction Sheet for Petition for Appointment of Guardian;  
Sample Notice of Guardianship Proceeding for Appointment of Guardian;  
Order to Show Cause for Appointment of Guardian;  
Order and Judgment (with instructions and separate checklist);  
Commission to Guardian;  
Oath and Designation;  
Initial Report - Sample;  
Annual Report - Sample;  
Annual Report - Sample for Guardian of the Person only .

**9<sup>th</sup> Judicial District (Westchester, Rockland, Putnam, Orange, Dutchess Counties):**

**Website:** <http://ww2.nycourts.gov/courts/9jd/guardianship.shtml>

**General:**

Application to Activate Standby Guardian;  
Application to Retain Professionals - Part 36;  
Application to Retain Professionals - Part 36 - Order  
*Ex Parte* Order;  
Guardian's Annual Accounting;  
Guardian's Final Accounting;  
Guardian's Initial Report;  
Notice of Article 81 Proceeding with Order To Show Cause and Petition;  
Notice on Final Accounting;  
Order Activating Standby Guardian;  
Judgment;  
Simplified Accounting Questionnaire;  
Statement of Death;  
Statement of Real Property;

**10<sup>th</sup> Judicial District**

**Nassau County:**

**Website:** <http://ww2.nycourts.gov/COURTS/10JD/nassau/guardianship.shtml>

**General:**

Initial Report;  
Annual Report of Guardian for Personal Needs Only;  
Annual Report for Guardian of Property Management & Personal Needs;  
Designation;  
Statement Identifying Real Property.

**Suffolk County:**

**Website:** <http://ww2.nycourts.gov/COURTS/10jd/suffolk/supreme.shtml>

**General:**

Commission to Guardian Form .

Other sample forms not posted on the website, but available from the Court:

Order to Confirm Sale;  
Order Discontinuing Guardianship;  
Order Settling Final Account;  
Order to Show Cause;

Poor Person Application;  
Order and Judgment;  
Short Form Application;  
Temporary Guardian Template;  
Affirmation in Opposition with Cross Motion;  
Affirmation in Opposition;  
Annual Account;  
Bond Sample;  
Commission;  
Designation and Consent;  
Final Account by Decree;  
Final Account by Motion;  
Fee Application;  
Initial Report;  
Order Approving Sale of Real Property.

**11<sup>th</sup> Judicial District - Queens County :**

**Website:**      [ww2.nycourts.gov/courts/11jd/supreme/civilterm/guardianship.shtml](http://ww2.nycourts.gov/courts/11jd/supreme/civilterm/guardianship.shtml)

**General:**

Guardian's Initial Report;  
Guardian's Annual Accounting;  
Short Form Application/Order .

**13<sup>th</sup> Judicial District - Richmond County [Staten Island]:**

**Website:**      <http://ww2.nycourts.gov/courts/13jd/Gaurdianship.shtml>

**General:**

Annual Accounting;  
Initial Report .

## VII

### **COURT EVALUATORS**

As explained in the prior Guardianship Task Force's Report, the Court Evaluator plays an integral role in an Article 81 proceeding. It is the Court Evaluator who conducts the initial investigation of the AIP's circumstances in advance of the proceeding. The Court Evaluator is able to meet with the AIP in the AIP's own surroundings, and also meets with the parties and the AIP's family members. The testimony and report of the Court Evaluator not only provide the Court with an unbiased view of the AIP's capacity and the propriety of the appointment of a Guardian, but also assists the Court in defining the issues that must be addressed at the hearing and the proper assessment of the AIP's resources and finances, thus ensuring the proper marshaling of the AIP's assets. In the past few years, administrative and logistical issues have arisen that require some changes to be promulgated by the Office of Court Administration (OCA) attendant to the Court Evaluator's appointment.

Accordingly, the following are recommendations of this current Guardianship Task Force.

#### **Sealing and Distribution of the Reports of the Court Evaluator:**

As a result of the health pandemic, e-filing was extended to documents filed in Article 81 proceedings. The implementation of e-filing has simplified access to all documents filed in a Guardianship proceeding - including the Court Evaluator's Report. However, since the Court Evaluator's Report always contains confidential and personal medical and financial information pertaining to the AIP, it is recommended that any Court Evaluator's Report filed via e-filing be deemed automatically sealed, requiring permission of the Guardianship Judge for the parties/counsel to view. It should be noted that Article 81 vests the Guardianship Court with the discretion to determine if any portion of the Court Evaluator's Report should even be disclosed to any parties / counsel in the proceeding. Accordingly, until such time as the Court Evaluator's Report is required to be automatically sealed upon filing, each Court should review the information contained within a Report, then assess whether the Report should be sealed *ab initio*.

As to which parties the Guardianship Judge may ultimately distribute the Court Evaluator's Report, it is clear that this decision is currently left to the discretion of the Guardianship Judge. While the Guardianship bar has expressed its understanding that each Guardianship Court may have its own policies regarding the exchange of the report, it has asked - and the Task Force recommends - that each individual Guardianship Court set forth and publish a policy as to its distribution of Court Evaluator Reports, so that counsel may better prepare for the Guardianship hearing in any given matter.

#### **Alternate Dispute Resolution ("ADR"):**

A large number of Guardianship proceedings involve disputes among family members. These disputes, which are readily identified by the Court Evaluator, generally have a negative impact on an AIP. Since OCA has greatly expanded its use of ADR in civil proceedings, ADR should be implemented in Article 81 proceedings, where appropriate, to address these common disputes. Accordingly, it is recommended that the Court Evaluator be required to identify what disputes might

appropriately be resolved by ADR, as the early identification and resolution of these disputes would be beneficial to both the AIP and the Guardianship Court in making its ultimate determination.

**Recruitment of Court Evaluators with Diverse Backgrounds:**

The Second Judicial Department has jurisdiction over some of the most ethnically-diverse communities in our country. Accordingly, Guardianship Judges should strive to recruit Court Evaluators from a wider array of cultural and ethnic backgrounds - particularly prospective Court Evaluators who are fluent in languages other than English. Unquestionably, a Court Evaluator with personal knowledge and understanding of an AIP's cultural beliefs and customs will render a more complete and accurate evaluation of an AIP, by affording the Court Evaluator a better opportunity to cultivate the trust of the AIP, as well as to understand any unique family dynamics present in the AIP's life. Moreover, the AIP would benefit if a Court Evaluator spoke the same language as the AIP, as Court Evaluators rarely have access to an Interpreter outside of the actual Guardianship hearing. Indeed, the inability of the Court Evaluator to communicate with the AIP in the AIP's native language can unduly impede the Court Evaluator's investigation in many respects, including the accuracy of the information the AIP ultimately discloses to the Court Evaluator.

**Provide Access to Language Interpreting Services:**

Since the Court Evaluator's investigation occurs outside of the courtroom, communicating with an AIP, the AIP's family members, or other necessary parties that do not speak English can impede the Court Evaluator from obtaining information that could prove to be vital to the Guardianship Judge's determination. Since it is unduly burdensome on the Court Evaluator to retain an Interpreter while conducting an investigation, it is recommended that OCA arrange for any Court Evaluator appointed to be provided immediate access to interpreting services - telephonically or via TEAMS video technology - for the duration of the Court Evaluator's investigation.

**Recruitment of Court Evaluators with Diverse Work Experience:**

Although the majority of Court Evaluators traditionally have been attorneys, Guardianship Courts are increasingly looking to individuals in other professions to assist in cases where a specific expertise is warranted. It is not unusual to see the Guardianship Judge look to nurses, social workers, mental healthcare professionals, teachers and numerous other professionals to assist in properly evaluating a case. Guardianship Judges are encouraged to adopt the practice of appointing a Court Evaluator who is not an attorney more frequently, where appropriate.

## VIII

### PRO BONO GUARDIANS

All jurisdictions are facing increasing difficulties in finding attorneys who are willing to serve as Guardians in Article 81 cases, especially where the AIP has little or no funds available to pay a Guardian for long-term appointment. Accordingly, this Task Force encourages Guardianship Judges to consider more appointments of professional non-attorneys to serve as Guardians of both the Person and Property of an AIP.

The experience of the 10<sup>th</sup> Judicial District (Nassau and Suffolk Counties) may be illustrative. Upon receiving a grant from the New York State Department of Health (through the office of then-State Senator Kemp Hannon), each county received \$250,000.00, to create a pilot program to address the shortage of attorney/Guardians in their communities. The programs are distinct in their approach: Nassau County appoints geriatric care managers (“GCMs”) through a non-profit organization and pays them a set hourly fee, while Suffolk County utilizes a network of retired volunteers. Both programs have been successful, ultimately serving a significant number of wards who would otherwise have been assigned to the “public” or “not-for-profit” Guardians in each county. Currently, each county is pursuing more funding for these programs, so that the programs may ultimately become permanent.

Jurisdictions facing an attorney/Guardian shortage are encouraged to approach their local Departments of Social Services or Office for the Aging to investigate partnering with these agencies to create similar programs. It has been the experience of Nassau and Suffolk Counties that New York State does not staff independent local offices addressing the needs of the aging population in each county. Accordingly, it has become incumbent on local jurisdictions to address these needs with programs promulgated by the Courts, as occurred in Nassau and Suffolk Counties.

In counties where bar associations have active Elder Law committees, this Task Force recommends partnering with those bar associations and committees to recruit attorneys who will be willing to serve as Guardians *pro bono*. In this respect, new lawyers entering the practice of Elder Law and Guardianship should provide a pool of candidates for these prospective appointments, as novice attorneys may be willing to take an appointment and gain valuable experience from their Court appearances and performance of their duties, while earning “good will” credit with the Guardianship Judges. In counties located in New York City, large law firms which participate in *pro bono* commitments may also provide a pool of candidates willing to accept these appointments.

Accordingly it is recommended that Guardianship Courts in other Judicial Districts explore the implementation of similar alternative programs for appointments of Guardians as a means of alleviating a glaring need for qualified Guardians.

## IX

### **PRO SE APPLICANTS - ASSISTANCE**

Currently, many Guardianship Courts provide information to individuals who appear at the Court inquiring about how to commence an Article 81 Guardianship proceeding without an attorney (i.e., *pro se*). Most Guardianship Courts, at a minimum, provide sample forms of the Petition and Order and Judgment. This Task Force recommends that Guardianship Courts adopt a “three-prong” approach to assist individuals who inquire about commencing a Guardianship proceeding without counsel:

1. Enlist the assistance of Elder Law attorneys and *pro bono* / “low” *bono* committees at local bar associations, and require these attorneys to donate *one hour a month* to be available to speak with *pro se* applicants;
2. Encourage the use of the Unified Court System’s website - [www.inside-ucs.org/](http://www.inside-ucs.org/) - as an excellent starting point for *pro se* applicants to begin to familiarize themselves with the Guardianship process.

The steps to follow from there are:

Go to ***Help for Unrepresented Litigants***; then

***Courthelp***; then to

***Guardianship***; then to

***More—Guardianship Basics and Guardian Case*** .

Under the tab of ‘***Guardianship of an Incapacitated Adult***,’ there is a link to Article 81 of the Mental Hygiene Law. This link will bring you into the actual statute; and

3. Obtain the instructional manual produced by CUNY Law School’s Main Street Legal Services, Inc., entitled, ***Guide to Becoming a Guardian Without a Lawyer***. This 37-page manual provides step-by-step instructions, explanations and forms for the *pro se* applicant to review and duplicate, as appropriate. In fact, this Task Force recommends that Guardianship Courts consider reproducing and providing copies of this manual at the front counters, or as a PDF document accessible on-line on the Courts’ or Judicial Districts’ respective websites.

## X

### LEGISLATIVE ACTION

Since the initial Guardianship Task Force Report was issued in 2005, there have been sporadic, inconsistent efforts undertaken by the Legislature to promote and effectuate legislation on behalf of IPs and the elderly in general. Sadly, the insidious nature of elder abuse, which encompasses physical, emotional, and financial abuse, most often remains undetected and results in devastating consequences to the lives of this segment of our population. Guardianship Judges and members of the Elder Law bar can all attest to the sometimes horrifying impact of this abuse. Unfortunately, in many cases, the Guardianship Courts in Article 81 proceedings are left to attempt to restore a modicum of stability to the lives of these people, many of whom have limited resources and are living with the trauma of elder abuse already having been inflicted upon them - with damage often beyond that which the Guardianship Court can repair.

These countless narratives of misfortune and abuse place Guardianship Judges and members of the Elder Law bar in a unique position to identify the pitfalls and flaws inherent in our institutions which furnish the opportunity for elder abuse to occur. The “deep dive” into the complexities of these cases has provided a wealth of insight and knowledge regarding not only the problems but also, to some degree, the solutions.

A concerted effort must be made to identify and promote legislation for the benefit of IPs. To this end, this Task Force recommends the following:

1. Establishment of a standing committee - to be comprised of Guardianship Judges, other Court personnel and members of the Elder Law bar - tasked with creating a comprehensive package of legislative proposals to aid in the prevention of physical, emotional, and financial abuse of AIPs and IPs;
2. Identification of particular legislators in this State who will commit themselves to drafting and promoting the proposals of the aforementioned committee;
3. Designation of a representative from the OCA to act as a liaison to and with State legislators and the Governor regarding these proposals; and
4. Research and study other jurisdictions that have developed effective legislation in this regard (e.g., protective banking laws, effective legislation and policies to prevent elder abuse, laws to facilitate investigation of financial abuse, and specialized prosecutorial investigatory units within law enforcement agencies).

**MODEL GUARDIANSHIP PART**

The Model Guardianship Part (“MGP”) in Suffolk County commenced with Chief Judge Judith Kaye’s 2005 judiciary address acknowledging the importance of prioritizing and protecting the rights, needs and interests of IPs. Thereupon, the initial Guardianship Task Force outlined recommendations toward the establishment of MGP, with the ultimate goal of determining whether the program was feasible and should be expanded throughout the Second Judicial Department. Accordingly, since 2006, the Model Guardianship Part in Suffolk County has been a functioning and evolving Part, with the Honorable H. Patrick Leis, III presiding over its jurisdiction. Along with his staff comprised of a Guardianship Referee and a Guardianship Analyst, MGP has expanded upon those original concise goals and grown into a working, problem-solving Court, tailored to uniquely address the best interests of AIPs and IPs. Amongst the most successful facets of MGP is the integration of litigation affecting AIPs, the effective and efficient monitoring of Guardians once appointed, the individualized care and attention to each case, and the proactive innovations aimed at enhancing ways in which best to serve AIPs and IPs.

At center-stage in MGP is the Court’s ability to accept other pending actions and proceedings affecting the AIP or IP by way of integration. Akin to the successes of the Integrated Domestic Violence Courts, integration has proven to be a most effective facet of MGP, allowing one judge to gain familiarity with a vulnerable individual’s needs and determine the core issues driving the litigation. Additionally, integration serves to reduce superfluous court appearances and costs to AIPs and IPs, and prevents the potential for contradictory determinations of factual issues. Although all types of cases have been integrated over the years, the MGP has primarily heard matrimonial actions, Family Court orders of protection, and landlord/tenant actions in conjunction with Guardianship matters. Due to the multitude of cases that may arise for integration, it is recommended that the Guardianship Judge assigned to a MGP possess experience in areas of matrimonial, landlord/tenant, family law and civil litigation in addition to Article 81 Guardianship matters.

Innovative monitoring practices are another cornerstone of MGP. Unlike other types of legal matters, in the area of Guardianship, the outcome of a hearing often marks the beginning of the Court’s oversight of a Guardian’s duties in caring for a PING or an IP. In fact,, it is often remarked that the end is truly the beginning in Guardianship matters. Indeed, once a Guardian is appointed and the subject of the proceeding is found to be either PING or an IP, then that individual must be protected from loss or harm. While a Guardian is granted the least restrictive authority necessary to ensure the PING/IP’s health, safety and welfare, the Court Examiner simultaneously appointed therein, must ensure that the Guardian is accountable for the actions taken on behalf of the PING / IP. In this respect, MGP has initiated many measures to ensure each Guardian’s accountability. Specifically, the use of effective and efficient compliance calendars overseeing the Court Examiner’s responsibilities to ensure the acquisition of appropriate commissions and bonds, as well as the filing of timely and accurate reports and accountings. The staff assigned to MGP work closely with Court Examiners through weekly compliance calendars to ensure that an organized and efficient review of requirements are completed, as well as to address the queries and needs of Court Examiners managing complex cases or difficult Guardians. Weekly calendars often address both professional and lay Guardians in-person (or, during the pandemic, via TEAMS video conferences), who may have pressing issues or questions regarding their duties or obligations. The Guardianship Referee presides each Wednesday morning to address all those cases on the calendar, and may settle Post-

Judgment matters in compliance, grant adjournments for those working toward compliance, or trouble-shoot with Court Examiners and Guardians.

The MGP has been dedicated to prioritizing the unique individual needs of each case and to best serving all AIPs and IPs coming before the Court. Toward this end, Judge Leis and his staff have implemented numerous programs and courtroom adaptations aimed at ensuring a non-threatening courtroom experience for vulnerable individuals. While access to funding for special programing has been tenuous and has resulted in adaptation by all participants, a valued program to Guardianship has been the Volunteer Case Monitor ("VCM") program - a partnership with the Education and Assistance Corporation ("EAC, Inc."). The VCM program may be utilized post-hearing once a Guardian is appointed. Case monitors have proven most valuable in cases where family members are serving as Guardian in matters that have demonstrated frustrated family dynamics. The case monitors then serve as the "eyes and ears" of the court through unscheduled periodic visits with the PING/ IPs at their place of residence, and make written reports to the Court as to the PING/IP's health, safety and welfare. While the effectiveness of this VCM program is unquestioned, the need for willing and available Guardians - especially in cases where there are little or no assets to pay a Part 36 Guardian - has led to changes that shifted EAC, Inc. into filling a gap where the agency may now serve as Guardians for IPs. With a limited funding source and their staff now reallocated to serving as Guardians, the VCM program has been suspended at this time. However, it would be beneficial to MGP if the VCM program were resurrected.

Another program available to AIPs is the use of therapy dogs through a partnership with Partners in Restorative Animal Assisted Therapy, Inc. ("PRAAT"). A therapy dog and its handler may be assigned on a case-by-case basis to emotionally and/or physically frail individuals with the impending stressors of a possibly contentious Court proceeding. Court Evaluators can request a therapy dog for upcoming proceedings, and if approved, a dog and its handler will first meet with the AIP in their place of residence before seeing them again in Court at a later date. There has been a notable positive difference in the affect of AIPs utilizing this service, leading to a less intimidating and overall, more comfortable courtroom environment.

MGP has implemented a number of additional proactive adaptations and innovations to advance the goal of creating a more comfortable courtroom experience for vulnerable persons. Frequently, a Guardianship proceeding is the first time an AIP has appeared in court, often resulting in fear and uncertainty. To alleviate undue stressors on AIPs who enter the courthouse, MGP has adapted the courtroom by setting up a non-adversarial table arrangement which places the AIP front and center before the Guardianship Judge hearing their case. The AIP may sit there with Court-appointed counsel and a caregiver, therefore putting the distractions of the other parties involved (petitioners, possible cross-petitioners, and potential contentious family members) behind them. Assisted Hearing Devices are always available and often used in MGP as well. Ensuring that the AIP has access to hearing what is going on in their case serves best to respect each individual's rights and minimizes risk for confusion in what may already be an overwhelming situation for a frail individual. Additionally, the courtroom is equipped with access to therapeutic music for the AIP who wishes to listen to music during any court "down time". However, the MGP ensures that court delays are negligible by accurately scheduling each case for a specified calendar time. Best practices indicate no more than one case shall be scheduled per morning or afternoon, affording more attention to each matter and simultaneously less waiting for individuals that may be physically or emotionally frail. The Guardianship Analyst is also available to provide resources which may include information and telephone numbers or websites to IPs/PINGs, their Guardians, and their family members, should queries be made. Whether it is simple assistance through enlisting the services of an interpreter or

teletype machine, an off-site hearing - thereby bringing the court to the individual or working with Adult Protective Service agencies, GCMs or staff in Guardianship Courts in other states, the MGP is prepared to handle each case's unique needs.

The MGP also effectuates the continued education of its core stakeholders, including Court staff, Guardianship attorneys, Part 36 Guardians, Court Examiners, and Guardianship volunteers by hosting annual educational Guardianship Programs or workshops. Often, free CLE accreditation is available through these programs as a manner of giving back to those dedicated individuals who make serving vulnerable persons a priority in their work in Suffolk County.

Locating appropriately qualified and willing Guardians is a persistent issue facing the area of Guardianship. Many Guardianship proceedings offer little in the way of assets to adequately compensate quality Part 36 Guardians, or present a multitude of complex issues and strained family dynamics. Either situation may cause few willing or qualified Guardians to accept an appointment. In response, MGP has been appointing non-lawyer Guardians with backgrounds in social work or elder care since its inception back in 2006. Outreach outside of the local bar associations has been extensive over the years. While funding has continued to pose a problem, in recent years, two not for profit 501(c)(3) agencies - EAC, Inc. and Guardianship Corp. - have begun to work toward filling the need for affordable Guardians. These agencies are currently available to serve as Guardians in non-monied and low-asset cases, or in cases where the Department of Social Services serves as Petitioner. Because of their social work and elder care backgrounds, they may also be appropriate for cases with complex non-legal issues. However, there is a need for continued efforts on this front, as steady and reliable funding is a pervasive issue.

Lastly, it should be noted that MGP has been an evolving problem-solving court since 2006. Therefore, its dedicated and devoted staff have employed numerous types of programs geared toward serving AIPs and IPs over the years that are not detailed in this document. The evolving nature of MGP also means that some trial programs have come and gone. Programs like our *pro bono* Guardianship mentorship program and volunteer case monitors have sadly been lost due to lack of steady funding, while other facets, such as Mediation, have not yet been fully realized.

In conclusion, over the course of its first 15 years, MGP has implemented an enlightened and respectful approach to Article 81 Guardianships in Suffolk County. By placing the unique needs of AIPs and IPs at the forefront, MGP has implemented innovative mechanisms to protect, respect and best serve those individuals coming before the Court. With an ever-burgeoning growth of the elder population in the United States, the impending need to protect the vulnerable adult population is more important than ever, necessitating the need for innovative and adaptive approaches to Guardianship. In more recent years, the successes of MGP, with the exception of integration, have been incorporated into all existing Guardianship Parts and practices in Suffolk County to extend its benefits to every Guardianship case heard within the county - exemplifying that the working model of this Court is not only beneficial, but also transferable to other jurisdictions.

APPENDIX A - COURT EXAMINER AND ACCOUNTING FEE SCHEDULE

EFFECTIVE JUNE 3, 2019

EXAMINER FEES

Gross Assets		Fee
\$0.00	to \$5,000.00 Treas	\$258
\$5,001.00	to \$7,500.00	\$336
\$7,501.00	to \$10,000.00	\$378
\$10,001.00	to \$20,000.00	\$420
\$20,001.00	to \$30,000.00	\$503
\$30,001.00	to \$40,000.00	\$671
\$40,001.00	to \$50,000.00	\$714
\$50,001.00	to \$60,000.00	\$755
\$60,001.00	to \$75,000.00	\$839
\$75,001.00	to \$100,000.00	\$923
\$100,001.00	to \$125,000.00	\$966
\$125,001.00	to \$150,000.00	\$1,007
\$150,001.00	to \$175,000.00	\$1,066
\$175,001.00	to \$200,000.00	\$1,124
\$200,001.00	to \$225,000.00	\$1,184
\$225,001.00	to \$250,000.00	\$1,242
\$250,001.00	to \$275,000.00	\$1,301
\$275,001.00	to \$300,000.00	\$1,359
\$300,001.00	to \$325,000.00	\$1,419
\$325,001.00	to \$350,000.00	\$1,477
\$350,001.00	to \$375,000.00	\$1,536
\$375,001.00	to \$400,000.00	\$1,594
\$400,001.00	to \$425,000.00	\$1,654
\$425,001.00	to \$450,000.00	\$1,712
\$450,001.00	to \$475,000.00	\$1,771
\$475,001.00	to \$500,000.00	\$1,829
\$500,001.00	to \$525,000.00	\$1,889
\$525,001.00	to \$550,000.00	\$1,947
\$550,001.00	to \$575,000.00	\$2,006
\$575,001.00	to \$600,000.00	\$2,064
\$600,001.00	to \$625,000.00	\$2,124
\$625,001.00	to \$650,000.00	\$2,182
\$650,001.00	to \$675,000.00	\$2,241
\$675,001.00	to \$700,000.00	\$2,299
\$700,001.00	to \$725,000.00	\$2,359
\$725,001.00	to \$750,000.00	\$2,417
\$750,001.00	to \$775,000.00	\$2,476
\$775,001.00	to \$800,000.00	\$2,534

ACCOUNTING FEES

Gross Assets		Fee
\$0.00	to \$5,000.00	\$210
\$5,001.00	to \$10,000.00	\$269
\$10,001.00	to \$25,000.00	\$378
\$25,001.00	to \$50,000.00	\$462
\$50,001.00	to \$75,000.00	\$546
\$75,001.00	to \$100,000.00	\$587
\$100,001.00	to \$150,000.00	\$671
\$150,001.00	to \$175,000.00	\$731
\$175,001.00	to \$200,000.00	\$789
\$200,001.00	to \$225,000.00	\$848
\$225,001.00	to \$250,000.00	\$906
\$250,001.00	to \$275,000.00	\$966
\$275,001.00	to \$300,000.00	\$1,024
\$300,001.00	to \$325,000.00	\$1,083
\$325,001.00	to \$350,000.00	\$1,141
\$350,001.00	to \$375,000.00	\$1,201
\$375,001.00	to \$400,000.00	\$1,259
\$400,001.00	to \$425,000.00	\$1,318
\$425,001.00	to \$450,000.00	\$1,376
\$450,001.00	to \$475,000.00	\$1,436
\$475,001.00	to \$500,000.00	\$1,494
\$500,001.00	to \$525,000.00	\$1,553
\$525,001.00	to \$550,000.00	\$1,611
\$550,001.00	to \$575,000.00	\$1,671
\$575,001.00	to \$600,000.00	\$1,729
\$600,001.00	to \$625,000.00	\$1,788
\$625,001.00	to \$650,000.00	\$1,846
\$650,001.00	to \$675,000.00	\$1,906
\$675,001.00	to \$700,000.00	\$1,964
\$700,001.00	to \$725,000.00	\$2,023
\$725,001.00	to \$750,000.00	\$2,081
\$750,001.00	to \$775,000.00	\$2,140
\$775,001.00	to \$800,000.00	\$2,199

\$800,001.00	to	\$825,000.00	\$2,594
\$825,001.00	to	\$850,000.00	\$2,652
\$850,001.00	to	\$875,000.00	\$2,711
\$875,001.00	to	\$900,000.00	\$2,769
\$900,001.00	to	\$925,000.00	\$2,829
\$925,001.00	to	\$950,000.00	\$2,887
\$950,001.00	to	\$975,000.00	\$2,946
\$975,001.00	to	\$1,000,000.00	\$3,004
\$1,000,001.00	to	\$1,025,000.00	\$3,064
\$1,025,001.00	to	\$1,050,000.00	\$3,122
\$1,050,001.00	to	\$1,075,000.00	\$3,181
\$1,075,001.00	to	\$1,100,000.00	\$3,239
\$1,100,001.00	to	\$1,125,000.00	\$3,299
\$1,125,001.00	to	\$1,150,000.00	\$3,357
\$1,150,001.00	to	\$1,175,000.00	\$3,416
\$1,175,001.00	to	\$1,200,000.00	\$3,474
\$1,200,001.00	to	\$1,225,000.00	\$3,533
\$1,225,001.00	to	\$1,250,000.00	\$3,592
\$1,250,001.00	to	\$1,275,000.00	\$3,651
\$1,275,001.00	to	\$1,300,000.00	\$3,709
\$1,300,001.00	to	\$1,325,000.00	\$3,768
\$1,325,001.00	to	\$1,350,000.00	\$3,827
\$1,350,001.00	to	\$1,375,000.00	\$3,886
\$1,375,001.00	to	\$1,400,000.00	\$3,944
\$1,400,001.00	to	\$1,425,000.00	\$4,003
\$1,425,001.00	to	\$1,450,000.00	\$4,061
\$1,450,001.00	to	\$1,475,000.00	\$4,121
\$1,475,001.00	to	\$1,500,000.00	\$4,179
\$1,500,001.00	to	\$1,525,000.00	\$4,238
\$1,525,001.00	to	\$1,550,000.00	\$4,296
\$1,550,001.00	to	\$1,575,000.00	\$4,356
\$1,575,001.00	to	\$1,600,000.00	\$4,414
\$1,600,001.00	to	\$1,625,000.00	\$4,473
\$1,625,001.00	to	\$1,650,000.00	\$4,531
\$1,650,001.00	to	\$1,675,000.00	\$4,591
\$1,675,001.00	to	\$1,700,000.00	\$4,649
\$1,700,001.00	to	\$1,725,000.00	\$4,708
\$1,725,001.00	to	\$1,750,000.00	\$4,766
\$1,750,001.00	to	\$1,775,000.00	\$4,826
\$1,775,001.00	to	\$1,800,000.00	\$4,884
\$1,800,001.00	to	\$1,825,000.00	\$4,943
\$1,825,001.00	to	\$1,850,000.00	\$5,001

\$800,001.00	to	\$825,000.00	\$2,258
\$825,001.00	to	\$850,000.00	\$2,316
\$850,001.00	to	\$875,000.00	\$2,375
\$875,001.00	to	\$900,000.00	\$2,434
\$900,001.00	to	\$925,000.00	\$2,493
\$925,001.00	to	\$950,000.00	\$2,551
\$950,001.00	to	\$975,000.00	\$2,610
\$975,001.00	to	\$1,000,000.00	\$2,668
\$1,000,001.00	to	\$1,025,000.00	\$2,728
\$1,025,001.00	to	\$1,050,000.00	\$2,786
\$1,050,001.00	to	\$1,075,000.00	\$2,845
\$1,075,001.00	to	\$1,100,000.00	\$2,903
\$1,100,001.00	to	\$1,125,000.00	\$2,963
\$1,125,001.00	to	\$1,150,000.00	\$3,021
\$1,150,001.00	to	\$1,175,000.00	\$3,080
\$1,175,001.00	to	\$1,200,000.00	\$3,138
\$1,200,001.00	to	\$1,225,000.00	\$3,198
\$1,225,001.00	to	\$1,250,000.00	\$3,256
\$1,250,001.00	to	\$1,275,000.00	\$3,315
\$1,275,001.00	to	\$1,300,000.00	\$3,373
\$1,300,001.00	to	\$1,325,000.00	\$3,433
\$1,325,001.00	to	\$1,350,000.00	\$3,491
\$1,350,001.00	to	\$1,375,000.00	\$3,550
\$1,375,001.00	to	\$1,400,000.00	\$3,608
\$1,400,001.00	to	\$1,425,000.00	\$3,668
\$1,425,001.00	to	\$1,450,000.00	\$3,726
\$1,450,001.00	to	\$1,475,000.00	\$3,785
\$1,475,001.00	to	\$1,500,000.00	\$3,843
\$1,500,001.00	to	\$1,525,000.00	\$3,903
\$1,525,001.00	to	\$1,550,000.00	\$3,961
\$1,550,001.00	to	\$1,575,000.00	\$4,020
\$1,575,001.00	to	\$1,600,000.00	\$4,078
\$1,600,001.00	to	\$1,625,000.00	\$4,138
\$1,625,001.00	to	\$1,650,000.00	\$4,196
\$1,650,001.00	to	\$1,675,000.00	\$4,255
\$1,675,001.00	to	\$1,700,000.00	\$4,313
\$1,700,001.00	to	\$1,725,000.00	\$4,373
\$1,725,001.00	to	\$1,750,000.00	\$4,431
\$1,750,001.00	to	\$1,775,000.00	\$4,490
\$1,775,001.00	to	\$1,800,000.00	\$4,548
\$1,800,001.00	to	\$1,825,000.00	\$4,608
\$1,825,001.00	to	\$1,850,000.00	\$4,666

\$1,850,001.00	to	\$1,875,000.00	\$5,061
\$1,875,001.00	to	\$1,900,000.00	\$5,119
\$1,900,001.00	to	\$1,925,000.00	\$5,178
\$1,925,001.00	to	\$1,950,000.00	\$5,236
\$1,950,001.00	to	\$1,975,000.00	\$5,296
\$1,975,001.00	to	\$2,000,000.00	\$5,354
\$2,000,001.00	to	\$2,025,000.00	\$5,413
\$2,025,001.00	to	\$2,050,000.00	\$5,471
\$2,050,001.00	to	\$2,075,000.00	\$5,531
\$2,075,001.00	to	\$2,100,000.00	\$5,589
\$2,100,001.00	to	\$2,125,000.00	\$5,648
\$2,125,001.00	to	\$2,150,000.00	\$5,706
\$2,150,001.00	to	\$2,175,000.00	\$5,766
\$2,175,001.00	to	\$2,200,000.00	\$5,824
\$2,200,001.00	to	\$2,225,000.00	\$5,883
\$2,225,001.00	to	\$2,250,000.00	\$5,941
\$2,250,001.00	to	\$2,275,000.00	\$6,001
\$2,275,001.00	to	\$2,300,000.00	\$6,059
\$2,300,001.00	to	\$2,325,000.00	\$6,118
\$2,325,001.00	to	\$2,350,000.00	\$6,176
\$2,350,001.00	to	\$2,375,000.00	\$6,236
\$2,375,001.00	to	\$2,400,000.00	\$6,294
\$2,400,001.00	to	\$2,425,000.00	\$6,353
\$2,425,001.00	to	\$2,450,000.00	\$6,411
\$2,450,001.00	to	\$2,475,000.00	\$6,470
\$2,475,001.00	to	\$2,500,000.00	\$6,529
\$2,500,001.00	to	\$2,525,000.00	\$6,588
\$2,525,001.00	to	\$2,550,000.00	\$6,646
\$2,550,001.00	to	\$2,575,000.00	\$6,705
\$2,575,001.00	to	\$2,600,000.00	\$6,713

Maximum Court Examiner fee \$6,713

\$1,850,001.00	to	\$1,875,000.00	\$4,725
\$1,875,001.00	to	\$1,900,000.00	\$4,783
\$1,900,001.00	to	\$1,925,000.00	\$4,843
\$1,925,001.00	to	\$1,950,000.00	\$4,901
\$1,950,001.00	to	\$1,975,000.00	\$4,960
\$1,975,001.00	to	\$2,000,000.00	\$5,018
\$2,000,001.00	to	\$2,025,000.00	\$5,078
\$2,025,001.00	to	\$2,050,000.00	\$5,136
\$2,050,001.00	to	\$2,075,000.00	\$5,195
\$2,075,001.00	to	\$2,100,000.00	\$5,253
\$2,100,001.00	to	\$2,125,000.00	\$5,312
\$2,125,001.00	to	\$2,150,000.00	\$5,371
\$2,150,001.00	to	\$2,175,000.00	\$5,430
\$2,175,001.00	to	\$2,200,000.00	\$5,488
\$2,200,001.00	to	\$2,225,000.00	\$5,547
\$2,225,001.00	to	\$2,250,000.00	\$5,606
\$2,250,001.00	to	\$2,275,000.00	\$5,665
\$2,275,001.00	to	\$2,300,000.00	\$5,723
\$2,300,001.00	to	\$2,325,000.00	\$5,782
\$2,325,001.00	to	\$2,350,000.00	\$5,840
\$2,350,001.00	to	\$2,375,000.00	\$5,900
\$2,375,001.00	to	\$2,400,000.00	\$5,958
\$2,400,001.00	to	\$2,425,000.00	\$6,017
\$2,425,001.00	to	\$2,450,000.00	\$6,075
\$2,450,001.00	to	\$2,475,000.00	\$6,135
\$2,475,001.00	to	\$2,500,000.00	\$6,193
\$2,500,001.00	to	\$2,525,000.00	\$6,252
\$2,525,001.00	to	\$2,550,000.00	\$6,310
\$2,550,001.00	to	\$2,575,000.00	\$6,370
\$2,575,001.00	to	\$2,600,000.00	\$6,428

## APPENDIX B - MODEL GUARDIANSHIP FORMS

## APPENDIX B

### Disclaimer:

The forms attached are forms used by some of the Counties in the Second Department. They may not be accepted and are not intended for use in all Counties. Please check with the Court in which you are appearing to see what forms are acceptable.

At an IAS Part \_\_\_\_\_ of the Supreme Court of the State of New York, held in the County of \_\_\_\_\_, in the Supreme Court, Supreme Court Building, \_\_\_\_\_, New York, on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_

PRESENT:

HON. \_\_\_\_\_  
Justice

.....X  
In the Matter of the Application of

ORDER TO SHOW CAUSE  
TO APPOINT GUARDIAN

\_\_\_\_\_  
for the Appointment of a Guardian of

INDEX NO. \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_  
an Alleged Incapacitated Person.

.....X

Legend SHALL be on its face in 12 point or larger  
BOLD face double spaced type  
purs. to MHL §81.07

**IMPORTANT**

**AN APPLICATION HAS BEEN FILED IN COURT BY \_\_\_\_\_  
WHO BELIEVES YOU MAY BE UNABLE TO TAKE CARE OF YOUR PERSONAL  
NEEDS OR FINANCIAL AFFAIRS. \_\_\_\_\_ IS ASKING THAT  
SOMEONE BE APPOINTED TO MAKE DECISIONS FOR YOU. WITH THIS PAPER  
IS A COPY OF THE APPLICATION TO THE COURT SHOWING WHY  
\_\_\_\_\_ BELIEVES YOU MAY BE UNABLE TO TAKE  
CARE OF YOUR PERSONAL NEEDS OR FINANCIAL AFFAIRS. BEFORE THE  
COURT MAKES THE APPOINTMENT OF SOMEONE TO MAKE DECISIONS FOR  
YOU THE COURT HOLDS A HEARING AT WHICH YOU ARE ENTITLED TO BE  
PRESENT AND TO TELL THE JUDGE IF YOU DO NOT WANT ANYONE**

APPOINTED. THIS PAPER TELLS YOU WHEN THE COURT HEARING WILL TAKE PLACE. IF YOU DO NOT APPEAR IN COURT, YOUR RIGHTS MAY BE SERIOUSLY AFFECTED.

YOU HAVE THE RIGHT TO DEMAND A TRIAL BY JURY. YOU MUST TELL THE COURT IF YOU WISH TO HAVE A TRIAL BY JURY. IF YOU DO NOT TELL THE COURT, THE HEARING WILL BE CONDUCTED WITHOUT A JURY. THE NAME AND ADDRESS, AND THE TELEPHONE NUMBER OF THE CLERK OF THE COURT ARE:

Guardianship Clerk  
\_\_\_\_\_  
\_\_\_\_\_, New York \_\_\_\_\_  
Telephone No. (\_\_\_\_)\_\_\_\_-\_\_\_\_\_

THE COURT HAS APPOINTED A COURT EVALUATOR TO EXPLAIN THIS PROCEEDING TO YOU AND TO INVESTIGATE THE CLAIMS MADE IN THE APPLICATION. THE COURT MAY GIVE THE COURT EVALUATOR PERMISSION TO INSPECT YOUR MEDICAL, PSYCHOLOGICAL, OR PSYCHIATRIC RECORDS. YOU HAVE THE RIGHT TO TELL THE JUDGE IF YOU DO NOT WANT THE COURT EVALUATOR TO BE GIVEN THAT PERMISSION. THE COURT EVALUATOR'S NAME, ADDRESS, AND TELEPHONE NUMBER ARE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

YOU ARE ENTITLED TO HAVE A LAWYER OF YOUR CHOICE REPRESENT YOU. IF YOU WANT THE COURT TO APPOINT A LAWYER TO HELP YOU AND

REPRESENT YOU, THE COURT WILL APPOINT A LAWYER FOR YOU. YOU WILL BE REQUIRED TO PAY THAT LAWYER UNLESS YOU DO NOT HAVE THE MONEY TO DO SO. YOU HAVE THE RIGHT TO PRESENT EVIDENCE, CALL WITNESSES AND EXPERT WITNESSES AND CROSS-EXAMINE WITNESSES INCLUDING WITNESSES CALLED BY THE COURT.

END 12 POINT TYPE

On reading and filing the annexed petition of \_\_\_\_\_, duly verified the \_\_\_\_\_ day of \_\_\_\_\_, 202\_, from which it appears that \_\_\_\_\_, an alleged incapacitated person above named, resides at \_\_\_\_\_ and is likely to suffer harm because: the person is unable to provide for personal needs and/or property management; and the person cannot adequately understand and appreciate the nature and consequences of such inability; and it appearing that the said alleged incapacitated person owns or possesses certain property within the State of New York

LET \_\_\_\_\_, the alleged incapacitated person (**\*list all parties entitled to notice**—see Mental Hygiene Law §81.07[e]), SHOW CAUSE before the Hon. \_\_\_\_\_, the Justice presiding at IAS Part \_\_, of this Court, to be held in the County of \_\_\_\_\_, at the Supreme Court building, \_\_\_\_\_, \_\_\_\_\_ floor, \_\_\_\_\_, New York \_\_\_\_\_, on the \_\_\_ day of \_\_\_\_\_, 202\_\_ at \_\_\_\_\_ a.m./p.m. of that day or as soon thereafter as counsel can be heard why a guardian should not be appointed for the alleged incapacitated person within the State of New York, upon his/her qualifying in accordance with the statutes of the State of New York in such cases made and provided to exercise one of more of

the following powers as set forth in §81.21, with relation to property management and §81.22, with relation to personal needs management of the Mental Hygiene Law;

(\* list powers—see Mental Hygiene Law §81.07[c][5]).

WHY the presence of \_\_\_\_\_, the alleged incapacitated person at the hearing or trial (should) (should not) be required; and

WHY petitioner should not have such other and further or different relief as may be just in the premises.

**(Use the following three (3) “Ordered” paragraphs where the APPOINTMENT of a TEMPORARY GUARDIAN— (Mental Hygiene Law §81.23) is appropriate.)**

Sufficient reason appearing therefor, it is

ORDERED, that \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ be and hereby is appointed temporary guardian of  
\_\_\_\_\_, the alleged incapacitated person and shall have the following temporary powers as provided in §81.23 of the Mental Hygiene Law:

(\* List all the temporary powers here)

(1) The filing of a bond by the temporary guardian is waived **OR**

(2) The temporary guardian shall execute and file with this court within ten (10) days after the issuance of the temporary guardian’s commission (or attorney-certified copy of this order), a bond with sufficient sureties in the sum of \$ \_\_\_\_\_ to approved by one of the justices of this court, upon condition that he/she will, in all things, faithfully discharge the trust imposed upon him/her and obey all the directions of the court in regard to the trust, and will make and render a just and true account of all the monies or other properties received by him/her

and the application thereof, and of his/her acts in the administration of his/her trust whenever so required to do so by the court pursuant to Mental Hygiene Law §81.23(a)(1); and it is further

ORDERED, that EITHER a Commission may be issued to the said temporary guardian under the seal of this court upon filing the Designation required by statute in the office of the Clerk of the County of Nassau pursuant to Mental Hygiene Law §81.26 OR an attorney-certified copy of this order can serve as the authority of the temporary guardian to act hereunder, provided that the temporary guardian files a Consent to Act and Designation with the office of the Clerk of the County of Nassau within TEN (10) DAYS of the date hereof. A certified copy of said Commission OR a copy of the attorney-certified copy of this order shall be served personally upon \_\_\_\_\_, the alleged incapacitated person or by certified mail upon any person having custody over the person or property of the alleged incapacitated person; and it is further

ORDERED, that \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ is hereby appointed counsel for the alleged incapacitated person named herein pursuant to Mental Hygiene Law §81.10(c)(5).

**(End of temporary guardian provisions)**

Sufficient reason appearing therefor,

LET personal service pursuant to CPLR §308(1) in accordance with Mental Hygiene Law §81.07(e)(2)(i) of a copy of this Order to Show Cause and of the papers upon which it is granted upon \_\_\_\_\_, the alleged incapacitated person not less than fourteen (14) days prior to the return date of this Order to Show Cause; and it is further

ORDERED, that a copy of this Order to Show Cause and Notice of Proceeding only, be served personally or by regular mail, pursuant to Mental Hygiene Law §81.07(g)(2), upon (**\* list all parties entitled to notice and include Mental Hygiene Legal Service if alleged incapacitated person is in a hospital or facility—see Mental Hygiene Law §81.07(g)(1)**), not less than fourteen (14) days prior to the return date of this Order to Show Cause; and it is further

ORDERED, that a copy of this Order to Show Cause, Petition and supporting papers be served upon \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ Telephone No. \_\_\_\_\_ who is hereby appointed Court Evaluator to investigate the claims made in the petition and to report to the court pursuant to §81.09 of the Mental Hygiene Law, within three (3) business days of this Order to Show Cause, pursuant to §81.07(e)(2)(ii) of the Mental Hygiene Law be deemed good and sufficient service.

ENTER:

\_\_\_\_\_  
J.S.C.

Use this Ordered paragraph instead of the last Ordered paragraph if a Temporary Guardian and/or counsel for AIP is sought to be appointed in the OSC:

ORDERED, that a copy of this Order to Show Cause, Petition and supporting papers be served upon \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ Telephone No. \_\_\_\_\_ who is hereby appointed Court Evaluator to investigate the claims made in the petition and to report to the court pursuant to §81.09 of the Mental Hygiene Law, and upon the Temporary Guardian appointed herein and the counsel for the AIP appointed herein within three (3) business days of this Order to Show Cause, pursuant to §81.07(e)(2)(ii) of the Mental Hygiene Law be deemed good and sufficient service.

*\*\*Note: Must Comply with 202.5 Uniform Rules of  
Supreme And County Court  
(At least 10pt. type and double spaced)*

81.08 Form 1

Petition for Appointment of a Guardian of the Person and Property

Court of the State of New York  
County of \_\_\_\_\_

.....X  
In the Matter of the Application for the  
Appointment of a Guardian for the Person  
and/or Property of

Index No.

an Alleged Incapacitated Person.

.....X

To the \_\_\_\_\_ Court of the State of New York, County of \_\_\_\_\_

The petition of \_\_\_\_\_ respectfully shows:

1. the person alleged to be incapacitated is \_\_\_\_\_ years of age;

his/her address is \_\_\_\_\_ and his/her telephone  
number is (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_.

2. resides with \_\_\_\_\_

at \_\_\_\_\_ and his/her telephone  
number is (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_.

3. (Here set forth a description of the alleged incapacitated person's functional level including that person's ability to manage the activities of daily living, behavior, and understanding and appreciation of the nature and consequences of any inability to manage the activities of daily living).

4. (If powers are sought with respect to the personal needs of the alleged incapacitated person, here set forth specific factual allegations as to the personal actions or other actual occurrences involving the person alleged to be incapacitated which are claimed to demonstrate that the person is likely to suffer harm because he or she cannot adequately understand and appreciate the nature and consequences of his or her inability to provide for personal needs.)

5. (If powers are sought with respect to property management for the alleged incapacitated person, here set forth specific factual allegations as to the financial transactions or other actual occurrences involving the person alleged to be incapacitated which are claimed to demonstrate that the person is likely to suffer harm because he or she cannot adequately understand and appreciate the nature and consequences of his or her inability to provide for property management.)

6. The following powers are being sought for any guardian appointed herein (specify).

The relationship of these powers to the functional level and needs of

\_\_\_\_\_ (person alleged to be incapacitated) is as follows: (specify).

7. [If authority is sought to exercise a power which involves the transfer of a part of the alleged incapacitated person's assets to or for the benefit of another person, including the petitioner or guardian, set forth all the information required by the Mental Hygiene Law 81.21, subdivision (b)].

8. These powers are sought for (specify duration).

9. The approximate value and description of the financial resources of (person alleged to be incapacitated) are as follows: (specify).

10. To the best of the petitioner's knowledge, the nature and amount of any claim, debt, or obligations of are as follows: (specify).

11. The names, addresses, and telephone numbers of presumptive distributees of (person alleged to be incapacitated) as that term is defined in Surrogate's Court Procedure Act 103, subdivision 42, unless they are unknown and cannot be reasonably ascertained are as follows:

Name and Relationship of Presumptive Distributees	Address	Telephone #s
---------------------------------------------------	---------	--------------

The petitioner is \_\_\_\_\_ and his/her address is

his/her telephone number is (\_\_\_\_)\_\_\_\_ - \_\_\_\_\_.

1. The name of the person (if any) proposed as guardian is \_\_\_\_\_. His/her address is \_\_\_\_\_.

His/her telephone number is (\_\_\_\_)\_\_\_\_ - \_\_\_\_\_.

His/her relationship to the person alleged to be incapacitated is \_\_\_\_\_.

He/she is suitable to exercise the powers necessary to assist for the following reasons:

(specify)

2. The following relief is sought pursuant to 81.23 of the Mental Hygiene Law (specify any provisional remedies sought).

3. The available resources for \_\_\_\_\_ (if any) that have been considered by the petitioner as follows: (specify available resources as defined in Mental Hygiene Law 81.03).

In the petitioner's opinion the sufficiency and reliability of these resources are as follows:

(Set forth opinion and reasons therefore).

4. (Here set forth any other information which in the petitioner's opinion will assist the court evaluator in completing the investigation and report in accordance with Mental Hygiene Law 81.09.)

5. No previous application has been made for the relief requested herein.

Wherefore, your petitioner prays that the Court:

6. Declare that \_\_\_\_\_ is incapacitated as the term is defined in 81.02, subdivision (b), of the Mental Hygiene Law

7. Appoint \_\_\_\_\_ as the guardian for the person and/or property of \_\_\_\_\_ with powers requested herein.  
(If appropriate, add:) Appoint as the standby guardian for he person and/or property of \_\_\_\_\_ with the powers requested herein.

8. (If appropriate, add prayer for any provisional remedy relief sought pursuant to Mental Hygiene Law 81.23.)

9. Grant such other and further relief as the Court deems just and proper.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Petitioner

Must be Verified

Supreme Court of the State of New York  
County of \_\_\_\_\_

.....X  
In the Matter of the Appointment of

as Guardian of \_\_\_\_\_,

**DESIGNATION**

An Incapacitated Person

**Index No.**

.....X

I, \_\_\_\_\_ with an address of \_\_\_\_\_, the Guardian of the person and/or property of \_\_\_\_\_, does hereby designate the Clerk of the County of \_\_\_\_\_, or her successor in office, as a person on whom service of any process issuing from said Court in this proceeding or in any other proceeding which shall affect the person of said Incapacitated Person may be made, in like manner and with like effect as if it were served personally upon me whenever I cannot be found and served within the State of New York after diligence used.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Signature  
Name \_\_\_\_\_  
Guardian of \_\_\_\_\_

State of New York    )  
                                  ) ss.:  
County of \_\_\_\_\_)

On the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person on behalf of which the individual acted, executed the instrument and that such individual made such appearance before the undersigned in the State of New York, County of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

.....X

**Pursuant to Article 81 of the Mental Hygiene Law  
for the appointment of a Guardian for:**

**COMMISSION FOR GUARDIAN  
INDEX NO.:**

An Incapacitated Person/Person in Need of a Guardian

.....X

THE PEOPLE OF THE STATE OF NEW YORK, TO ALL WHOM THESE PRESENT  
SHALL COME, GREETING:

NOW THEREFORE, KNOW YE THAT WE HAVE GRANTED, GIVEN AND  
COMMITTED, AND BY THESE PRESENTS DO GIVE, GRANT AND COMMIT UNTO  
THE SAID GUARDIAN THE POWERS AS SET FORTH IN THE **ATTACHED COURT  
CERTIFIED COPY** OF THE ORDER/JUDGMENT dated and entered in the office of the  
County Clerk on the day of , 20     appointing as guardian of the [Person and/or Property of  
WHEREAS, the appointment of Guardian shall be [indefinite or insert date/event].

\*\*\*PLEASE NOTE: If a certified copy of the order is not attached this Commission is null &  
void.

Incapacitated Persons Name: \_\_\_\_\_.

Incapacitated Persons Address: \_\_\_\_\_.

Incapacitated Person's Phone #: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_.

Guardian's Name: \_\_\_\_\_.

Guardian's Address: \_\_\_\_\_.

WITNESS, \_\_\_\_\_, CLERK OF THE COUNTY OF \_\_\_\_\_, STATE OF

NEW YORK, AT \_\_\_\_\_, \_\_\_\_\_, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

BY THE CLERK OF THE COURT

COUNTY OF \_\_\_\_\_

## INSTRUCTIONS TO FILE YOUR COMMISSION

*If a bond is required, the court must approve the bond, prior to the filing of your commission*

Please complete attached commission form and submit with a certified copy of the order and judgment to the Nassau County Clerk Office at 240 Old Country Road Mineola, NY 11501.

\*Be sure to amend accordingly for Co-Guardians, Successor Guardian, Temporary Guardian or Special Guardian.

\*\* Be sure to pick **either** An Incapacitated Person or Person in Need of Guardian.

\*\*\* Dated: the date the judge signed the order and judgment.

Entered: the date the County Clerk "stamps" the order and judgment entered (ask them for entered date).

\*\*\*\* A certified copy of the order and judgment must be purchased at the County Clerk Office and submitted with your completed commission form

STATEMENT IDENTIFYING REAL PROPERTY  
Pursuant to Mental Hygiene Law §81/20 (a)(6) (vi)

Record and Index: \_\_\_\_\_

**Incapacitated Person** \_\_\_\_\_

**Address** \_\_\_\_\_

\_\_\_\_\_

**Guardian of Property** \_\_\_\_\_

**Address** \_\_\_\_\_

\_\_\_\_\_

[  ] Check box if there is/are Co-Guardians of the property and List Below

**Guardian of Property** \_\_\_\_\_

**Address** \_\_\_\_\_

\_\_\_\_\_

**Guardian of Property** \_\_\_\_\_

**Address** \_\_\_\_\_

\_\_\_\_\_

**Adjudication of Incapacity: Supreme Court** \_\_\_\_\_ **County**

\_\_\_\_\_  
Index Number

\_\_\_\_\_  
Date of Order and Judgment

\_\_\_\_\_  
Date of Decision/Verdict

Surety Name: \_\_\_\_\_

Bond Number: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**Real Property  
Address**

\_\_\_\_\_  
\_\_\_\_\_

**Tax Map Designation:**

**Name of Municipality:** \_\_\_\_\_

Section \_\_\_\_\_

Block \_\_\_\_\_

Lot \_\_\_\_\_

\_\_\_\_\_  
Signature of Guardian

\_\_\_\_\_  
Co-Guardian

\_\_\_\_\_  
Name of Guardian

\_\_\_\_\_  
Name of Co-Guardian

State of New York County of \_\_\_\_\_ } ss:

On this \_\_\_ day of \_\_\_\_\_ before me came

\_\_\_\_\_  
Name of Guardian

\_\_\_\_\_  
Name of Co-Guardian

to me know to be the individuals described herein, and who executed the foregoing instrument and acknowledged that he/she/they executed same.

\_\_\_\_\_  
Notary Public

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

-----X  
In the matter of the Initial Report of

\_\_\_\_\_  
as Guardian of

\_\_\_\_\_  
An Incapacitated Person.

Index #: \_\_\_\_\_

INITIAL REPORT

-----X

I, \_\_\_\_\_, residing  
at \_\_\_\_\_, as Guardian for the  
above-named person, do hereby make, render and file the following Initial Report of Guardian as  
follows:

1. That your Guardian has successfully completed all educational requirements under  
81.39 of the Mental Hygiene Law by attending class on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_, sponsored by  
\_\_\_\_\_ at  
\_\_\_\_\_.

(attach a copy of certificate issued to Guardian)

2. That your Guardian filed with the Supreme Court his/her bond in the amount of  
\$ \_\_\_\_\_ on \_\_\_\_\_, 20\_.  
(attach a copy of the bond)

3. That your Guardian received his/her commission from the County Clerk, which  
commission is dated \_\_\_\_\_, 20\_.

4. That you Guardian has visited the Incapacitated Person and had taken the following  
steps, consistent with the Court Order, and has provided for his/her personal needs as  
follows:

A. Provisions for medical, dental, mental health or related services:

**B. Provisions for social and personal services:**

**C. Application of health and accident insurance as well as government benefits:**

**D. Date, time and place of visits made with the incapacitated person since the order of appointment.**

**5. The following is a true and full account of all assets of the Incapacitated Person that have been marshalled by your Guardian:**

**BANK ACCOUNTS:**

**(List name and address of institution, account numbers and amount of money on hand prior to liquidation by Guardian and the institution and account numbers to which the monies were deposited)**

**All monies have been deposited into guardianship accounts, except:  
(explain)**

**STOCKS AND SECURITIES**

**List name and address of company, number of shares and fair market value of stock or security as of the date of your appointment)**

**REAL ESTATE**

**(List property address, description of property [i.e. two-family dwelling] and approximate value of premises, and the names of tenants, if any, as well as rental income collected. Set forth date of filing of Statement Identifying Real Property with the County Clerk)**

**PERSONAL PROPERTY**

**(Set forth any jewelry, collectibles, automobiles and cash and set forth approximate values)**

**INCOME**

**(Set forth and identify all sources of income which the Incapacitated Person is entitled to receive)**

**ASSETS NOT YET MARSHALLED**

**(Set forth all bank accounts, stocks, securities and/or security accounts not yet marshalled)**



**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_**

.....X

**APPLICATION FOR APPROVAL  
OF EXPENDITURES / ORDER**

In the Matter of \_\_\_\_\_,

An Incapacitated Person.

Index No.:

.....X

**TO THE JUSTICE PRESIDING:**

1. Guardians respectfully requests permission to expend a sum not to exceed \$\_\_\_\_\_ for the following:

\_\_\_\_\_  
\_\_\_\_\_.

2. The current value of Guardianship estate (Excluding the value of real property) \$\_\_\_\_\_.

3. The last annual report filed by the Guardian was for year:\_\_\_\_\_.

4. The Guardians believes that the aforesaid expenditures are for the direct benefit of the Incapacitated Person in that (explain briefly)

\_\_\_\_\_  
\_\_\_\_\_.

5. The Guardians annexes supporting documentation (e.g., **2 or 3** expense estimates; **2 or 3** estimates of professional performing services; appraisals; etc.) and other necessary information establishing that this sum is fair and reasonable.

6. \_\_\_\_\_, (insert the name(s) of the interested parties requiring notice, if any)

was/were notified of the pending application by mail/email/fax on the day of

\_\_\_\_\_, 202\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Guardian

Sworn to before me

this \_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Name of Guardian

\_\_\_\_\_  
Notary Public

----- *To be submitted with second page to the Court Examiner for recommendation* -----

-----To be submitted by the Court Examiner for consideration-----

1. My last filed examination covered the year/period: \_\_\_\_\_

2. I respectfully recommend \_\_\_\_\_ Do not recommend \_\_\_\_\_ approval of the above expenditures.

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Court Examiner

\_\_\_\_\_  
Name of Court Examiner

-----To be submitted to assigned Judge for decision -----

Upon reading and filing the foregoing, the expenditure(s) is/are

\_\_\_\_\_ APPROVED \_\_\_\_\_ NOT APPROVED/DENIED

\_\_\_\_\_ NOT APPROVED/DENIED WITHOUT PREJUDICE

Additional Comments:

\_\_\_\_\_  
\_\_\_\_\_

So Ordered:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
J. S. C.

**\*The Guardian is directed to serve a copy of this Order on the Court Examiner within 5 days of the date of the Order.**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

.....X  
IN THE MATTER OF THE ANNUAL  
REPORT OF

**ANNUAL REPORT OF  
PERSONAL NEEDS GUARDIAN**

\_\_\_\_\_  
AS PERSONAL NEEDS GUARDIAN FOR

Index No. \_\_\_\_\_ - \_\_\_\_\_  
ANNUAL REPORT FOR YEAR 20 \_\_\_\_\_

\_\_\_\_\_  
AN INCAPACITATED PERSON

.....X

I/We, \_\_\_\_\_ and \_\_\_\_\_,  
as Personal Needs Guardian(s) for the above named Incapacitated Person do hereby make, render and  
file the following annual account.

I/we was/were duly appointed Personal Needs Guardian(s) of the above named person, by  
Order of the Supreme Court of \_\_\_\_\_ County dated the \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_ and have continued to act as such fiduciary since that date.

List here the following information:

State the present residence address and telephone number of all Guardians:

List the name and present address of the spouse, children and siblings of the Incapacitated  
Person.

Spouse:

Children:

Siblings:

State the age, date of birth and marital status of the Incapacitated Person:

State the present residence address and telephone number of the Incapacitated Person. If said Incapacitated Person does not presently reside at his or her personal home, set forth the name, address, and telephone number of the facility or place at which said Incapacitated Person resides, and the name of the chief executive officer of the facility or the person otherwise responsible for the care of the Incapacitated Person.

State whether there have been any changes in the physical or mental condition of the Incapacitated Person, and any substantial change in medication.

State the date and place the Incapacitated Person was last seen by a physician and the purpose of that visit.

Attach a statement by a physician, psychologist, nurse clinician or social worker, or other person who has evaluated or examined the Incapacitated Person within the three months prior to the filing of this report, regarding an evaluation of the Incapacitated Person's condition and the current functional level of the Incapacitated Person.

State whether the current residential setting is suitable to the current needs of the Incapacitated Person and why.

Attach a list of any professional medical treatment given to the Incapacitated Person during the previous year.



## GENERAL INSTRUCTIONS

Complete all sections of this Annual Report, and attach additional pages and documents as necessary.

The affidavit should be sworn to before a Notary Public or Commissioner of Deeds.

By May of each year file your Annual Report for the preceding year as follows:

- \$ file the original with the Guardianship Part - Room 152, Supreme Court Building, 100 Supreme Court Drive, Mineola, NY 11501
- \$ File a copy with the Court Examiner, the Director of the residential care facility (if the Incapacitated Person is residing in one) and the Department of Social Services (if the Incapacitated Person receiving government benefits such as Medicaid).

Immediately notify the Court Examiner and the Clerk of the Guardianship Part of the death of the Incapacitated Person. Also send each a Death Certificate.

Failure to comply with Article 81 of the Mental Hygiene Law with respect to filing an Annual Report may constitute cause for removal.

Any change of address of either Guardian or Incapacitated Person must be reported promptly to the Guardianship Part - Room 152, Supreme Court Building, 100 Supreme Court Drive, Mineola, NY 11501

TO THE SUPREME COURT  
COUNTY OF \_\_\_\_\_

-----X  
In the Matter of the Annual Report of

\_\_\_\_\_, Guardian for  
Property Management and Personal Needs of

ANNUAL REPORT  
OF GUARDIAN

\_\_\_\_\_, an Incapacitated Person

Index No.: \_\_\_\_\_ - \_\_\_\_\_  
For the Year \_\_\_\_\_

-----X  
I, \_\_\_\_\_, residing at \_\_\_\_\_

\_\_\_\_\_, Phone No. (\_\_\_\_\_) \_\_\_\_\_

Guardian for the above-named Incapacitated Person who resides at \_\_\_\_\_

\_\_\_\_\_  
(residence)  
Phone No. (\_\_\_\_\_) \_\_\_\_\_, or at \_\_\_\_\_

Facility Address \_\_\_\_\_

Phone No. (\_\_\_\_\_) \_\_\_\_\_, the facility or place where the Incapacitated Person

resides and the Chief Executive Officer or person otherwise responsible for the Incapacitated

Person's care is \_\_\_\_\_ do

hereby make, render and file the following report.

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, I was appointed Guardian for the  
Incapacitated Person by Order of the Supreme Court of \_\_\_\_\_ County and have continued to  
act as such Guardian since that date, giving a bond in the sum of \$ \_\_\_\_\_ which is still  
in force and effect with \_\_\_\_\_ as Surety thereon. There has  
been no change in the bond or Surety thereon and the Surety is in as good financial standing as  
when the bond was given.

The following is a true and full account of all said Guardian receipts and disbursements for the year  
\_\_\_\_\_.

SUMMARY

Schedule **A** - Principal received on appointment if a new matter  
or BALANCE ON HAND of last account: \$ \_\_\_\_\_

Schedule **B-1** - Additional Principal: \$ \_\_\_\_\_

Schedule **B-2** - Change of Principal (Securities): \$ \_\_\_\_\_

Schedule **B-3** - Change of Principal (Real Estate/Personal Property): \$ \_\_\_\_\_

Schedule **C** - Income Received: \$ \_\_\_\_\_

**SUBTOTAL OF ABOVE:** \$ \_\_\_\_\_

Schedule **D** - Disbursements: \$ [ \_\_\_\_\_ ]

**BALANCE ON HAND (SUBTOTAL MINUS DISBURSEMENTS):\*** \$ \_\_\_\_\_

Schedule **E** - Securities (use Inventory Value): \$ \_\_\_\_\_

Schedule **E-1** - Real Estate: \$ \_\_\_\_\_

Schedule **E-2** - Personal Property: \$ \_\_\_\_\_

\* The above cash balance is on deposit in the following banks:

Bank	Address	Account No.	Balance
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

NOTE: If there is not sufficient space in the Schedules below, use separate sheets and attach.

SCHEDULE A - PRINCIPAL ON HAND

As of date of appointment (if this is a first account) or as of last annual accounting.

Identify each item in detail, including name and address of each bank or other financial institution, number of shares of each security, etc.

SOURCE

AMOUNT  
(for Securities use Inventory Value)

SCHEDULE B-1 - ADDITIONAL PRINCIPAL

If there have been receipts of principal during the year, so indicate.

DATE

SOURCE

AMOUNT

SCHEDULE B-2 - CHANGE OF PRINCIPAL (SECURITIES)

If property listed in Schedule E of the last accounting has been converted to cash, list the gain or loss when compared to the Inventory Value - loss should be shown in brackets.

<u>DATE</u>	<u>SOURCE</u>	<u>SALE PRICE</u>	<u>AMOUNT of GAIN or [LOSS]</u>
-------------	---------------	-------------------	-------------------------------------

**SCHEDULE B-3 - CHANGE OF PRINCIPAL (REAL ESTATE / PERSONAL PROPERTY)**  
 If property listed in Schedules E-1 or E-2 of the last accounting has been converted to cash, list the amount received from the sale - this will always be shown as a positive number.

<u>DATE</u>	<u>SOURCE</u>	<u>AMOUNT</u>
-------------	---------------	---------------

**SCHEDULE C - INCOME RECEIVED**  
 (List all income received during the year, including, but not limited to, Social Security and pension benefits, annuity payments, interest and dividends itemized for each account or security owned.)

SCHEDULE D - PAID DISBURSEMENTS

(NOTE: If disbursement was directed by court order, include date of that order \*).

<u>DATE</u>	<u>PAID TO</u>	<u>AMOUNT</u>	<u>* DATE OF COURT ORDERED DISBURSEMENT</u>
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SCHEDULE E - SECURITIES

(NOTE: List here all securities with their inventory and current market value.)

<u>DESCRIPTION</u>	<u>INVENTORY VALUE</u>	<u>CURRENT MARKET VALUE</u>
--------------------	------------------------	-----------------------------

SCHEDULE E-1 - REAL ESTATE

(NOTE: List all real estate, stating its location, assessed value, amount of mortgage, if any, weekly or monthly rental, and the approximate current market value; also, if the property is owned jointly with others, give names of joint owners and their relationship to the Incapacitated Person.)

SCHEDULE E-2 - PERSONAL PROPERTY

(NOTE: List all personal property, i.e., jewelry, automobiles, including purchase price or appraised value.)

SCHEDULE F - NAME AND ADDRESS OF BOND BROKER (IF ANY) AND THE SURETY COMPANY (Attach copy of the latest bond.)

AMOUNT OF BOND  
\$

BOND NUMBER

SCHEDULE G - State the age, date of birth and marital status of the Incapacitated Person. List the name and present address of the spouse, children and siblings of the Incapacitated Person.

SCHEDULE H - Present physical and mental condition of the Incapacitated Person. Any major changes in physical or mental condition or substantial change in medication since the Initial Report or the last Annual Report was filed.

SCHEDULE I - Last date the Incapacitated Person was seen by a physician: \_\_\_\_\_.  
Attach a statement by a physician, psychologist, nurse clinician, social worker or other person who has evaluated or examined the Incapacitated Person within three months of the filing of this report.

SCHEDULE J - Statement of whether the current residential setting is best suited to the current needs of the Incapacitated Person; a resume of any professional medical treatment given to the ward during the year of report; the plan for medical, dental and mental health treatment, and related services in the coming year.

SCHEDULE K - Information concerning the social condition of the Incapacitated Person; including the social and personal services utilized by the Incapacitated Person; the social skills of the Incapacitated Person; and the social needs of the Incapacitated Person during the year of this report.

SCHEDULE L - State whether the Guardian has used or employed the services of the Incapacitated Person, or whether moneys have been earned by or received on behalf of such Incapacitated Person, and provide the details thereof in Schedule C.

SCHEDULE M - Resume of Guardian's activities performed on behalf of the Incapacitated Person during the year of this report.

SCHEDULE N - Any facts indicating the need to terminate the guardianship or for any alteration in the powers of the Guardian.



# ORDER AND JUDGMENT FOR THE APPOINTMENT OF A SUCCESSOR GUARDIAN - MHL ARTICLE 81

*Revised 1/20/2020*

ANNEXED IS A SAMPLE "ORDER AND JUDGMENT" FORM TO BE USED AS A GUIDE IN NASSAU COUNTY SUPREME COURT FOR THE APPOINTMENT OF A GUARDIAN PURSUANT TO ARTICLE 81 OF THE MENTAL HYGIENE LAW.

THE LANGUAGE CONTAINED IN SAID FORM IS NOT INTENDED TO BE ALL INCLUSIVE, AS EACH JUDGMENT SHOULD BE ADAPTED TO THE INDIVIDUAL CASE. THEREFORE, YOU SHOULD FAMILIARIZE YOURSELF WITH THE APPROPRIATE SECTIONS OF ARTICLE 81 IN PREPARING SAME. IN REVIEWING THE SAMPLE FORM, ATTENTION SHOULD BE GIVEN TO THE BRACKETED NOTES (INCLUDING ALTERNATIVE PARAGRAPHS) CONTAINED THEREIN, THE USE OF POSSESSIVE PRONOUNS, AND SINGULAR AND PLURAL NOUNS SO AS TO CONFORM YOUR ORDER AND JUDGMENT TO YOUR PARTICULAR CASE.

EACH SUCH "**BLUE BACKED**" ORDER AND JUDGMENT SHALL BE SUBMITTED TO THE GUARDIANSHIP DEPT. - ROOM 152, 100 SUPREME COURT DRIVE, MINEOLA, NY 11501, ACCOMPANIED BY THE FOLLOWING:

- (1) NOTICE OF SETTLEMENT;
- (2) PROOF OF SERVICE ON ALL PARTIES ENTITLED TO NOTICE;
- (3) THE DECISION PORTION OF THE TRANSCRIPT; AND
- (4) AFFIRMATION OF LEGAL SERVICES, IF APPLICABLE

**YOUR ORDER AND JUDGMENT SHOULD CONFORM TO THE COURT'S  
DECISION AS CONTAINED IN THE TRANSCRIPT OF HEARING.**

PLEASE NOTE THAT THE CLERKS HAVE BEEN DIRECTED TO REJECT ANY ORDER AND JUDGMENT WHICH IS NOT IN AMBLE COMPLIANCE WITH THE ANNEXED SAMPLE AND THE COURT'S FINDINGS.

At an I. A. Part\_\_\_of the Supreme Court of the State of New York, County of\_\_\_\_\_, at the Courthouse located at \_\_\_\_\_, \_\_\_\_\_, New York on the \_\_\_\_ day of \_\_\_\_\_, 20\_.

PRESENT:  
HON

Justice of the Supreme Court.

.....X

In the Matter of the Appointment of

as Successor Guardian for the Personal Needs  
and Property Management of

ORDER AND JUDGMENT  
APPOINTING SUCCESSOR  
GUARDIAN AND DIRECTING

FINAL REPORT AND ACCOUNT

Index No.:

an Incapacitated Person.

.....X

By Order to Show Cause granted on [INSERT DATE OF ORIGINAL ORDER TO SHOW CAUSE TO APPOINT GUARDIAN], an application was made for the appointment of a Guardian for, \_\_\_\_\_an Alleged Incapacitated Person. By Order and Judgment dated, [INSERT NAME OF GUARDIAN] was appointed Guardian for the Personal Needs and Property Management of \_\_\_\_\_, an Incapacitated Person, and thereafter duly qualified as such.

By Order to Show Cause granted on [INSERT DATE OF CURRENT ORDER TO SHOW CAUSE FOR LEAVE TO RESIGN], [INSERT NAME OF GUARDIAN], sought leave to resign as Guardian, to have a Successor Guardian appointed in his/her place and stead [or to have the Standby Guardian confirmed as Successor Guardian in his/her place and stead] and permission to file a Final Account. A hearing was conducted on \_\_\_\_\_, and attended by [INSERT PEOPLE IN ATTENDANCE AT HEARING]; and no one appearing in opposition to the relief sought herein; after due deliberation,

NOW, on motion of \_\_\_\_\_, ESQ., attorney for the Petitioner, it is ORDERED AND ADJUDGED, that [INSERT NAME OF GUARDIAN] be and s/he hereby is permitted to resign as Guardian for the Personal Needs and Property Management of \_\_\_\_\_, an Incapacitated Person, effective upon the qualification of the Successor Guardian appointed hereunder and the issuance of his/her Commission; and it is further

ORDERED AND ADJUDGED, that within SIXTY (60) DAYS of the date hereof, [INSERT NAME OF GUARDIAN], as (former) Guardian of the Property, is directed to and shall file a final report and account of his/her actions as Guardian of \_\_\_\_\_, the Incapacitated Person, and shall seek his/her discharge, the discharge of his/her surety, and the awarding of compensation, if any; and shall cause said final account to be settled and that a Notice of Motion for the settlement thereof, together with a copy of this Order, shall be served either personally or by certified mail by said former Guardian at least THIRTEEN (13) DAYS prior to the return date of said motion upon \_\_\_\_\_, the Court Examiner assigned herein, who is hereby appointed Referee to review said final account and to report his/her findings and recommendations to the Court, and upon all other persons entitled to notice pursuant to Mental Hygiene Law Section 81.33(c), including [LIST PARTIES ENTITLED TO NOTICE OR WHO HAVE APPEARED HEREIN]; and it is further

ORDERED AND ADJUDGED, that \_\_\_\_\_, residing at \_\_\_\_\_, and with telephone number ( ) \_\_\_\_\_, be and s/he hereby is appointed the Successor Guardian for the Personal Needs and Property Management of \_\_\_\_\_, an Incapacitated Person (the "Successor Guardian"), upon his/her filing a bond in the sum of \$ \_\_\_\_\_ with the Clerk of the Court, to be first approved by a Judge of this Court, [OR: the filing of a bond having been waived at present] conditioned that s/he will faithfully discharge the powers granted by this Court, obey all directions of the Court in regard to said powers, and make and render a true account of all properties received by him/her in the application thereof, and a true report of his/her acts in the administration of the said powers, whenever so required to do so by the Court, and upon his/her further filing with the Clerk of the Court a designation, duly executed and acknowledged, naming the Clerk of the Court, or her successor in office, as a person on whom service of any process may be made in like manner and with like effect as if it were personally served upon \_\_\_\_\_, the Successor Guardian herein, whenever s/he cannot with due diligence be served; and s/he shall have all the powers as authorized in

the Order and Judgment Appointing Guardian, dated \_\_\_\_\_, together with any additional powers authorized hereunder; and it is further

ORDERED AND ADJUDGED, that said Successor Guardian shall file the aforesaid bond, designation, the proposed Commission, and all other necessary papers with the Clerk of the Court within THIRTY (30) DAYS of the date hereof; and it is further

ORDERED AND ADJUDGED, that within FIVE (5) DAYS after the Successor Guardian has filed the above designation, the Clerk of the Court shall issue a Commission stating the title of this proceeding; the name, address, and telephone number of the Incapacitated Person; the name, address, and telephone number of the Successor Guardian; the specific powers granted to such Successor Guardian; and the date when the Successor Guardian's appointment was ordered by this Court; and it is further

ORDERED AND ADJUDGED, that the duration of the guardianship is indefinite; and it is further

ORDERED AND ADJUDGED, that the Successor Guardian shall have the following powers which shall be in addition to the powers specifically granted in the aforesaid Order and Judgment Appointing Guardian, dated \_\_\_\_\_:

*[INSERT ADDITIONAL AUTHORITY GRANTED HEREIN, IF ANY]*

ORDERED AND ADJUDGED, that all persons and institutions are hereby directed and commanded to immediately deliver to the Successor Guardian for the Property Management, [INSERT NAME OF SUCCESSOR GUARDIAN], upon demand and presentation of a certified copy of said Successor Guardian's Commission, all the property and income of the Incapacitated Person which may be in their possession or under their control; and it is further

ORDERED AND ADJUDGED, that all persons are hereby directed and commanded to deliver to the Successor Guardian for the Personal Needs, [INSERT NAME OF SUCCESSOR GUARDIAN], upon demand and presentation of a certified copy of the Successor Guardian's Commission, all personal property of said Incapacitated Person, including but not limited to, Medicare and Social Security cards, insurance cards, all identification cards, and any other documents belonging or issued to; and it is further

account(s) to be established hereunder shall be in the State of New York and shall provide banking statements and cancelled checks in either original or imaged formats. In the event that the Successor Guardian establishes a brokerage account(s) with the assets of the Incapacitated Person, the Successor Guardian shall retain the original statements of such account(s) for the use and review of the Court Examiner assigned herein; and it is further

ORDERED AND ADJUDGED, that the following individuals shall receive notice of the incapacitated person's death, the intended disposition of the remains of the decedent, funeral arrangements and the final resting place of the incapacitated person when that information is known or can be reasonably ascertained by the Successor Guardian: (e.g. family members notified in the OSC); it is further

ORDERED AND ADJUDGED, that within TWENTY (20) DAYS of the date of the death of the Incapacitated Person, the Successor Guardian shall file with the Court, the Court Examiner, and the (nominated) personal representative of the estate of the Incapacitated Person, a copy of both the Certificate of Death and a Statement of Death as defined in Section 81.44 of the Mental Hygiene Law. In the event that the identity of the personal representative is not known or able to be ascertained, the Successor Guardian shall instead serve a Statement of Death upon the Public Administrator of the County of Nassau; and it is further

ORDERED AND ADJUDGED, that within ONE HUNDRED FIFTY (150) DAYS of the death of the Incapacitated Person and in accordance with Section 81.44 of the Mental Hygiene Law, the Successor Guardian shall file a final report and account of his/her actions as such, and s/he shall seek his/her discharge based upon same. Such Successor Guardian shall cause the Final Report and Account to be settled on notice to all necessary and appropriate parties by certified mail or personal service at least THIRTEEN (13) DAYS prior to the return date or shall seek a Decree discharging him/her and his/her surety *[if applicable]* pursuant to Section 81.34 of the Mental Hygiene Law; and it is further

ORDERED AND ADJUDGED, that in addition to the statutory reporting requirements, the Successor Guardian shall advise the Court Examiner by written communication regarding any permanent change in abode of the Incapacitated Person and/or any significant changes in the physical or medical condition of the Incapacitated Person, within THIRTY (30) DAYS thereof; and it is further

ORDERED AND ADJUDGED, that the Successor Guardian shall notify the Court and the Court

*Revised 1/2/2020*

Examiner of any change in his/her domicile within THIRTY (30) DAYS of the date of such relocation, and shall file a new designation with the Clerk of the Court reflecting such change in abode; and it is further

ORDERED AND ADJUDGED, that the Successor Guardian shall be required to complete a training program as provided for under Section 81.39 of the Mental Hygiene Law, either in person or by audio or video tape or by internet broadcast, and shall submit proof of the completion of such program to the Court Examiner in the initial report to be filed herein; and it is further

[OR:

ORDERED AND ADJUDGED, that the requirement of the Successor Guardian to complete a training program as provided for under Section 81.39 of the Mental Hygiene Law is hereby waived; and it is further]

ORDERED AND ADJUDGED, that the compensation of the Successor Guardian shall be set in subsequent orders of the Court from time to time, unless waived; and it is further

ORDERED AND ADJUDGED, that the Successor Guardian **shall file an initial report** within **NINETY (90) DAYS** after issuance of the Commission to said Successor Guardian in accordance with the provisions of Section 81.30 of the Mental Hygiene Law, and shall mail a copy of said report to **Court**

Examiner \_\_\_\_\_, with offices at \_\_\_\_\_, and with telephone number (\_\_\_\_) \_\_\_\_\_; and it is further

ORDERED, that [INSERT PETITIONER'S COUNSEL] shall provide to the Successor Guardian, [INSERT NAME OF SUCCESSOR GUARDIAN], a copy of the Order and Judgment Appointing Guardian, dated \_\_\_\_\_, if same is not already in his/her possession; and it is further

ORDERED, that [INSERT PETITIONER'S COUNSEL] shall assist the Successor Guardian with **timely** obtaining his/her bond and Commission to Successor Guardian; and it is further

ORDERED AND ADJUDGED, that within **THIRTY-FIVE (35) DAYS** of the date hereof, the Court Examiner assigned herein shall confirm that the Successor Guardian has duly qualified as such and that a Commission to Successor Guardian has been issued by the Clerk of the Court. In the event the Successor Guardian has failed to qualify by such date, the COURT EXAMINER AND SUCCESSOR GUARDIAN shall notify the Court in writing or by email; and it is further

ORDERED AND ADJUDGED, that the **GUARDIAN SHALL APPEAR BEFORE THE COURT ON**  
\_\_\_\_\_, **AT** \_\_\_:\_\_\_ **AM/PM**, IN THE GUARDIANSHIP APPEARANCE PART  
COURTROOM, LOCATED ON THE \_\_\_ FLOOR, UNLESS THE REQUIRED COMMISSION HAS BEEN FILED AND  
ACCEPTED BY THE CLERK OF THE COURT; (*Petitioner's counsel is reminded to assist the Guardian(s) with  
acquiring their commission and filing their designation*) and it is further

ORDERED AND ADJUDGED, on or before 60 days from the entry date of this Order, the **former  
Guardian** of the Property must file their final accounting and report with the COURT and the COURT  
EXAMINER. **Failure to timely comply shall result in a MANDATORY APPEARANCE BEFORE THE  
COURT,**  
**BY THE FORMER GUARDIAN(S) AND COURT EXAMINER ON** \_\_\_\_\_, **at** \_\_\_:  
**AM/PM IN THE GUARDIANSHIP APPEARANCE PART COURTROOM, LOCATED ON THE \_\_\_ FLOOR.**

ORDERED AND ADJUDGED, that except as modified herein, the Order and Judgment Appointing  
Guardian, dated \_\_\_\_\_, shall remain in full force and effect, with the duties and  
authority

ORDERED AND ADJUDGED, that pursuant to Section 81.16(e) of the Mental Hygiene Law, a  
copy granted to the Guardian continuing for the Successor Guardian; and it is further of this Order and  
Judgment shall be personally served upon, read, and explained to the Incapacitated Person by the  
Successor Guardian within THIRTY (30) DAYS of the date hereof; and it is further

[OR:

ORDERED AND ADJUDGED, that notwithstanding Section 81.16(e) of the Mental Hygiene Law, a  
copy of this Order and Judgment need not be personally served upon, read or explained to the  
Incapacitated Person; and it is further]

ORDERED AND ADJUDGED, that [INSERT PETITIONER'S COUNSEL] shall mail copies of this  
Order and Judgment to the former Guardian and Successor Guardian \_\_\_\_\_;  
[INSERT ALL NECESSARY AND APPEARING PARTIES]; and, the Court Examiner previously appointed  
herein.

ENTER:

\_\_\_\_\_

, J.S.C.