



Article 81 of the Mental Hygiene Law

Tuesday, December 4, 2018

NYC

Wednesday, December 12, 2018

Albany

Program time is from 9:00 a.m. – 5:00 p.m. at both locations

*Sponsored by the Trusts & Estates Law Section, the Elder Law & Special Needs
Section and the Committee on Continuing Legal Education of the New York State Bar
Association*

This program is offered for educational purposes.

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Program Description

Under Article 81 of the Mental Hygiene Law, persons appointed as a court evaluator or guardian, in almost all cases, must receive training approved by the Office of Court Administration. This program has been approved by the Office of Court Administration for such purposes. The highly qualified and experienced practitioners in the health, elder and guardianship law fields on the faculty will highlight the latest legal and regulatory developments in this area as well as the fundamentals of how to serve as an effective guardian or court evaluator. This program fulfills the training requirements for enrollment on the Part 36 Fiduciary Eligibility List as guardian, court evaluator, and attorney for alleged incapacitated persons.

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Program Agenda

8:30 a.m. – 9:00 a.m. Registration

9:00 a.m. – 9:10 a.m. Introductory Remarks

9:10 a.m.–10:00 a.m. **Part 36 of the Rules of the Chief Judge**

- Review of Part 36 as to applies to Article 81
- Part 36 Procedural Requirements
- Disqualification Requirement
- Compensation Limits

(1.0 MCLE credit; 1.0 Areas of Professional Practice)

10:00 a.m.–10:50 a.m. **Introduction to Topic and Background**

- Article 81 comparison with SCPA 17-A
- Orientation to medical terminology including capacity determination, medical assessments and extent of impairment

(1.0 MCLE Credits; 1.0 Areas of Professional Practice)

10:50 a.m. –11:00 a.m. Break

11:00 a.m.–11:50 a.m. **The Proceeding**

- Commencing a Guardianship proceeding including emergency relief, single transactions and ethical issues
- Court Evaluator Educational Requirements
 - Legal Duties and Responsibilities of the Court Evaluator
 - Rights of the Incapacitated Person
 - Available Resources to the Incapacitated Person
- Hearing and Order: Drafting the Order and Judgment

(1.0 MCLE Credits; 1.0 Areas of Professional Practice)

11:50 a.m.–12:50 p.m. Lunch (on your own)

12:50 p.m.–2:30 p.m. **Guardianship**

- Legal Duties and Responsibilities of a Guardian
 - Legal Duties and Responsibilities of the Guardian
 - Rights of the Incapacitated Persons
 - Available Resources to the Incapacitated Person
 - Entitlements
 - Health Care Decision Making
 - Resources
 - Annual and Final Reports
- (2.0 MCLE Credits; 2.0 Skills)*

2:30 p.m.–2:40 p.m. Break

2:40 p.m. -4:45 p.m. **Representation**

- Counsel for the AIP
 - Legal Fees: Fee Application
 - “Who is the Client?”
 - Psychological and Social Concerns Relating to the Disabled and Frail Older Adults
 - Ethical Considerations for Guardians
 - Role of MHLS
- (2.5 MCLE Credits; 2.5 Ethics)*

4:45 p.m. Adjournment

Accessing the Online Course Materials

Below is the link to the online course materials. These program materials are up-to-date and include supplemental materials that were not included in your course book.

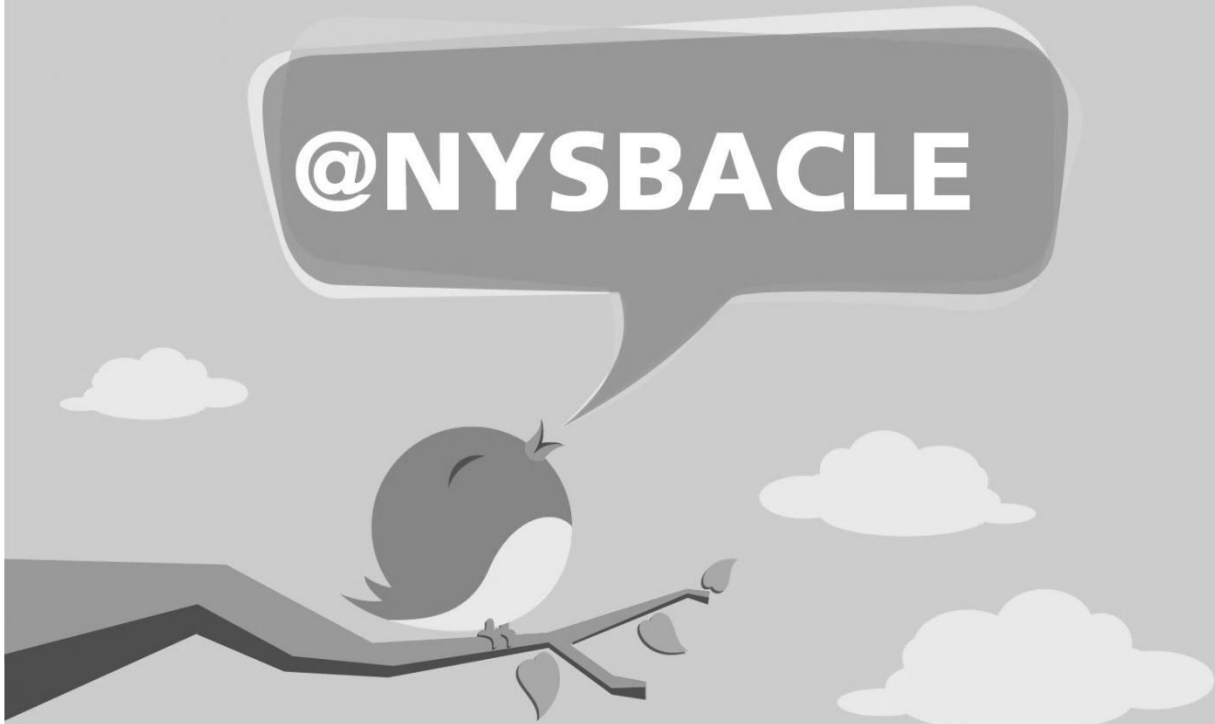


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These Rules of Professional Conduct were promulgated as Joint Rules of the Appellate Divisions of the Supreme Court, effective April 1, 2009, and amended on several occasions thereafter. They supersede the former part 1200 (Disciplinary Rules of the Code of Professional Responsibility).

The New York State Bar Association has issued a Preamble, Scope and Comments to accompany these Rules. They are not enacted with this Part, and where a conflict exists between a Rule and the Preamble, Scope or a Comment, the Rule controls.

This unofficial compilation of the Rules provided for informational purposes only. The official version of Part 1200 is published by the New York State Department of State. An unofficial on-line version is available at www.dos.ny.gov/info/nycrr.html (Title 22 [Judiciary]; Subtitle B Courts; Chapter IV Supreme Court; Subchapter E All Departments; Part 1200 Rules of Professional Conduct; § 1200.0 Rules of Professional Conduct).

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Esq., Tammy Rose Lawlor, Esq., Lisa M. Petrocelli, Esq. 33

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TOPIC I

Part 36 of the Rules of the Chief Judge

By Michele Gartner, Esq.

PART 36

THE RULES OF THE CHIEF JUDGE



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*State of New York
Court of Appeals*



*Janet Di Fiore
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**ADMINISTRATIVE ORDER OF THE
CHIEF JUDGE OF THE STATE OF NEW YORK**

Pursuant to Article VI, § 28(c) of the State Constitution and section 211 of the Judiciary Law, upon consultation with the Administrative Board of the Courts, and with the approval of the Court of Appeals of the State of New York, I hereby amend, effective immediately, Part 36 of the Rules of the Chief Judge, by deleting the bracketed material and adding the underlined material.

Section 36.0 Preamble.

Public trust in the judicial process demands that appointments by judges be fair, impartial and beyond reproach. Accordingly, these rules are intended to ensure that appointees are selected on the basis of merit, without favoritism, nepotism, politics or other factors unrelated to the qualifications of the appointee or the requirements of the case.

The rules cannot be written in a way that foresees every situation in which they should be applied. Therefore, the appointment of trained and competent persons, and the avoidance of factors unrelated to the merit of the appointments or the value of the work performed, are fundamental objectives that should guide all appointments made, and orders issued, pursuant to this Part.

Section 36.1 Application.

(a) Except as set forth in subdivision (b) of this section, this Part shall apply to the following appointments made by any judge or justice of the Unified Court System:

- (1) guardians;
- (2) guardians *ad litem*, including guardians *ad litem* appointed to investigate and report to the court on particular issues, and their counsel and assistants;
- (3) attorneys for the child who are not paid from public funds, in those judicial departments where their appointments are authorized;
- (4) court evaluators;

- (5) attorneys for alleged incapacitated persons;
- (6) court examiners;
- (7) supplemental needs trustees;
- (8) receivers;
- (9) referees (other than special masters and those otherwise performing judicial functions in a quasi-judicial capacity); [and]
- (10) the following persons [or entities] performing services for guardians or receivers:
 - (i) counsel;
 - (ii) accountants;
 - (iii) auctioneers;
 - (iv) appraisers;
 - (v) property managers; and
 - (vi) real estate brokers; and
- (11) a public administrator within the City of New York and for the Counties of Westchester, Onondaga, Erie, Monroe, Suffolk and Nassau and counsel to the public administrator, except that only sections 36.2(c) and 36.4(f) of this Part shall apply, and that section 36.2(c) of this Part shall not apply to incumbents in these positions until one year after the effective date of this paragraph.
- (b) Except for sections 36.2(c)(6) and 36.2(c)(7) of this Part, this Part shall not apply to:
 - (1) appointments of attorneys for the child pursuant to section 243 of the Family Court Act, guardians *ad litem* pursuant to section 403-a of the Surrogate's Court Procedure Act, or the Mental Hygiene Legal Service;
 - (2) the appointment of, or the appointment of any persons or entities performing services for, any of the following:
 - (i) a guardian who is a relative of:
 - (a) the subject of the guardianship proceeding; or
 - (b) the beneficiary of a proceeding to create a supplemental needs trust; a person or entity nominated as guardian by the subject of the proceeding or proposed as guardian by a party to the proceeding; a supplemental needs trustee nominated by the beneficiary of a supplemental needs trust or proposed by a proponent of the trust; or a person or entity having a legally recognized duty or interest with respect to the subject of the proceeding;
 - (ii) a guardian *ad litem* nominated by an infant of 14 years of age or over;

- (iii) a nonprofit institution performing property management or personal needs services, or acting as court evaluator;
 - (iv) a bank or trust company as a depository for funds or as a supplemental needs trustee;
 - (v) except as set forth in section 36.1(a)(11), a public official vested with the powers of an administrator;
 - (vi) a person or institution whose appointment is required by law; or
 - (vii) a physician whose appointment as a guardian *ad litem* is necessary where emergency medical or surgical procedures are required; [and] or
- (3) an appointment other than above without compensation, except that the appointee must file a notice of appointment pursuant to section 36.4(b) of this Part.

Section 36.2 Appointments.

- (a) Appointments by the judge. All appointments of the persons [or entities] set forth in section 36.1 of this Part, including those persons [or entities] set forth in section 36.1(a)(10) of this Part who perform services for guardians or receivers, shall be made by the judge authorized by law to make the appointment. In making appointments of persons [or entities] to perform services for guardians or receivers, the appointing judge may consider the recommendation of the guardian or receiver.
- (b) Use of lists.
 - (1) All appointments pursuant to this Part shall be made by the appointing judge from the appropriate list of applicants established by the Chief Administrator of the Courts pursuant to section 36.3 of this Part.
 - (2) An appointing judge may appoint a person [or entity] not on the appropriate list of applicants upon a finding of good cause, which shall be set forth in writing and shall be filed with the fiduciary clerk at the time of the making of the appointment. The appointing judge shall send a copy of such writing to the Chief Administrator. A judge may not appoint a person [or entity] that has been removed from a list pursuant to section 36.3(e) of this Part.
 - (3) Appointments made from outside the lists shall remain subject to all of the requirements and limitations set forth in this Part, except that the appointing judge may waive any education and training requirements where completion of these requirements would be impractical.
- (c) Disqualifications from appointment.
 - (1) No person shall be appointed who is a judge or housing judge of the Unified Court System of the State of New York, or who is a relative of, or related by marriage to, a judge or housing judge of the Unified Court System within the fourth degree of relationship.

(2) No person serving as a judicial hearing officer pursuant to Part 122 of the Rules of the Chief Administrator shall be appointed in actions or proceedings in a court in a county where he or she serves on a judicial hearing officer panel for such court.

(3) No person shall be appointed who is a full-time or part-time employee of the Unified Court System. No person who is the spouse, sibling, parent or child of an employee who holds a position at salary grade JG24 or above, or its equivalent, shall be appointed by a court within the judicial district where the employee is employed or, with respect to an employee with statewide responsibilities, by any court in the State.

(4)(i) No person who is a chair or executive director, or their equivalent, of a State or county political party (including any person or persons who, in counties of any size or population, possess or perform any of the titles, powers or duties set forth in Public Officers Law section 73[1][k]), or the spouse, sibling, parent or child of that official, shall be appointed while that official serves in that position and for a period of two years after that official no longer holds that position. This prohibition shall apply to the members, associates, counsel and employees of any law firms or entities while the official is associated with that firm or entity.

(ii) No person who has served as a campaign chair, coordinator, manager, treasurer or finance chair for a candidate for judicial office, or the spouse, sibling, parent or child of that person, or anyone associated with the law firm of that person, shall be appointed by the judge for whom that service was performed for a period of two years following the judicial election. If the candidate is a sitting judge, the disqualifications shall apply as well from the time the person assumes any of the above roles during the campaign for judicial office.

(5) No former judge or housing judge of the Unified Court System, or the spouse, sibling, parent or child of such judge, shall be appointed, within two years from the date the judge left judicial office, by a court within the jurisdiction where the judge served. Jurisdiction is defined as follows:

(i) the jurisdiction of a judge of the Court of Appeals shall be statewide;

(ii) the jurisdiction of a justice of an Appellate Division shall be the judicial department within which the justice served;

(iii) the jurisdiction of a justice of the Supreme Court and a judge of the Court of Claims shall be the principal judicial district within which the justice or judge served; and

(iv) with respect to all other judges, the jurisdiction shall be the principal county within which the judge served.

(6) No attorney who has been disbarred or suspended from the practice of law shall be appointed during the period of disbarment or suspension.

(7) No person convicted of a felony, or for five years following the date of sentencing after conviction of a misdemeanor (unless otherwise waived by the Chief Administrator

upon application), shall be appointed unless that person receives a certificate of relief from disabilities.

(8) No receiver or guardian shall be appointed as his or her own counsel, and no person associated with a law firm of that receiver or guardian shall be appointed as counsel to that receiver or guardian, unless there is a compelling reason to do so.

(9) No attorney for an alleged incapacitated person shall be appointed as guardian to that person, or as counsel to the guardian of that person.

(10) No person serving as a court evaluator shall be appointed as guardian for the incapacitated person except under extenuating circumstances that are set forth in writing and filed with the fiduciary clerk at the time of the appointment.

(d) Limitations on appointments based upon compensation.

(1) No person [or entity] shall be eligible to receive more than one appointment within a calendar year for which the compensation anticipated to be awarded to the appointee in any calendar year exceeds the sum of \$15,000.

(2) If a person [or entity] has been awarded more than an aggregate of \$100,000 [\$75,000] in compensation by all courts during any calendar year, the person [or entity] shall not be eligible for compensated appointments by any court during the next calendar year.

(3) For purposes of this Part, the term compensation shall mean awards by a court of fees, commissions, allowances or other compensation, excluding costs and disbursements.

(4) These limitations shall not apply where the appointment is necessary to maintain continuity of representation of or service to the same person or entity in further or subsequent proceedings.

Section 36.3 Procedure for appointment.

(a) Application for appointment. The Chief Administrator shall provide for the application by persons [or entities] seeking appointments pursuant to this Part on such forms as shall be promulgated by the Chief Administrator. The forms shall contain such information as is necessary to establish that the applicant meets the qualifications for the appointments covered by this Part and to apprise the appointing judge of the applicant's background.

(b) Qualifications for appointment. The Chief Administrator shall establish requirements of education and training for placement on the list of available applicants. These requirements shall consist, as appropriate, of substantive issues pertaining to each category of appointment— including applicable law, procedures, and ethics—as well as explications of the rules and procedures implementing the process established by this Part. Education and training courses and programs shall meet the requirements of these rules only if certified by the Chief Administrator. Attorney participants in these education

and training courses and programs may be eligible for continuing legal education credit in accordance with the requirements of the Continuing Legal Education Board.

(c) Establishment of lists. The Chief Administrator shall establish separate lists of qualified applicants for each category of appointment, and shall make available such information as will enable the appointing judge to be apprised of the background of each applicant. The Chief Administrator may establish more than one list for the same appointment category where appropriate to apprise the appointing judge of applicants who have substantial experience in that category. Pursuant to section 81.32(b) of the Mental Hygiene Law, the Presiding Justice of the appropriate Appellate Division shall designate the qualified applicants on the lists of court examiners established by the Chief Administrator.

(d) Registration. The Chief Administrator shall establish a procedure requiring that each person [or entity] on a list reregister every two years in order to remain on the list.

(e) Removal from lists. The Chief Administrator may remove any person [or entity] from any list for unsatisfactory performance or any conduct incompatible with appointment from that list, or if disqualified from appointment pursuant to this Part. A person [or entity] may not be removed except upon receipt of a written statement of reasons for the removal and an opportunity to provide an explanation and to submit facts in opposition to the removal.

(f) Notwithstanding section 36.3(e), pending a final determination on the issue of removal, the Chief Administrator may temporarily suspend any person [or entity] from any list upon a showing of good cause that the person's conduct places clients or wards at significant risk of financial or other harm, or presents an immediate threat to the public.

Section 36.4 Procedure after appointment.

(a) Upon appointment of a fiduciary pursuant to this Part, the Court shall forward a copy of the appointment order to the designated fiduciary clerk within two (2) business days.

(b) Notice of appointment and certification of compliance.

(1) Every person [or entity] appointed pursuant to this Part shall file with the fiduciary clerk of the court from which the appointment is made, within 30 days of the making of the appointment:

(i) a notice of appointment; and

(ii) a certification of compliance with this Part, on such form as promulgated by the Chief Administrator. Copies of this form shall be made available at the office of the fiduciary clerk and shall be transmitted by that clerk to the appointee immediately after the making of the appointment by the appointing judge. An appointee who accepts an appointment without compensation need not complete the certification of compliance portion of the form.

(2) The notice of appointment shall contain the date of the appointment and the nature of the appointment.

(3) The certification of compliance shall include:

(i) a statement that the appointment is in compliance with section 36.2(c) and (d) of this Part; and

(ii) a list of all appointments received, or for which compensation has been awarded, during the current calendar year and the year immediately preceding the current calendar year, which shall contain:

(a) the name of the judge who made each appointment;

(b) the compensation awarded; and

(c) where compensation remains to be awarded[;]

[(d)] (i) the compensation anticipated to be awarded; and

[(e)] (ii) separate identification of those appointments for which compensation of \$15,000 or more is anticipated to be awarded during any calendar year. The list shall include the appointment for which the filing is made.

(4) A person [or entity] who is required to complete the certification of compliance, but who is unable to certify that the appointment is in compliance with this Part, shall immediately so inform the appointing judge.

(c) Approval of compensation.

(1) Upon the approval of compensation of more than \$500, the court shall file with the fiduciary clerk (i) on such form as is promulgated by the Chief Administrator, a statement of approval of compensation, which shall contain a confirmation to be signed by the fiduciary clerk that the appointee has filed the notice of appointment and certification of compliance; and (ii) a copy of the proposed order approving compensation.

(2) The court shall not sign an order awarding compensation exceeding \$500 until such time as the fiduciary clerk has confirmed that the appointee has properly filed the notice of appointment and certification of compliance. No compensation shall be awarded to an appointee who has not properly filed the notice of appointment and certification of compliance.

(3) Each approval of compensation of \$5,000 or more to appointees pursuant to this section shall be accompanied by a statement, in writing, of the reasons therefor by the judge. The judge shall file a copy of the order approving compensation and the statement with the fiduciary clerk at the time of the signing of the order. (4) Compensation to appointees shall not exceed the fair value of services rendered. Appointees who serve as counsel to a guardian or receiver shall not be compensated as counsel for services that should have been performed by the guardian or receiver.

(5) Unless otherwise directed by the court, a fiduciary appointee may utilize supporting attorneys and staff in their firm without additional Court approval. Support attorneys and staff may perform tasks only under the fiduciary appointee's direct supervision; all appearances and reports must be made by the fiduciary appointee; and all compensation earned by support attorneys or personnel shall be charged to the appointee for purposes of compensation limits pursuant to this Part.

(d) Reporting of compensation received by law firms. A law firm whose members, associates and employees have had a total of \$50,000 or more in compensation approved in a single calendar year for appointments made pursuant to this Part shall report such amounts on a form promulgated by the Chief Administrator.

(e) Reporting of compensation received by a referee to sell real property.

(1) A referee to sell real property shall make a letter application to the court to authorize payment over \$750 for a "good cause" adjournment or if there is a rebid or resale.

(2) Upon approval of compensation exceeding \$750 to a referee to sell real property, the Court shall file a copy of its compensation order with the appropriate fiduciary clerk, who shall generate the required Unified Court System forms and monitor compliance and filing with the Part 36 processing unit. Payment of such compensation may not be made until the plaintiffs in the matter have received a copy of the court's compensation order.

(3) Exception. The procedure set forth in this section shall not apply to the appointment of a referee to sell real property and a referee to compute whose compensation for such appointments is not anticipated to exceed \$750.

(f) Approval and reporting of compensation received by counsel to the public administrator.

(1) A judge shall not approve compensation to counsel to the public administrator in excess of the fee schedule promulgated by the administrative board of the public administrator under SCPA 1128 unless accompanied by the judge's statement, in writing, of the reasons therefor, and by the appointee's affidavit of legal services under SCPA 1108 setting forth in detail the services rendered, the time spent, and the method or basis by which the requested compensation was determined.

(2) Any approval of compensation in excess of the fee schedule promulgated by the administrative board of the public administrator shall be reported to the Office of Court Administration on a form promulgated by the Chief Administrator and shall be accompanied by a copy of the order approving compensation, the judge's written statement, and the counsel's affidavit of legal services, which records shall be published as determined by the Chief Administrator.


(3) Each approval of compensation of \$5,000 or more to counsel shall be reported to the Office of Court Administration on a form promulgated by the Chief Administrator and shall be published as determined by the Chief Administrator.

Section 36.5 Publication of appointments.

- (a) All forms filed pursuant to section 36.4 of this Part shall be public records.
- (b) The Chief Administrator shall arrange for the periodic publication of the names of all persons [and entities] appointed by each appointing judge, and the compensation approved for each appointee.



Chief Judge of the State of New York

Attest: 

Clerk of the Court of Appeals

Dated: October 18, 2018

AO/02/18





PART 36 OF THE RULES OF THE CHIEF JUDGE: AN EXPLANATORY NOTE

Part 36 of the Rules of the Chief Judge creates a system that broadens the eligibility for appointment to a wide range of applicants well-trained in their category of appointment, establishes procedures that promote accountability and openness in the selection process, and insulates that process from appearances of favoritism, nepotism or politics.

1. APPLICABILITY

Part 36 governs ten categories of primary appointments and six categories of secondary appointments (§ 36.1 [a]), as set forth below.

(A) GUARDIANS

Part 36 applies to guardians appointed for: 1) incapacitated persons pursuant to Mental Hygiene Law Article 81; 2) minors pursuant to Surrogate's Court Procedure Act article 17 or Civil Practice Laws and Rules article 12; and 3) the intellectually or developmentally disabled pursuant to Surrogate's Court Procedure Act article 17-A (§ 36.1 [a][1]). If a person is appointed guardian upon a ward's nomination or a party's proposal, appointment is exempt from Part 36 (§ 36.1 [b][2][i]).

A guardianship where the appointee is a nonprofit institution, department of social services, or other public agency with legally recognized duties or interests is exempt from Part 36 (§ 36.1 [b][2][i], [iii]). Guardianships in proceedings for the termination of parental rights (see Social Services Law § 384-b, Surrogate's Court Procedure Act § 403-a, Family Ct. Act article 6) are also exempt, since only persons or entities authorized by law may be appointed guardian in such proceedings (§ 36.1 [b][2][i], [vi]).

(B) GUARDIANS AD LITEM

Part 36 applies to guardians ad litem appointed under the general provisions of Surrogate's Court Procedure Act § 403 and Civil Practice Laws and Rules 1202, including guardians ad litem appointed to investigate and report to the court on particular issues (§ 36.1 [a][2]). Where a court appoints counsel or assistants to guardians ad litem, these appointees also are governed by the rules. If appointed a guardian ad litem upon the nomination of an infant of 14 years of age or over, the appointee is exempt (§ 36.1 [b][2][ii]). Similarly exempt is a physician whose appointment as a guardian ad litem is necessary where emergency medical or surgical procedures are required (§ 36.1 [b][2][vii]).

(C) ATTORNEYS FOR THE CHILD (FORMERLY LAW GUARDIANS)

Privately paid attorneys for the child who are appointed in domestic relations matters in those Departments of the Appellate Division where authorized are subject to the provisions of Part 36 (§ 36.1 [a][3]). Attorneys for the child appointed and paid from public funds are exempt (§ 36.1 [b][1]). (As a general rule, Part 36 applies only to appointees compensated at the expense of private parties, and not those compensated from public funds such as appointments pursuant to Family Court Act § 243, Surrogate's Court Procedure Act § 403-a, 407, Judiciary Law § 35, and County Law article 18-B.)

(D) COURT EVALUATORS, ATTORNEYS FOR ALLEGED INCAPACITATED PERSONS, COURT EXAMINERS

In proceedings for the appointment of guardians for incapacitated persons pursuant to Article 81 of the Mental Hygiene Law, the court may appoint an attorney for the alleged incapacitated person (Mental Hygiene Law § 81.10) or appoint a court evaluator as an independent witness to investigate and report to the court (Mental Hygiene Law § 81.09). These appointments are governed by Part 36 (§ 36.1 [a][4], [5]), except that a nonprofit institution appointed court evaluator is exempt (§ 36.1 [b][2][iii]). The Mental Hygiene Legal Service, which may serve as attorney for an alleged incapacitated person or court evaluator, is also exempt (§ 36.1 [b][1]).

If a guardian is appointed pursuant to Article 81 of the Mental Hygiene Law, the court may also assign a court examiner to audit and report on accountings required to be filed in such guardianship proceedings (Mental Hygiene Law § 81.30, 81.31). Court examiners

are designated by the Presiding Justice of each Department of the Appellate Division (Mental Hygiene Law § 81.32), and, upon designation, must comply with all the provisions of Part 36 (§§ 36.1 [a][6]; 36.3 [c]).

(E) SUPPLEMENTAL NEEDS TRUSTEES

Supplemental needs trustees (see Omnibus Budget Reconciliation Act of 1993 (42 USC 1396p[d][4], EPTL § 7-1.12, SSL § 366 [2][b][2][iii], 18 NYCRR § 360-4.5) may be appointed in a number of contexts in Supreme Court or Surrogate's Court, e.g., in infants' compromise orders, or in proceedings under article 17-A of the Surrogate's Court Procedure Act or Article 81 of the Mental Hygiene Law. When selected by the court and appointed by judgment or order, a supplemental needs trustee is subject to the provisions of Part 36 (§ 36.1 [a][7]), unless the appointee is a bank or trust company (§ 36.1 [b][2][iv]), or is appointed upon nomination by the beneficiary, or by the proponent, of the trust (§ 36.1 [b][2][i][b]).

(F) RECEIVERS

Part 36 applies to receivers almost without exception (§ 36.1 [a][8]). In rare cases where the choice of receiver would be dictated by law, such an appointee would be exempt (§ 36.1 [b][2][vi]).

(G) REFEREES

Referees are treated differently under Part 36 depending on the purpose for which they are appointed. Under Articles 31 and 43 of the Civil Practice Laws and Rules, referees, sometimes called "special masters", are often used in a quasi-judicial capacity to supervise discovery or conduct trials in civil actions or proceedings. No matter what their title, if referees are used to perform a judicial function, they are exempt from Part 36 (§ 36.1 [a][9]). Referees appointed for all other purposes are governed by the rules. These appointments are usually for the purpose of performing an act outside of court, e.g., conducting the sale of real property in a mortgage foreclosure action or supervising a labor union election.

Referees to compute the value of, and sell, real property in the ordinary mortgage foreclosure action, and who receive compensation of \$750 or less, are subject to all of the provisions of Part 36 preliminary to appointment, including the disqualification provisions of section 36.2 (c), the limitations based on compensation of section 36.2 (d), and list enrollment under section 36.3. Upon appointment, however, these referees are not required to file the notice of appointment or certification of compliance that all other Part 36 appointees must file (§ 36.4 [e]). They and the court are also excepted from filing a statement of approval of compensation pursuant to Judiciary Law § 35-a (1) (a) and 22 NYCRR § 26.1 (a) (see section 5.B. *infra*), because the \$750 total compensation results from two separate appointments which are below the statutory threshold of \$500 for each appointment (up to \$250 for computation; \$500 for sale).

(H) SECONDARY APPOINTMENTS OF GUARDIANS AND RECEIVERS: COUNSEL, ACCOUNTANTS, APPRAISERS, AUCTIONEERS, PROPERTY MANAGERS, REAL ESTATE BROKERS

When a guardian or receiver subject to the provisions of Part 36 seeks to retain counsel, or an accountant, appraiser, auctioneer, property manager or real estate broker, the retained professional becomes a Part 36 appointee (§ 36.1 [a][10]). The guardian or receiver must request that the judge appoint such a professional (§ 36.2 [a]), and the professional must comply with all the provisions of Part 36, including those governing list enrollment (§ 36.3), disqualification and limitation based on compensation (§ 36.2), and all filing requirements (§ 36.4).

(I) PUBLIC ADMINISTRATOR AND COUNSEL TO PUBLIC ADMINISTRATOR

Certain sections of Part 36 apply to the appointment of a Public Administrator within the City of New York and for the counties of Westchester, Onondaga, Erie, Monroe, Suffolk and Nassau and counsel to the public administrator. Those sections include the disqualifications due to family relationship, employment, former employment, political party office or judicial campaign office found in section 36.2 (c) and the approval of compensation reporting requirements found in section 36.4(f).

2. APPROVED LISTS: APPLICATION, ENROLLMENT, USE

All persons whose appointments are governed by Part 36 (§ 36.1 [a] [1] – [10]), and who are not exempt under section 36.1 (b), must be enrolled on an approved list established by the Chief Administrator of the Courts (§ 36.3 [c]) from which all names for appointment must be selected (§ 36.2 [b][1]), except when good cause exists to appoint outside the list (§ 36.2 [b][2]). In those exceptional circumstances, the court must make a finding of good cause, in writing, and file its finding with the fiduciary clerk, who has the duty of supervising the filing of all papers in the Part 36 appointment process (see §§ 36.2 [b][2]; 36.4 [b][1], [c][1]-[3]). A copy of the finding also will be sent to the Chief Administrator of the Courts (§ 36.2[b][2]). A person not appointed from an appropriate list still must comply with all the other provisions of Part 36, e.g., the appointee must not be disqualified from appointment under section 36.2(c) or (d) and must file all Part 36 forms pursuant to section 36.4, but any education and training requirements may be waived (§ 36.2 [b][3]). At no time may a court appoint a person removed from a list for cause, or a person whom is currently suspended from an appointment list of the Chief Administrator of the Courts pending a final determination on the issue of removal (see §§ 36.2 [b][2]; 36.3[f]). (See § 36.3 [e] for the procedure for removal upon the Chief Administrator's determination of unsatisfactory performance or conduct incompatible with appointment from a list.)

To enroll on a list maintained by the Chief Administrator of the Courts, an applicant must have completed the required training for each category of appointment for which enrollment is requested (§ 36.3 [b]). Once all required training is completed, an application must be submitted on the application form promulgated by the Chief Administrator (UCS-870) (§ 36.3 [a]). Court examiners for proceedings under Article 81 of the Mental Hygiene Law and privately paid attorneys for the child in domestic relations actions first must be approved by the Appellate Division before being eligible for placement on a list.

Section 36.3 (d) provides for biennial re-registration, which will permit the Chief Administrator to keep all lists current.

3. DISQUALIFICATIONS

The following persons are disqualified from appointment (§ 36.2 [c]):

- (a) a judge or housing judge of the Unified Court System, or a relative of, or a person related by marriage to, a judge or housing judge of the Unified Court System within the fourth degree of relationship;
- (b) a judicial hearing officer in a court in which he or she serves as a judicial hearing officer (appointments may be accepted in courts in which he or she does not serve as a JHO);
- (c) a full-time or part-time employee of the Unified Court System;
- (d) the spouse, brother/sister, parent or child of a full-time or part-time employee of the Unified Court System at or above salary grade JG24, or its equivalent: 1) employed in a judicial district where the relative is applying for appointment or 2) with statewide responsibilities;
- (e) a person who currently serves, or has served within the last two years as chair, executive director, or the equivalent, of a state or county political party (including any person or persons who, in counties of any size or population, possess

or perform any of the titles, powers or duties set forth in Public Officers Law §73[1][k]); or the spouse, brother/sister, parent or child of such political party official; or a member, associate, counsel or employee of a law firm or entity with which such political party official is currently associated;

- (f) a former judge or housing judge of the Unified Court System who left office within the last two years and who is applying for appointment within the jurisdiction of prior judicial service, as defined by section 36.2(c)(5) of the Rules of the Chief Judge; or the spouse, brother/sister, parent or child of such former judge;
- (g) an attorney currently disbarred or suspended from the practice of law by any jurisdiction;
- (h) a person convicted of a felony for which no certificate of relief from civil disabilities has been received;
- (i) a person convicted of a misdemeanor for which sentence was imposed within the last five years and for which no certificate of relief from civil disabilities, or waiver by the Chief Administrator of the Courts, has been received; or
- (j) a person who has been removed from an appointment list of the Chief Administrator of the Courts for unsatisfactory performance or conduct incompatible with appointment, or is currently suspended from an appointment list of the Chief Administrator of the Courts pending a final determination on the issue of removal.

The disqualifications for disbarred or suspended attorneys (see paragraph [g], *supra*) and convicted criminals (see paragraphs [h] and [i], *supra*) apply to any appointments under section 36.1 (a), even if otherwise exempted under the rules pursuant to section 36.1 (b).

Additionally, there are three disqualifications that do not limit list enrollment, but may render an enrollee disqualified from appointment due to the circumstances of a particular case. These disqualifications are: 1) receivers or guardians, or persons associated with the law firm of a receiver or guardian, are prohibited from being appointed counsel to the receiver or guardian (§ 36.2 [c] [8]); 2) counsel to alleged incapacitated persons in Mental Hygiene Law Article 81 proceedings are prohibited from being appointed guardian, or counsel to the guardian, for an incapacitated person they have represented (§ 36.2 [c][9]); and 3) court evaluators in Mental Hygiene Law Article 81 proceedings are prohibited from being appointed guardian for an incapacitated person in a proceeding in which they served as court evaluator (§ 36.2 [c][10]). In the first and third of these disqualifications, exceptions may be made. If there is a compelling reason, such as savings to the estate of the receivership or guardianship, the receiver or guardian may be appointed counsel. Similarly, if there are extenuating circumstances, such as the unavailability of others to be appointed guardian and a familiarity and trust developed between court evaluator and incapacitated person, a court evaluator may be appointed guardian upon a written finding by the court of extenuating circumstances.

There is also a disqualification relating to judicial campaign activity. This does not prevent list enrollment, but limits appointment by a judge for whom the enrollee acted as campaign chair, coordinator, manager, treasurer or finance chair in a campaign for a judicial election that took place less than two years prior to the proposed appointment (§ 36.2 [c][4][iii]). If the candidate is a sitting judge, the disqualification also applies to a person who assumes any of the above roles during the campaign for judicial office. Included in this disqualification are the spouse, brother/sister, parent or child of the campaign official, or anyone associated with the campaign official's law firm.

4. LIMITATIONS ON APPOINTMENTS BASED UPON COMPENSATION

Subdivision (d) of section 36.2 establishes two additional disqualifications from appointment, not related to list eligibility, but based upon anticipated or previously awarded compensation. These restrictions do not limit compensation per se, but use compensation as a basis for determining availability for future appointment. There are no exceptions to the application of these limitations, unless the court determines the appointment is necessary to maintain continuity of representation of the same person or entity in further or subsequent proceedings.

(A) THE \$15,000 RULE

Section 36.2 (d)(1) prohibits appointees from receiving more than one appointment in the same calendar year (i.e., January 1 to December 31) for which compensation in excess of \$15,000 is awarded in that calendar year or anticipated to be awarded in any calendar year. Two examples illustrate the rule. 1) If appointed as attorney for an alleged incapacitated person, and compensation of, for example, \$20,000 for that appointment is awarded or anticipated to be awarded in that same year, then the appointee is precluded from receiving another appointment in that calendar year for which compensation in excess of \$15,000 is anticipated either in that calendar or in any single future calendar year. 2) If appointed as guardian, and an annual commission of, for example, \$20,000 is anticipated to be awarded in the following calendar year, the appointee is precluded from receiving another appointment in the current calendar year for which compensation in excess of \$15,000 is anticipated to be awarded either in the current calendar year or in any single future calendar year.

(B) THE \$100,000 RULE

Section 36.2 (d) (2) establishes a limitation on appointments based on an annual, aggregate amount of compensation. If compensation is awarded in an aggregate amount of more than \$100,000 during any calendar year (no matter what year the appointment was made), the appointee will be ineligible for any compensated appointments during the next calendar year. It is the year of the award of compensation, and not the year of its actual receipt, that activates the application of the rule. Like its \$15,000 counterpart, the \$100,000 rule is a limitation on appointments, and not on compensation; nothing in the \$100,000 rule prevents a court's award, or an appointee's receipt, of total compensation exceeding \$100,000 in any calendar year. Excess compensation in one calendar year simply prevents compensated appointments in the following calendar year.

5. PROCEDURE AFTER APPOINTMENT

(A) COMBINED NOTICE OF APPOINTMENT AND CERTIFICATION OF COMPLIANCE

Part 36 appointees must complete and file with the fiduciary clerk within 30 days of appointment a notice of appointment and certification of compliance (§ 36.4 [b][1]), which will be sent to the appointee by the court immediately after appointment. If the appointee cannot certify qualification for appointment in the certification of compliance, or cannot accept appointment for any other reason, the appointee must immediately notify the court (§ 36.4 [b][4]).

The notice of appointment contains the date and nature of the appointment (§ 36.4 [b][2]), and the certification of compliance certifies that the appointee is not disqualified from service and is not otherwise precluded by any limitation based on compensation (§ 36.4 [b][3][i]; see § 36.2 [d], [e]). The appointee must list all appointments received during the current calendar year (§ 36.4 [b][3][ii]), report the amount of compensation awarded for each (§ 36.4 [b][3][iii][B]), or, if not awarded, the total amount of compensation anticipated for each (§ 36.4 [b][3][iii][c][i]), and separately identify appointments for which compensation is anticipated to exceed \$15,000 in any calendar year (§ 36.4 [b][3][iii][c][ii]). The appointee must also list all appointments for which compensation was awarded in the year immediately preceding the current calendar year (§ 36.4 [b][3][iii]) and report the amount awarded for each (§ 36.4 [b][3][iii][B]). For all appointments, the name

of the appointing judge must be indicated (§ 36.4 [b][3][iii][A]).

There are two exceptions to this procedure. Although exempt from the application of Part 36 (see § 36.1 [b][3]), uncompensated appointees must still complete and file the notice of appointment section of the form (§ 36.4 [b][1]). This will allow uncompensated fiduciary activity to be recorded and appropriately recognized. The other exception applies to referees to compute the value of, and sell, real property. Although subject to the application and list process of Part 36 (see § 36.1 [a][9]), referees to compute and sell are relieved from the obligation to file the notice of appointment and certification of compliance form for appointments where total compensation is not anticipated to exceed \$750 (§ 36.4 [e][3]).

(B) APPROVAL OF COMPENSATION

Judges who approve compensation of more than \$500 are required to file a statement of approval of compensation with the Office of Court Administration pursuant to Judiciary Law § 35-a (1)(a) and 22 NYCRR Part 26. Whenever a court is requested to approve compensation in excess of \$500 for a Part 36 appointee, a statement of approval of compensation on a form promulgated by the Chief Administrator of the Courts must be submitted for signature to the approving judge. The statement must contain a confirmation signed by the fiduciary clerk that the notice of appointment and certification of compliance was filed (§ 36.4 [c][1]). No judge may approve compensation of more than \$500 without this statement and the signed confirmation of the fiduciary clerk (§ 36.4 [c][2]). Additionally, every approval of compensation in excess of \$5000 must contain the judge's written statement of the reasons for such approval (§ 36.4 [c][3]). After signing the order awarding compensation and the statement of approval of compensation, the judge must file a copy of the order and the original statement with the fiduciary clerk. The fiduciary clerk will then forward the statement of approval of compensation to the Office of Court Administration for entry of the amount of compensation in its database under the name of the appointee. This will keep the database current for periodic publication under section 36.5.

The rules cite the standard for judicial approval of compensation, viz., fair value for all services rendered that are necessary to the performance of the appointee's duties (§36.4 [c][4]). This determination remains in the sound discretion of the court and depends on the factual circumstances of each case.

Unless the court directs otherwise, fiduciary appointees may utilize supporting attorneys and staff, however, all tasks must be directly supervised by the fiduciary appointee, and all appearances and reports must be made by the appointee (§36.4[c][5]). Court examiners and attorneys for the child must adhere to the rules of their respective Appellate Divisions, and should not assume that delegation is permitted.

6. REPORTING LAW FIRM COMPENSATION

Section 36.4 (d) obligates law firms to report, in writing, to the Chief Administrator of the Courts whenever the aggregate total compensation for Part 36 appointments of law firm members, associates or employees reaches or exceeds \$50,000 in a single calendar year. The report of compensation received by law firms must be filed on form UCS-876 on or before March 31st of the following the calendar year.

The reporting of law firm compensation is for informational purposes only. Limitations based on compensation apply only to individual appointees, not firms, and the appointment and compensation of one person in a firm are only considered in certifying the eligibility of that individual for appointment and do not affect the eligibility of any other person in the firm.

7. PUBLICATION

The notice of appointment and certification of compliance, statement of approval of compensation, and report of compensation received by law firms, filed pursuant to section 36.4, are public records, and the names of appointees and of appointing judges, and the amounts of approved compensation, are subject to periodic publication by the Chief Administrator of the Courts (§36.5).



INSTRUCTIONS: APPLICATION FOR APPOINTMENT PURSUANT TO PART 36 OF THE RULES OF THE CHIEF JUDGE

Welcome to Part 36 - Fiduciary Online

After reading through the following instructions, click Proceed to Part 36 at the end of the page to continue to the Fiduciary Online system.

Part 36 of the Rules of the Chief Judge requires that the judicial appointments listed below be made from lists established by the Chief Administrator of the Courts. Lists of eligible appointees are made public on the NYS UCS website. In addition, the Chief Administrator makes public the names of all persons and entities appointed by each appointing judge and the compensation approved for each appointee.

ONLINE ACCOUNTS

To file an initial application, amend a current application, or to re-register as required every two years, you must have an online account. New York State Attorneys may access the Part 36 Fiduciary Online system using their Attorney Online Services account. If you are an attorney who does not yet have an Attorney Online Service account or not an attorney, you will be instructed on how to create the appropriate online account on the next page.

RULES

Before proceeding to the Part 36 Fiduciary Online system, all applicants **MUST** read the Part 36 Rules (22 NYCRR 36) and the Explanatory Note. You will be asked to affirm that you have read both at the end of your application.

[Part 36 Rules \(22 NYCRR 36\)](#)

[Explanatory Note](#)

CATEGORIES OF APPOINTMENT

Proof of certified training, and/or a resume, will be required as part of any new application, amendment of a current application, or a re-registration application as required every two years. Detailed information on certified training can be found in the [FAQ](#).

Certified training is required to apply for the following categories:

- **Attorney for Alleged Incapacitated Person (MHL Article 81 training)**
- **Court Evaluator (MHL Article 81 training)**
- **Guardian (MHL Article 81 training)**
- **Guardian ad Litem**
- **Receiver**
- **Supplemental Needs Trustee**
- **Attorney for the Child (privately paid), formerly Law Guardian (privately paid) ([see FAQ for special instructions](#))**
- **Court Examiner ([see FAQ for special instructions](#))**

A resume must be attached to apply for the following categories:

- **Counsel to Receiver**
- **Counsel to Guardian**
- **Accountant**
- **Auctioneer**
- **Appraiser**
- **Property Manager**
- **Real Estate Broker**
- **Referee (except special master or referee otherwise performing judicial functions in a quasi-judicial capacity)**

BACKGROUND QUESTIONNAIRE

Personal Background questions and an Affirmation will be required in the application. If you answer YES to any of the background questions, you must attach an explanation in detail, giving all relevant dates. To read through the Personal Background questions, or the Affirmation, refer to the [FAQ](#).



Proceed to Part 36 - Fiduciary Online
(click here to sign in or create an account)

UCS-870 Application for Appointment: Qualification Statements

 [Help](#)

* Required



IMPORTANT

All applicants must read Part 36 of the [Rules of the Chief Judge \(22 NYCRR\)](#), and the [Explanatory Note](#) prior to proceeding with their application.

Qualification Statements *

If you answer **Yes** to any of the statements below, you are **not** qualified to file this application for appointment pursuant to Part 36. Please check the appropriate box for each item.

- a. **I AM** a full-time or a part-time judge or housing judge of the Unified Court System of the State of New York or a relative of, or related by marriage to, a full-time or a part-time judge or housing judge of the Unified Court System within the fourth degree of relationship (Town and Village judges are judges of the Unified Court System); ☐ Yes ☐ No
- b. **I AM** a full-time or part-time employee of the Unified Court System; ☐ Yes ☐ No
- c. **I AM** the spouse, brother/sister, parent or child of a full-time or part-time employee of the Unified Court System who holds a position at or above salary grade JG24, or its equivalent: 1) employed in a judicial district in which I am applying for appointment or 2) with statewide responsibilities; ☐ Yes ☐ No
- d. **I AM** a person who currently serves, or has served within the last two years, as chair, executive director, or the equivalent, of a state or county political party (including any person or persons who, in counties of any size or population, possess or perform any of the titles, powers or duties set forth in Public Officers Law §73[1][k]); the spouse, brother/sister, parent or child of such political party official; or a member, associate, counsel or employee of a law firm or entity with which such political party official is currently associated; ☐ Yes ☐ No
- e. **I AM** a former judge or housing judge of the Unified Court System who left office within the last two years and who is applying for appointment within the jurisdiction of prior judicial service, as defined by section 36.2(c)(5) of the Rules of the Chief Judge, or the spouse, brother/sister, parent or child of such former judge; ☐ Yes ☐ No
- f. **I AM** an attorney currently disbarred or suspended from the practice of law by any jurisdiction; ☐ Yes ☐ No
- g. **I AM** a person convicted of a felony for which no certificate of relief from civil disabilities has been received; ☐ Yes ☐ No
- h. **I AM** a person convicted of a misdemeanor for which sentence was imposed within the last five years and for which no certificate of relief from civil disabilities, or waiver by the Chief Administrator of the Courts, has been received; ☐ Yes ☐ No
- i. **I AM** a person who has been removed from an appointment list of the Chief Administrator of the Courts for unsatisfactory performance or conduct incompatible with appointment, or is currently suspended from an appointment list of the Chief Administrator of the Courts pending a final determination on the issue of removal, or resigned from the appointment list in its entirety pursuant to an agreement with the Inspector General of the Courts; ☐ Yes ☐ No

UCS-870 Application for Appointment: Personal Information

[? Help](#)

* Required

Current Name

First: *

Middle:

Last: *

Suffix:

Prior Names

First:

Middle:

Last:

Suffix:

First:

Middle:

Last:

Suffix:

Social Security Number

Social Security Numbers are required in order to administer the disbursement of moneys that may constitute taxable income. 42 U.S.C. §405 (c)(2)(C)(i).

SSN: *

Confirm SSN: *

Business Information

Business Name:

Street: *

City/Town/Village: *

State: *

Zip: *

Country: (if not USA)

Phone Number: (***-***-****) *

Email Address: *

Self Employed:

☐ Yes ☐ No

Years Employed: (nearest whole number)

Contact Information (email & address to which all correspondences are sent)

☐ Use your Business Information as your Contact Information

Business Name:

Street: *

City/Town/Village: *

State: *

Zip: *

Country: (if not USA)

Phone Number: (***-***-****) *

Email Address: *

Categories of Appointment (certified training **IS** required, resume **IS NOT** required)

Your application will **NOT** be processed unless training has been completed. Certified training must be completed within two (2) years before the date the application is submitted.

☐ **ATTORNEY FOR ALLEGED INCAPACITATED PERSON** (MHL Article 81 training)

Attorneys applying for this category must be current in their registration to practice law in New York State.

Year Training Completed: *

Full Name of Training Provider: *

Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10☐ **COURT EVALUATOR** (MHL Article 81 training)

Year Training Completed: *

Full Name of Training Provider: *

Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10☐ **GUARDIAN** (MHL Article 81 training)

Year Training Completed: *

Full Name of Training Provider: *

Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10☐ **GUARDIAN AD LITEM**

Attorneys applying for this category must be current in their registration to practice law in New York State.

Year Training Completed: *

Full Name of Training Provider: *

Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10☐ **RECEIVER**

Year Training Completed: *

Full Name of Training Provider: *

Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10☐ **SUPPLEMENTAL NEEDS TRUSTEE**

Year Training Completed: *

Full Name of Training Provider: *

Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10☐ **ATTORNEY FOR THE CHILD (PRIVATELY PAID)** (formerly Law Guardian - Privately Paid)

Approval for placement on the eligibility list must be obtained from each department of the Appellate Division in which you wish to accept appointments.

Attorneys applying for this category must be current in their registration to practice law in New York State.

Year Training Completed: *

Full Name of Training Provider: *

Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10☐ **COURT EXAMINER**

Approval for placement on the eligibility list must be obtained from each department of the Appellate Division in which you wish to accept appointments.

Year Training Completed: *

Full Name of Training Provider: *

Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10**Categories of Appointment** (certified training **IS NOT** required, resume **IS** required)☐ **COUNSEL TO RECEIVER**

Attorneys applying for this category must be current in their registration to practice law in New York State.

Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10☐ **COUNSEL TO GUARDIAN**

Attorneys applying for this category must be current in their registration to practice law in New York State.

Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10☐ **ACCOUNTANT**Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10☐ **AUCTIONEER**Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10☐ **APPRAISER**Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10☐ **PROPERTY MANAGER**Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10☐ **REAL ESTATE BROKER**Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10☐ **REFEREE**

Except special master or referee otherwise performing judicial functions in a quasi-judicial capacity.

Number of Appointments Received in the Last 10 Years: * ☐ None ☐ 1-10 ☐ More Than 10

UCS-870 Application for Appointment: Qualifications

[? Help](#)

* Required

Counties Available for Appointment

1.

Add County

Foreign Languages Spoken Fluently

1.

Please specify other...

[Remove](#)

Add Foreign Language

Academic Degrees Awarded

1.

Please specify other...

[Remove](#)

Add Academic Degree

Attorneys Admitted to Practice Outside New York State

1.

Jurisdiction of Admission: *

Year of Admission: *

Active Status: *

[Remove](#)

☐ Yes ☐ No

Add Other Jurisdictions

Areas of Special Interest of Attorneys Admitted to Practice in New York or Other Jurisdictions

1.

[Remove](#)

Please specify other...

Add Special Interest

Professions or Occupations Other Than Attorney

1.

Please specify other...

[Remove](#)

Licensing Entity:

Year License Issued:

Active Status: *

☐ Yes ☐ No

Add Profession/Occupation

UCS-870 Application for Appointment: Qualifications

 [Help](#)

* Required

Counties Available for Appointment

1.

Add County

Foreign Languages Spoken Fluently

No Foreign Languages Entered

Add Foreign Language

Academic Degrees Awarded

No Academic Degrees Entered

Add Academic Degree

Attorneys Admitted to Practice Outside New York State

No Admissions Outside New York Entered

Add Other Jurisdictions

Areas of Special Interest of Attorneys Admitted to Practice in New York or Other Jurisdictions

No Special Interests Entered

Add Special Interest

Professions or Occupations Other Than Attorney

No Professions or Occupations Entered

Add Profession/Occupation

UCS-870 Application for Appointment: Background Information

[? Help](#)

* Required

Personal Background

Have you ever been, or are proceedings pending in which you may be... *

- | | |
|--|--|
| 1. convicted of a crime or offense, other than a traffic infraction (include military proceedings)? | <input type="radio"/> Yes <input type="radio"/> No |
| 2. denied a professional or occupational license, or been censured by a licensing authority or had an occupational or professional license revoked or suspended? | <input type="radio"/> Yes <input type="radio"/> No |
| 3. held in contempt of court? | <input type="radio"/> Yes <input type="radio"/> No |
| 4. found civilly liable in an action involving fraud, misrepresentation, theft or conversion? | <input type="radio"/> Yes <input type="radio"/> No |
| 5. discharged in bankruptcy? | <input type="radio"/> Yes <input type="radio"/> No |
| 6. found liable for unpaid money judgments, liens or judgments of foreclosure? | <input type="radio"/> Yes <input type="radio"/> No |
| 7. in default in the performance or discharge of any duty or obligation imposed by a judgment, decree, order or directive of any court or governmental agency? | <input type="radio"/> Yes <input type="radio"/> No |
| 8. removed as a fiduciary by a court of competent jurisdiction for misconduct? | <input type="radio"/> Yes <input type="radio"/> No |
| 9. in forfeiture of a bond? | <input type="radio"/> Yes <input type="radio"/> No |
| 10. found to have committed an ethical violation as a member of a judicial, executive or legislative branch of government? | <input type="radio"/> Yes <input type="radio"/> No |

Explanatory Notes

If you answered **YES** to any question, you **MUST** submit an explanation of your answer in detail, giving all relevant dates.

Explanations can be entered in the text area below or attached as a file on the next page.

UCS-870 Application for Appointment: Attachments



[Help](#)

* Required



ATTACHMENT REQUIREMENTS

- A resume, of no more than four (4) pages, is **required** for your application for Counsel To Guardian. The resume should include information of government-issued licenses and certificates issued by professional schools or organizations.
- Explanatory notes are **required** for background questions answered **YES**. You may either upload an attachment containing your explanatory notes, or enter them in the text area on the Background Information page.

22

Attachments (accepted files types: PDF, JPG, JPEG, BMP, PNG, TIF, TIFF)

Browse...

No files selected.

Attach

No Uploaded Attachments

UCS-872-Effective 10/2011

NOA #: ()

**NOTICE OF APPOINTMENT AND
CERTIFICATION OF COMPLIANCE**
(Pursuant to 22 NYCRR § 36.4)

Date of Appointment:

☒ Non-List**PART A****NOTICE OF APPOINTMENT****1. Appointee's Name and Fiduciary Identification Number:**

FID #

FIRST

MIDDLE

LAST

SUFFIX(Sr., Jr., III)

2. Address/Phone/Fax/Email:

BUSINESS NAME (IF ANY)

STREET 1

CITY/TOWN/VILLAGE

STATE

ZIP

ZIP+4

STREET 2

COUNTRY

PHONE

FAX

E-MAIL

3. Type of Appointment:**4. Index/File No.:**

NUMBER

YEAR

5. Court:**6. County:****7. Title of Action/Proceeding:****8. Case Type:****9. Appointing Judge:**

FIRST

MIDDLE

LAST

SUFFIX(Sr., Jr., III)

UCS-872-Effective 10/2011

NOA #: ()

INSTRUCTIONS TO APPOINTEE

- Review the information in items 1 and 2 of Part A(Notice of Appointment) for accuracy; circle errors and enter corrections on form.
- If Fiduciary Identification Number does not appear in Part A, an appointed individual must enter Social Security Number; an appointed entity must enter Tax Identification Number:

SS/TID# _ _ _ - _ _ - _ _ _

(Social Security Numbers are required in order to administer the disbursement of moneys that may constitute taxable income. 42 U.S.C. § 405 (c)(2)(C)(i). Social Security/Tax Identification Number will not be made public.)

- Appointment WITH compensation: Complete Part B (Certification of Compliance); date and sign item 5 of Part B.

Appointment WITHOUT compensation: do NOT complete Part B (Certification of Compliance); date and sign here:

Date : _____ Signature : _____

- Return completed form as soon as possible, but no later than 30 days after appointment, to the Fiduciary Clerk for the court of appointment

IF UNABLE TO ACCEPT APPOINTMENT FOR ANY REASON, NOTIFY FIDUCIARY CLERK IMMEDIATELY.

PART B**CERTIFICATION OF COMPLIANCE**

1. Appointment in Part A: If the compensation anticipated to be awarded in any single calendar year (current or future) is \$15,000 or more, mark "X" in the box in Column E.

A <u>Index/File No.</u> (Number/year)	B <u>Court</u>	C <u>County</u>	D <u>Appointing Judge</u>	E <u>Anticipated Compensation of</u> <u>\$15,000 or more</u>
				<input type="checkbox"/>

UCS-872-Effective 10/2011

NOA #: ()

2. Part 36 appointments RECEIVED during CURRENT calendar year: **2017**

a) Review information for current calendar year appointments provided below from the records of the Office of Court Administration; circle errors and enter corrections on this form. b) In the blank spaces below, provide information for all current calendar year appointments not pre-recorded on this form. c) Mark "X" in the box in Column E for any appointment (including pre-recorded appointments) for which compensation of \$15,000 or more is anticipated to be awarded in any single calendar year (current or future). Include compensation already awarded in calculating anticipated compensation for the current calendar year.

A <u>Index/File No.</u> (Number/year)	B <u>Court</u>	C <u>County</u>	D <u>Appointing Judge</u>	E <u>Anticipated Compensation of \$15,000 or more</u>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
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				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

NOA #: ()

a) Review information for prior calendar year compensation provided below from the records of the Office of Court Administration; circle errors and enter corrections on this form. b) In the blank spaces below, provide information for all appointments not pre-recorded on this form for which compensation was awarded during the prior calendar year. c) Total all amounts of compensation entered in Column E (including pre-recorded amounts) in the space provided at the bottom of the column.

[illegible]

Total compensation awarded during prior calendar year 2016 from Column E: \$_____

UCS-872-Effective 10/2011

NOA #: ()

4. **I certify that I am qualified** to accept the appointment in Part A of this form pursuant to section 36.2(c) of the Rules of the Chief Judge (22 NYCRR) because all the following are true. **Please check each box:**

- a. I AM NOT a full-time or a part-time judge or housing judge of the Unified Court System of the State of New York or a relative of, or related by marriage to, a full-time or a part-time judge or housing judge of the Unified Court System within the fourth degree of relationship (Town and Village judges are judges of the Unified Court System); ☐ **TRUE**
- b. I AM NOT a full-time or part-time employee of the Unified Court System; ☐ **TRUE**
- c. I AM NOT the spouse, brother/sister, parent or child of a full-time or part-time employee of the Unified Court System who holds a position at or above salary grade JG24, or its equivalent: 1) employed in a judicial district in which I am applying for appointment or 2) with statewide responsibilities; ☐ **TRUE**
- d. I AM NOT a person who currently serves, or has served within the last two years, as chair, executive director, or their equivalent, of a state or county political party (including any person or persons who, in counties of any size or population, possess or perform any of the titles, powers or duties set forth in Public Officers Law § 73 [1][k]); the spouse, brother/sister, parent or child of such political party official; or a member, associate, counsel or employee of any law firm or entity with which such political party official is currently associated; ☐ **TRUE**
- e. I AM NOT a former judge or housing judge of the Unified Court System who left office within the last two years and who served within the jurisdiction of the court making the appointment in Part A of this form, as defined by section 36.2(c)(5) of the Rules of the Chief Judge, or the spouse, brother/sister, parent or child of such former judge; ☐ **TRUE**
- f. I AM NOT a person who is serving or who has served as a campaign chair, coordinator, manager, treasurer or finance chair for the campaign of the judge making the appointment in Part A of this form, or the spouse, brother/sister, parent or child of that person, or anyone associated with the law firm of such person, within two years following the judicial election; ☐ **TRUE**
- g. I AM NOT a judicial hearing officer pursuant to Part 122 of the Rules of the Chief Administrator serving on a judicial hearing officer panel for the court making the appointment in Part A of this form; ☐ **TRUE**
- h. I AM NOT an attorney currently disbarred or suspended from the practice of law by any jurisdiction; ☐ **TRUE**
- i. I AM NOT a person convicted of a felony for which no certificate of relief from civil disabilities has been received; ☐ **TRUE**
- j. I AM NOT a person convicted of a misdemeanor for which sentence was imposed within the last five years and for which no certificate of relief from civil disabilities, or waiver by the Chief Administrator of the Courts, has been received; ☐ **TRUE**
- k. I AM NOT a person who has been removed from an appointment list of the Chief Administrator of the Courts for unsatisfactory performance or conduct incompatible with appointment, or is currently suspended from an appointment list of the Chief Administrator of the Courts pending a final determination on the issue of removal, or resigned from the appointment list in its entirety pursuant to an agreement with the Inspector General of the Courts; ☐ **TRUE**

I certify that I am qualified to accept the appointment in Part A of this form pursuant to section 36.2(d) ("Limitations on appointments based on compensation") of the Rules of the Chief Judge (22 NYCRR) ☐ **YES** ☐ **NO**

If you answered NO to the above, you are not qualified for the appointment pursuant to Part 36.

Date: _____ Signature: _____

Fiduciary Clerk should submit all completed statements to:

Appointment Processing Unit, 25 Beaver Street, Room 840, New York, NY 10004

(Mark "X" in appropriate boxes and provide all requested information.)

SUPREME COURT OF THE STATE OF NEW YORK
County: _____ COUNTY
-----X

EX PARTE APPLICATION
for
APPROVAL OF SECONDARY APPOINTMENT
(Pursuant to 22 NYCRR § 36.1(a)(10))

Title of Action

INDEX NO. _____ / _____
No. Yr.

-----X

APPROVAL of the following SECONDARY APPOINTEE is respectfully requested (attach one page resume):

Name: _____

Address: _____

Phone/FAX/Email _____

The secondary appointee will serve as: ☐ COUNSEL ☐ ACCOUNTANT ☐ APPRAISER
☐ AUCTIONEER ☐ REAL ESTATE BROKER ☐ PROPERTY MANAGER.

The secondary appointee ☐ is on the list established by the Chief Administrator of the Courts for the category of appointment requested.
☐ is NOT on the list established by the Chief Administrator of the Courts for the category of appointment requested, but is otherwise qualified for appointment pursuant to Part 36 of the Rules of the Chief Judge.

The reasons for the request are as follows (If a NON-LIST appointment is requested, include explanation of good cause for the appointment; if the Guardian or Receiver requests that he/she, or a person associated with his/her law firm, be appointed counsel, include an explanation of the compelling reason for the appointment.): _____

DATED: _____

Signature: _____

Print Name: _____

Sworn to before me this _____ day
of _____, 200__.

☐ GUARDIAN ☐ RECEIVER

Notary Public

Address: _____

Phone _____
FAX _____
Email _____

(Mark "X" in appropriate boxes and provide all requested information.)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X

Title of Action

-----X

DECISION AND ORDER
APPROVING
EX PARTE APPLICATION
for
SECONDARY APPOINTMENT
(Pursuant to 22 NYCRR § 36.1(a)(10))

INDEX NO. _____ / _____
No. Yr.

Name of Judge: _____

Upon ex parte application of _____, as
Name

☐ GUARDIAN ☐ RECEIVER, dated _____, for approval of a Secondary Appointment,
it is determined that

1. A Secondary Appointment is necessary and

Name: _____

Fiduciary ID: _____

Address: _____

Phone/FAX/Email _____

is appropriate for appointment as: ☐ COUNSEL ☐ ACCOUNTANT ☐ APPRAISER

☐ AUCTIONEER ☐ REAL ESTATE BROKER ☐ PROPERTY MANAGER;

2. (Choose (a) or (b) by marking "X" in appropriate box.)

a. ☐ The appointee is on the list established by the Chief Administrator of the Courts for the category of appointment requested;

OR

b. ☐ The appointee is NOT on the list established by the Chief Administrator of the Courts for the category of appointment requested, but is otherwise qualified for appointment pursuant to Part 36 of the Rules of the Chief Judge, and the Court is filing with the fiduciary clerk form UCS 872.5 (STATEMENT OF REASONS FOR NON-LIST APPOINTMENT (§ 36.2(b)(2)));

3. (If this is an appointment of Guardian or Receiver, or person associated with his/her law firm, as COUNSEL, mark "X" in following box and provide compelling reason.)

☐ The compelling reason for appointment of the Guardian or Receiver, or a person associated with his/her law firm, as counsel is as follows: _____

Title of Action: _____ Index No. _____ / _____
No. Yr.

ACCORDINGLY, it is

ORDERED that this application for approval of a secondary appointment as

☐ COUNSEL ☐ ACCOUNTANT ☐ APPRAISER ☐ AUCTIONEER
☐ REAL ESTATE BROKER ☐ PROPERTY MANAGER is GRANTED.

ORDERED that _____ the secondary appointee shall immediately
Name of Secondary Appointee
file form UCS 872;

ORDERED that compensation for the secondary appointee is subject to PRIOR court approval upon submission of an application showing experience/expertise, services rendered, time expended, prevailing rate in the community, rate charged, challenges presented and results achieved;

ORDERED that the applicant shall serve a copy of this order upon the secondary appointee and all persons entitled to notice in this action/proceeding by certified mail.

DATED: _____

Signature: _____

File a signed copy of this order with the Fiduciary Clerk



REPORT OF COMPENSATION RECEIVED BY LAW FIRMS FOR APPOINTMENTS PURSUANT TO PART 36 OF THE RULES OF THE CHIEF JUDGE (§ 36.4(c))

(Complete if total compensation from appointment of law firm's members, associates and employees pursuant to Part 36 of the Rules of the Chief Judge exceeds \$50,000 in a single calendar year (January 1 to December 31). File by March 31st following the calendar year reported.)

1. Calendar Year Reported:

 Year

2. Law Firm Tax ID Number

 TID# -

3. Name of Law Firm:

4. Address/Phone/FAX/ E-mail:

Street	City/Town/Village	State	Zip
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Phone	Fax	E-Mail	
<input type="text"/>	<input type="text"/>	<input type="text"/>	

5. List the names and Fiduciary Identification Numbers of the members, associates and employees of the law firm for whom compensation from appointments has been approved during the calendar year reported, and enter for each the total compensation approved during that year. For a member, associate or employee with no Fiduciary Identification Number (FID#), enter "Non-List" and his/her Social Security Number in space provided for FID#, (attach additional sheets as needed).

NAME	FIDUCIARY IDENTIFICATION NUMBER	TOTAL APPROVED COMPENSATION IN CALENDAR YEAR REPORTED
		\$
		\$
		\$
		\$
		\$
		\$
		\$

6. Total of all compensation entered in item 5:

Date: _____

Signature: _____

Print Name: _____

Title: _____

(e.g., managing attorney, member)

TOPIC II

Article 81 Materials

With Contributions from John Newman, Esq, Debra V. Isler, Esq., Robert A. Isler, Esq., Tammy Rose Lawlor, Esq., & Lisa M. Petrocelli, Esq.

THE LEGAL DUTIES AND RESPONSIBILITIES OF THE COURT EVALUATOR

John Newman, Esq.

I. Court Evaluator is an independent investigator

A. The appointment of a Court Evaluator in an Article 81 proceeding is statutorily mandated. MHL §81.09.

1. Outgrowth of Guardian ad Litem appointments in former conservator (MHL Article 77) and committee (MHL Article 78) proceedings. Role of Guardian ad Litem was often blurred between advocate for the ward versus advisor to the court as to ward's best interests.

2. The appointment of a Court Evaluator is mandated in every proceeding for the appointment of a guardian pursuant to MHL Article 81.

a. Exception - The court may dispense with the appointment of a Court Evaluator if the court appoints counsel for the alleged incapacitated person pursuant to MHL §81.10. (See, MHL §81.10(g))

B. The Court Evaluator serves as the court's witness to assist the court in making determinations regarding: (i) the alleged incapacitated person's capacity; (ii) whether the alleged incapacitated person has any alternate resources and the reliability of same; (iii) if a guardian is to be appointed, who that guardian should be; and (iv) the extent of the powers to be granted to the guardian.

1. The Court Evaluator serves as the "eyes and ears" of the court to assist the court in making a determination in the proceeding.

2. The Court Evaluator does not represent the alleged incapacitated person as his/her attorney in the proceeding and, therefore, is not an advocate for the positions advanced by the alleged incapacitated person.

JOHN NEWMAN, ESQ.
177fl J•, uyt mtHCHO TIIHNPII\1.SUJ'E2, HUNTINC'ION, NJ<w YORI< 11711
(031J480-7802

3. The Court Evaluator is chosen from a list maintained by the Office of Court Administration ("OCA") and provided to the Judges of each County. The Court Evaluator position can be filled by lawyers, doctors, accountants, social workers, nurses, all of whom shall first be certified by OCA as a Court Evaluator.

II. MHL §81.09(c) - Statutory Guidance for Duties and Responsibilities

A. A guideline for the duties of the Court Evaluator are enumerated at MHL §81.09(c).

1. Meet, interview and consult with the alleged incapacitated person. MHL §81.09(c)(1).

- a. First hand observations of the alleged incapacitated person, his/her physical condition, ability to comprehend his/her situation and circumstances and ability to understand the proceedings are an essential element of the Court Evaluator's role.

- b. It is often appropriate and necessary to meet with the alleged incapacitated person more than one time to gauge his/her abilities, functional limitations and appreciation of the facts and circumstances alleged in the petition.

2. Explain the proceedings to the alleged incapacitated person.

- a. Determine if the alleged incapacitated person understands the English language and explain to the alleged incapacitated person, in a manner which the alleged incapacitated person can reasonably understand, the nature and possible consequences of the proceeding, general powers and duties of a guardian, available resources and the rights to which the person is entitled, including the right to counsel. MHL §81.09(c)(2).

- b. Although Article 81 always required the Court Evaluator to explain the proceeding in terms that the alleged incapacitated person could reasonably understand, the 2004 statutory amendments specifically require that the Court Evaluator

determine whether the alleged incapacitated person understands English, or only another language.

c. Every alleged incapacitated person has significant legal rights, many of which are detailed in the legend of the Order to Show Cause (see, MHL §81.07(d) and §81.11(b)). It is the Court Evaluator's responsibility to explain these legal rights to the alleged incapacitated person.

i. Right to attend and participate in the Hearing;

ii. Right to demand a trial by jury;

iii. Right to object to the disclosure of medical, psychological or psychiatric records;

iv. Right to a lawyer - either self-retained or appointed by the court;

v. Right to present evidence;

vi. Right to call witnesses, including expert witnesses, and cross-examine witnesses called by petitioner and/or the court.

3. Determine if the alleged incapacitated person wants to retain counsel or if factors exist that would require the appointment of counsel (see MHL §81.10). MHL §81.09(c)(3).

a. If the alleged incapacitated person wants an attorney, objects to the proceeding, or in some other way causes the Court Evaluator to consider that the alleged incapacitated person should have counsel, STOP your interview of the alleged incapacitated person.

b. If the alleged incapacitated person requests counsel or should have counsel appointed for him/her, any further "investigation" by the Court Evaluator of the alleged incapacitated person will be subject to scrutiny by the Court and counsel at the hearing.

4. Interview the Petitioner. MHL §81.09(c)(4).

a. In the event the petitioner is a facility or government agency, the Court Evaluator should interview a representative of the petitioner who has familiarity with the alleged incapacitated person's condition, affairs and situation.

b. The petitioner's interview must go beyond simply re-hashing the allegations set forth in the Petition.

c. It is appropriate if not necessary to advise Petitioner's attorney of the time and place of the interview with petitioner. Petitioner's attorney has the right to be present for the interview.

d. As a general rule, the Court Evaluator should interview all persons named in the petition as "Interested Parties" and any other persons subsequently identified as "Interested Parties" through the Court Evaluator's investigation.

e. If the petitioner seeks to be appointed as guardian, the Court Evaluator should thoroughly explore petitioner's qualifications to serve as guardian.

5. Investigate and make a written report to the Court. MHL §81.09(c)(5).

a. The report shall be written. It may be admitted into evidence at the Hearing if the Court Evaluator testifies and is subject to cross-examination (see, MHL §81.12(b)).

b. The report shall reflect the Court Evaluator's personal observations about the alleged incapacitated person's conditions, affairs and situation. Included in the report should be information responsive to the following seventeen (17) questions:

i. Does the person alleged to be incapacitated agree to the appointment of the proposed guardian and to the powers proposed for the guardian;

- ii. Does the person wish legal counsel of his or her own choice to be appointed or is the appointment of counsel in accordance with MHL §81.10 otherwise appropriate;
- m. Can the person alleged to be incapacitated come to the courthouse for the hearing;
- iv. If the person alleged to be incapacitated cannot come to the courthouse, is the person completely unable to participate in the hearing;
- v. If the person alleged to be incapacitated cannot come to the courthouse, would any meaningful participation result from the person's presence at the hearing;
- vi. Are available resources sufficient and reliable to provide for personal needs or property management without the appointment of a guardian;
- vii. How is the person alleged to be incapacitated functioning with respect to the activities of daily living and what is the prognosis and reversibility of any physical and mental disabilities, alcoholism or substance dependence? The response to this question shall be based on the evaluator's own assessment of the person alleged to be incapacitated to the extent possible and where necessary, on the examination of assessments by third parties, including records of medical, psychological and/or psychiatric examinations obtained pursuant to MHL §81.09(d). As part of this review, the court evaluator shall consider the diagnostic and assessment procedures used to determine the prognosis and reversibility of any disability and the necessity, efficacy, and dose of each prescribed medication;
- vm. What is the person's understanding and appreciation of the nature and consequences of any inability to manage the activities of daily living;
- ix. What is the approximate value and nature of the financial resources of the person alleged to be incapacitated;

x. What are the person's preferences, wishes, and values with regard to managing the activities of daily living;

xi. Has the person alleged to be incapacitated made any appointment or delegation pursuant to §§ 5-1501, 5-1505, or 5-1506 of the General Obligations Law (Powers of Attorney), §§ 2965 or 2981 of the Public Health Law (Health Care Proxies), or a Living Will;

xii. What would be the least restrictive form of intervention consistent with the person's functional level and the powers proposed for the guardian;

xm, What assistance is necessary for those who are financially dependent upon the person alleged to be incapacitated;

xiv. Is the choice of proposed guardian appropriate, including a guardian nominated by the allegedly incapacitated person pursuant to MHL § 81.17 or § 81.19(c); and what steps has the proposed guardian taken or does the proposed guardian intend to take to identify and meet the current and emerging needs of the person alleged to be incapacitated unless that information has been provided to the court by the local department of social services when the proposed guardian is a community guardian program operating pursuant to the provisions of Title III, Article 9-B of the Social Services Law;

xv. What potential conflicts of interest, if any, exist between or among family members and/or other interested parties regarding the proposed guardian or the proposed relief;

xvi. What potential conflicts of interest, if any, exist involving the person alleged to be incapacitated, the petitioner, and the proposed guardian; and

xvii. Are there any additional persons who should be given notice and an opportunity to be heard.

c. In the event the Court Evaluator has taken any steps to preserve property of the alleged incapacitated person during the pendency of the proceeding pursuant to MHL § 81.09(e),

the Court Evaluator's report and recommendations must also include information pertaining to same.

6. Interview and/or consult with professionals having specialized knowledge in the area of the person's alleged incapacity including but not limited to mental retardation, developmental disabilities, alcohol and substance abuse, and geriatrics. MHL §81.09(c)(6).

a. The Court Evaluator must educate himself/herself regarding the particulars of the alleged incapacitated person's alleged incapacities so as to be in a position to properly assess the needs of that person and the nature and extent of the powers that may be recommended for the Guardian.

7. Retain an independent medical expert where the court finds it is appropriate. MHL §81.09(c)(7).

a. Application to the Court must be made and the Court must determine that an independent medical examination is appropriate for the proceeding.

i. Query: what does "appropriate" mean??

8. Conduct any other investigations or make recommendations with respect to other subjects as the Court deems appropriate. MHL §81.09(c)(8).

a. Although ancillary issues may arise during the investigation which may impact the alleged incapacitated person, the issues to be addressed at the hearing are relatively simple: (i) is a guardian necessary; (ii) is there incapacity or consent; (iii) if yes to (i) and (ii), then who should be appointed as guardian.

9. Attend all court proceedings and conferences. MHL §81.09(c)(9).

B. Other Considerations - Procedural Issues

1. The Court Evaluator should review the petition, and based on his/her investigation, make a recommendation as to the following:

a. Whether the Comt has obtained personal jurisdiction over all necessary parties;

i. The petition may not identify all necessary parties and therefore, not all necessary parties may have received proper notice (see, MHL §81.07(g)).

b. Whether the Court has proper subject matter jurisdiction over the proceeding (MHL §81.02); and

c. Whether the venue of the proceeding is proper (MHL §81.05).

III. Inspection of the Alleged Incapacitated Person's Medical Records - MHL §81.09(d)

A. Records subject to privilege.

1. An alleged incapacitated person's medical records, including psychological, psychiatric and/or social work records, are subject to the privilege set forth at CPLR §§4504, 4507 and 4508 and, therefore, the alleged incapacitated person has the right to object to disclosure of such records.

2. Notwithstanding the statutory privileges, the Comt Evaluator may apply to the court for permission to inspect such medical records of the alleged incapacitated person. Upon application, the Court must determine that "the records are likely to contain information which will assist the Court Evaluator in completing his or her report to the Court." MHL §81.09(d).

FORMS: Form 1 - Sample Affidavit in Support of application to inspect medical records of the alleged incapacitated person.

Form 2 - Sample Order Allowing Inspection of Medical Records

B. Medical records not a necessity.

1. Nothing in the statute requires medical testimony in a guardianship proceeding. (See, Matter of Harriet R., 224 AD2d 625, 639 NYS3d 390 (2nd Dept., 1996), *appeal denied* 88 NY 2d 805.)

a. The 2004 statutory amendments to MHL Article 81 specifically state that "the court shall not require that supporting papers [to the Order to Show Cause] contain medical information." (MHL §81.07(b)(3).)

2. The appointment of a guardian pursuant to MHL Article 81 must be based on a "functional assessment" of the alleged incapacitated person. Although the medical history and medical prognosis of the alleged incapacitated person may be one component in assessing one's potential need for the assistance of a guardian, the thrust of Article 81 is not one of medical diagnoses, but one of how well, or how poorly, an individual functions.

3. A review of an alleged incapacitated person's medical records should not be the first step in the Court Evaluator's investigation.

a. Medical records may support the allegations of incapacity and provide an identifiable basis for the allegation, but do not necessarily support a finding that there is a need for the appointment of a guardian. The appointment of a guardian must be based on the alleged incapacitated person's functional limitations, not medical diagnoses alone.

4. Assertion of the physician-patient privilege by the alleged incapacitated person may prevent medical records and/or medical testimony from being used as evidence at the Hearing.

a. Although the rules of evidence may be waived by the Court for good cause shown, they may not be waived where the alleged incapacitated person contests the proceeding. (Matter of Rosa B.-S., 767 NYS2d 33 (2nd Dept., 2003), citing Matter of Janczak, 167 Misc. 2d 776, 771, 634 NYS2d 1020 (1995).)

b. The physician-patient privilege is not waived "unless he or she [the alleged incapacitated person] has affirmatively placed his/her medical condition in issue." Matter of Rosa B.-S., 767 NYS2d 33 (2nd Dept., 2003)

c. The testimony of an alleged incapacitated person's treating physician will be subject to the physician-patient privilege and objectionable at a hearing. However, the testimony of a non-treating physician may be admissible. Matter of Marie H., 25 AD3d 704, 811 NYS2d 708 (2nd Dept., 2006).

IV. Investigation of Financial Affairs of the Alleged Incapacitated Person

A. The Court Evaluator is obligated to investigate and report to the Court on the nature and extent of the alleged incapacitated person's financial affairs: assets, income and liabilities. The Court Evaluator cannot rely solely on the information presented in the petition.

1. Assets - real property, stocks and bonds, business interests (corporate, LLC, partnerships), bank accounts, retirement accounts (e.g. IRA), cash, personal property (e.g. jewelry, antiques).

a. Real Property

i. Review copies of property deeds - obtain a "last deed of record" search if necessary (in NYC, consult ACRIS).

ii. Confirm that the petitioner has filed a Notice of Pendency against the property (see, MHL §81.24).

iii. Visit the property even if the alleged incapacitated person is not currently residing at the property to determine: the condition of the property; if any measures need to be taken to secure the property or to protect it from waste; if there are tenants or squatters.

b. Securities and Deposit Accounts

i. Conform titles and all balances of accounts listed in the petition by, writing to the financial institutions listed in the petition.

FORM: Form 3 - Sample Letter to Bank

ii. Contact other banks in the alleged incapacitated person's residential area to determine if other accounts may exist.

iii. Inquire about any recent/unusual activity on the accounts.

iv. Inquire of banks as to whether the alleged incapacitated person maintains a safe deposit box at the bank.

c. Business Interests

i. If the alleged incapacitated person owns an interest in an ongoing business (corporation, LLC, partnership), it may be necessary for the Court Evaluator to obtain rule Order from the Court to secure and protect the business interest or for the appointment of a Temporary Guardian to operate and/or manage the business.

d. Personal Property

i. The Court Evaluator has the authority to preserve and protect property of the alleged incapacitated person that may be subject to waste, misappropriation or loss. See, MHL §81.09(e). Example: take possession of cash found in apartment.

e. Trusts

i. If the alleged incapacitated person is the beneficiary of a trust agreement, it may obviate the need for a guardian.

f. Income Tax Returns

i. Review of the alleged incapacitated person's recent income tax returns may yield a wealth of information - sources of income, identity of assets.

2. Income

a. Confirm the sources and amounts of monthly income.

b. Review recent bank statements or transcripts, if available, to confirm deposits of income or to identify other sources of income.

c. Review recent income tax returns.

3. Liabilities, Debts and Outstanding Obligations

a. Identify regular and recurring bills/expenses and the existence of any overdue obligations.

b. It may be necessary to send letters to creditors advising of the pending guardianship proceeding and/or obtain from the Court a temporary restraining order to keep creditors from foreclosing or otherwise taking action to obtain or enforce a judgment.

V. Determine the Existence of Advance Directives

A. Advance Directives - Health Care Proxy, Living Will, Power of Attorney, Trusts

1. The advance directives may reflect the alleged incapacitated person's preferences and wishes for care and treatment and selection of agents.

2. The alleged incapacitated person's agents/fiduciaries must receive notice of the guardianship proceedings.

3. The existence of advance directives may obviate the need for some or all of the requested powers and may completely eliminate the need for the appointment of a guardian.

B. Last Will and Testament

1. May be a document that should be "safeguarded" by Court Evaluator (see, MHL §81.09(e)).

2. Effective July 7, 2008, the Comi cannot invalidate the Last Will of an incapacitated person. MHL §81.29(d).

i. Query: Can the Court make findings of fact relative to the alleged incapacitated person's capacity which might impact on a future will contest ?

VI. **Report**

A. Form 4 Sample Report

JOHN NEWMAN, ESQ., is an Elder Law attorney who handles conservatorships, committee ships, guardianships and related capacity matters on a regular basis. He has been a lecturer on Elder Law issues on behalf of the New York State, Queens, Nassau and Suffolk County Bar Associations, and New York County Lawyers Association. He is a member of the Elder Law and Trusts & Estates Sections of the New York State, Nassau, and Suffolk County Bar Associations. He has been fortunate enough to act in Court-Appointed roles as Conservator, Guardian-ad-Litem, Court Evaluator, Counsel, Guardian and Trustee in over 100 contested and un-contested matters. He is a Court Examiner, appointed by the Presiding Justice of the Appellate Division, Second Department, for the County of Nassau. He has been attorney on cases, as well as co-author on articles, published in the New York Law Journal and is one of several authors of a book published by the New York State Bar Association entitled, "Guardianship Practice in New York State".

JOHN NEWMAN, ESQ.,
 177 (11) AS' r . nm IC: H () I' UHNPII { I. SUM 2, HUNTINOTON, NEW YORK] 1743
 <0811 480-7802

FORM 1

August 7, 2013

Via Fax [REDACTED]

Chambers of Hon. [REDACTED]
100 Supreme Court Drive
Mineola NY 11501

Re: In the Matter of the Application of [REDACTED]
for the Appointment of Co-Guardians for the Personal Needs and
Property Management of [REDACTED]
Index # [REDACTED]

With regard to the above referenced matter and in my capacity as the court
appointed evaluator, following the review of the petition I believe it to be necessary that
all medical records with regard to the treatment rendered to [REDACTED] since
January 1, 2009 be obtained.

By this letter I respectfully request the court issue a short form order authorizing
me to obtain the same. A major issue in this proceeding clearly is the extent of physical
injury suffered by [REDACTED] and whether or not the same was accidental or
intentionally committed. [REDACTED]

Respectfully,
[REDACTED]

FORM 2

SHORT FORM ORDER

SUPREME COURT STATE OF NEW YORK

Present:

HON.

Justice.

TRJAL/IAS PART 2
NASSAU COUNTY

In the Matter of the Application of

Index No.

Pursuant to Article 81 of the Mental Hygiene
Law for the Appointment of Co-Guardians for the
Personal Needs and Property Management of

an Alleged Incapacitated Person .

., having been- appointed the Court Evaluator herein; b Order to
Show Cause to Appoint Co-Guardians dated July 23, 2013 , and it
appearing that in order for the Court Evaluator to fulfill his mandate all medical
records with regard to treatment rendered to the Alleged Incapacitated Person since
January 1, 2009, is required, it is hereby

ORDERED that all medical providers who rendered treatment to
since January 1, 2009, shall provide to **as Court**
Ea uator, all medical records in their possession con **cerning**
from January 1, 2009.

This decision constitutes the order of the court.

Dated: q)?- 09--!Jo&

FORM 3.

March 24, 2014

_____ **Bank**

Street Address

City, State Zip

Re: _____ - Guardianship/Supplemental Needs Trust

Dear Sir or Madam: .

I have been appointed as Court Evaluator by Order of the Hon. _____, J.S.C., Supreme Court, Nassau County, dated _____, 2014 (an attorney certified copy of which is enclosed), which, in part, provided for me to investigate the assets and income of _____ the Alleged Incapacitated Person. In this regard, I have determined that there are/were several accounts in the name of _____ as follows:

1. Checking account # _____
2. Savings account # _____
3. Cb account ~~##~~ _____ ; and
4. CD account # _____

With regard to my duties as Court Evaluator, I need to know the current status of said accounts as well as a transactional history of said accounts from _____, 20_ to present/closure. Please advise me of the procedure to obtain the necessary documentation at your earliest convenience. Your prompt attention to this matter would be appreciated.

If you have any questions, please contact my office. Thank you for your anticipated cooperation.

Very truly yours,

John Newman

JN/

FORM 4

STATE OF NEW YORK
SUPREME COURT:

COUNTY

-----, -----X
In the Matter of the Application of

REPORT OF
COURT EVALUATOR

for the Appointment of a Guardian of the
Property Pursuant to Article 81 of the Mental
Hygiene Law for

Index No. ____/2014

an Alleged Incapacitated Person.

-----X

JOHN NEWMAN, an attorney duly admitted to practice law in the Courts of the State of
New York, affirms the truth of the following under penalties of perjury and pursuant to CPLR
2106. This report consists of fourteen (14) different sections:

Appointment	Page 1
Nature of Proceeding	Page 2
Jurisdiction	Page 2
Venue	Page 3
Scope of Investigation	Page 3
Interviews	Page 5
Assets/Income/Liabilities	Page 9
Available Resources	Page 9
Proposed Property Management	Page 9
Proposed Personal Needs Management	Page 10
Appointment of a Guardian and Applicable Law	Page 10
Attendance of AIP at Hearing	Page 11
Conclusions	Page 11
Recommendations	Page 12

APPOINTMENT

1. I was duly appointed as Court Evaluator by Order of _____
_ Justice of the Supreme Court, _____ County, dated _____, 2014, to protect the

rights and interests of _____, an Alleged Incapacitated Person (hereinafter referred to as "_____").

2. I reviewed the Order to Show Cause, Petition, and supporting documentation relating to the appointment of a Guardian of the Property for _____

NATURE OF PROCEEDING .

3. This is a proceeding under Article 81 of the Mental Hygiene Law to have a Guardian of the Property appointed for _____. The Petitioner is the mother of the Alleged Incapacitated Person.

JURISDICTION

4. The aforementioned Order to Show Cause required personal service of the Order to Show Cause, Petition, and supporting papers attached thereto upon the Alleged Incapacitated Person, on or before the _____ day of _____, 2014; service by overnight mail upon the undersigned, on or before the _____ day of _____, 2014; service by regular mail of the Order to Show Cause and Notice of Proceeding only upon _____
--- **-father**),----- **-brother**), MENTAL HYGIENE
LEGAL SERVICE, and _____ DEPARTMENT OF SOCIAL SERVICES, on
or before _____, 2014.

5. The Alleged Incapacitated Person has been duly, personally served with a copy of the Order to Show Cause, Petition and supporting papers.

6. The undersigned was properly served, as Court Evaluator, with a copy of the Order to Show Cause, Petition and supporting papers, by overnight delivery.

7. In addition, I have determined that the following individuals have been timely served with the required papers in this proceeding: upon_____.

—'MENTAL HYGIENE LEGAL SERVICE, and _____
_ DEPARTMENT OF SOCIAL SERVICES.

8. The Court has obtained personal jurisdiction over the Alleged Incapacitated Person and all the interested parties in this proceeding.

VENUE

9. The instant proceeding has been commenced in the Supreme Court of the State of New York, in and for the County of_____.

10. Pursuant to the Mental Hygiene Law §81.05, the venue of this proceeding is properly within the County of_____.

SCOPE OF THE INVESTIGATION OF THE UNDERSIGNED COURT EVALUATOR

11. In the fulfillment of my duties as Court Evaluator, my investigation included, but was not limited to the following:

a. I have reviewed all relevant legal documents submitted in connection with this matter including, but not limited to, Order to Show Cause, Petition, and all information and documentation in support of said documents.

b. On _____, 2014, I met with _____ and his mother, _____ for approximately _ hours.

c. On _____, 2014, I met with _____ and his mother, _____ for approximately _ hours.

d. I have had numerous telephone conversations and e-mail communications with _____ attorneys for the Petitioner.

e. I have conducted the necessary research and follow-up to ensure the efficient and prompt resolution of this matter.

12. As a result of said review stated above, I have been able to make the following observations:

Background Information Regarding _____

A. _____ is three (3) years of age having been born on _____, 20____. _____ lives at _____, _____, New York _____, with his mother, father, and older brother. As a result of medical malpractice, _____ suffered neurological injuries at the time of his birth which affect his physical and mental abilities. _____ cannot walk (yet), he is legally blind, he has very limited speech, requires a feeding tube, constant suctioning of excess fluids, and he suffers from other physical problems. The medical malpractice action was settled, and an Infant's Compromise Order was signed by the Hon. _____, J.S.C., on _____, 20____ (attached as Exhibit A to the Petition).

_____ attends _____ School in _____ from 8:30 a.m. until 1:30 p.m. _____ is transported to and from the school, but has a nurse with him at all times to attend to his physical needs. _____ receives Physical Therapy, Occupational Therapy, and Speech Therapy three (3) times per week; and Vision Therapy two (2) times per week; and his mother has been attempting to obtain feeding therapy for _____ with the hope that he would no longer require the feeding tube. _____

has been hospitalized recently due to his weakened immune system, and is subject to frequent illnesses. _____ is receiving various medications as detailed in the Petition. _____ is under the care of a number of doctors, including a pulmonologist, neurologist and gastroenterologist. All of _____'s day-to-day needs are provided for by his parents, and the medical professionals who assist them.

B. I met _____ and his mother in their apartment in _____. The apartment was very neat, clean, and had a play area for _____ - which he took advantage of during my visit. _____ is a beautiful young boy. While his communication skills are not age appropriate, he can convey his wishes in certain aspects of his life and (thankfully) can express joy. While he is not walking yet, he can pull himself up and stand and has a great deal of upper-body strength. I was lucky enough to have _____ sit on my lap for part of my visit, and I left as if I had been to the gym for a workout. He was in constant motion, and smiled when I tickled him or put him up in the air. It was truly a pleasure to meet _____ and his mother, _____ is a zealous advocate for _____, and has pursued all possible services for _____. _____, as any three (3) year old, is not aware of the nature of the proceeding, and the roles his mother, father and/or a Guardian, play in the matter.

INTERVIEWS

13. a. _____ - On _____, 2014 and _____ 2014, I met with _____ and his mother in their apartment in _____. Again, as a three (3) year old it was clear that _____ was not aware why I was in his apartment. It was not necessary for me to attempt to explain to _____ the nature of the proceeding and his

rights under the Law, including the fact that the Court could appoint an attorney for him.

_____ could not object to the Guardianship or request that counsel be appointed for him.

Notwithstanding, pursuant to MHL §81.09, I have investigated the following issues/questions and provide the Court with the relevant responses, as a supplement to the foregoing provisions of this Report, as follows:

- (i) does the person alleged to be incapacitated agree to the appointment of the proposed guardian and to the powers proposed for the guardian -Unable to answer.
- (ii) does the person wish legal counsel of his or her own choice to be appointed or is the appointment of counsel in accordance with section 81.10 of this article otherwise appropriate -Unable to answer.
- (iii) can the person alleged to be incapacitated come to the courthouse for the hearing - No.
- (iv) if the person alleged to be incapacitated cannot come to the courthouse, is the person completely unable to participate in the hearing -Yes.
- (v) if the person alleged to be incapacitated cannot come to the courthouse, would any meaningful participation result from the person's presence at the hearing -No.
- (vi) are available resources sufficient and reliable to provide for personal needs or property management without the appointment of a special guardian -No.
- (vii) how is the person alleged to be in need of a guardian functioning with respect to the activities of daily living and what is the prognosis and reversibility of any physical and mental disabilities, alcoholism or substance dependence – requires total assistance and supervision with all of his activities of daily living. His condition(s) may improve over time.
- (viii) what is the person's understanding and appreciation of the nature and consequences of any inability to manage the activities of daily living - None.

- (ix) what is the approximate value and nature of the financial resources of the person alleged to be incapacitated – see Exhibit A to the Petition.
- (x) what are the person's preferences, wishes, and values with regard to managing the activities of daily living – Unable to answer.
- (xi) has the person alleged to be incapacitated made any appointment or delegation pursuant to section 5-1501, 5-1505, or 5-1506 of the general obligations law, section two thousand nine hundred sixty-five or two thousand nine hundred eighty-one of the public health law, or a living will -No.
- (xii) what would be the least restrictive form of intervention consistent with the person's functional level and the powers proposed for the guardian - I believe the appointment of a Guardian with all the powers over his property management needs would constitute the least restrictive form of intervention.
- (xiii) what assistance is necessary for those who are financially dependent upon the person alleged to be incapacitated – A monthly budget should be established for the cost of 's health care needs and payment should be made to his parents to provide for same.
- (xiv) is the choice of proposed guardian appropriate, including a guardian nominated by the person allegedly incapacitated pursuant to section 81.17 or subdivision (c) of section 81.19 of this article; and what steps has the proposed guardian taken or does the proposed guardian intend to take to identify and meet the current and emerging needs of the person alleged to be incapacitated unless that information has been provided to the court by the local department of social services when the proposed guardian is a community guardian program operating pursuant to the provisions of title three of article nineB of the social services law – , ESQ., the attorney who represented and his mother in the medical malpractice action, has agreed to act as Guardian due to the fact that 's mother is not yet a U.S. Citizen and cannot qualify as Guardian; and, said Guardian, with assistance of counsel, has identified the current and emerging needs of the alleged incapacitated person.

- (xv) what potential conflicts of interest, if any, exist between or among family members and/or other interested parties regarding the proposed guardian or the proposed relief - **None.**
- (xvi) what potential conflicts of interest, if any, exist involving the person alleged to be incapacitated, the petitioner, and the proposed guardian - **None.**
- (xvii) are there any additional persons who should be given notice and an opportunity to be heard - **No.**

b. _____ — I met with _____'s mother on _____, 2014 and _____, 2014, in her apartment. _____ gave me a detailed background of _____'s current needs, and what services she was attempting to add on his behalf. _____ explained how she and her husband, _____, care for _____. She advised me she handles the medical requirements, doctor appointments, etc., while _____ helps _____ with his physical needs and is the disciplinarian. _____ also told me that _____'s older brother, is very responsible for and protective of _____. Thankfully, _____ has a great family support system.

b. ELLYN S. KRAVITZ, ESQ. - I spoke to and corresponded with the Petitioner's counsel, ELLYN S. KRAVITZ, ESQ. She has provided me with the background of the case, and supporting documentation. MS. KRAVITZ is a well respected Elder Law attorney who will be able to assist the Guardian and _____'s parents in carrying out the powers authorized by the Court.

d. _____, ESQ. - I spoke to with the proposed Guardian. MS. _____ represented _____ and his parents in the medical malpractice action, and has developed a close relationship with the family. She is knowledgeable in the area of financial

matters, and can work well with _____'s parents in relation to his property management needs.

ASSETS/INCOME/LIABILITIES

14. In accordance with paragraph 11 of the Petition, _____ is the beneficiary of certain financial benefits from the settlement of the medical malpractice action. Said paragraph provides the financial details of the settlement, which I do not need to repeat in this Report. However, the Court should be aware the settlement involves the New York State Medical Indemnity Fund ("NYSMI Fund"). The NYSMI Fund will allow _____ to dis-enroll from Medicaid, while paying for all of his future health care needs. _____'s prior Medicaid Lien was settled, and paid from the malpractice proceeds, in the sum of \$400,000.00.

The NYSMI Fund was created for two (2) main purposes, first, to pay or reimburse costs necessary to meet the health care needs of a "qualified plaintiff" throughout his or her lifetime; and, second, to lower the expenses associated with medical malpractice litigation throughout the health care system. A copy of the NYSMI Fund approval and application are annexed hereto as Exhibit "I".

AVAILABLE RESOURCES

15. _____ has not executed, and could not execute (being under 18 years of age), a Power of Attorney, Trust or other advance directive relative to his property management needs.

PROPOSED PROPERTY MANAGEMENT FOR

16. Petitioner seeks the appointment of a Guardian of the Property Management, with those powers authorized by Mental Hygiene Law Section 81.21. In this regard, paragraph 17 of the Petition lists various powers requested to be given to the Guardian. Based upon the

foregoing, _____'s interests are best served by the appointment of a Property Management Guardian, with those powers as requested in the Petition.

PROPOSED PERSONAL NEEDS MANAGEMENT FOR

17. Petitioner does not seek the appointment of a Personal Needs Guardian or powers authorized by Mental Hygiene Law Section 81.22. _____ is under eighteen (18) years of age, and therefore his parents, as natural guardians, can make all health care decisions on his behalf.

APPOINTMENT OF GUARDIAN AND APPLICABLE LAW

18. This proceeding is for the appointment of a Guardian pursuant to Article 81 of the Mental Hygiene Law, which sets forth that §81.02(a) the standards to be applied, and reads in pertinent part:

The court may appoint a guardian for a person if the court determines: 1. that the appointment is necessary to provide for the personal needs of that person, ...and/or to manage the property and financial affairs of that person; and 2. that the person agrees to the appointment, or that the person is incapacitated as defined in subdivision b of this section.

MHL §81.02 (b) sets forth further, in pertinent part:

The determination of incapacity shall be based on clear and convincing evidence, and shall consist of a determination that a person is likely to suffer harm because: 1. the person is unable to provide for personal needs, and/or property management; and 2. the person cannot adequately understand and appreciate the nature and consequences of such inability...

19. I have considered what is the least restrictive form of intervention as required under MHL §81.02 and MHL §81.09(c)(5)(xii) and find that the appointment of a Guardian of _____'s property is necessary.

ATTENDANCE OF ALLEGED INCAPACITATED PERSON AT HEARING

20. _____ could not attend the hearing and meaningfully participate. His physical and mental health would be adversely affected by his presence at Court. I would recommend that _____'s presence at the hearing be dispensed.

CONCLUSIONS

21. In summary, based upon the pleadings herein, my investigation, legal research and review as detailed herein, I have reached the following conclusions:

- a. The instant proceeding is one for the appointment of a Guardian of the Property of _____ pursuant to Article 81 of the Mental Hygiene Law of the State of New York;
- b. This Court has the requisite subject matter jurisdiction;
- c. This Court has the requisite jurisdiction over all persons interested in this proceeding, including the Alleged Incapacitated Person, and there are no additional persons who should be given notice and an opportunity to be heard;
- d. That there is no one financially dependent upon _____ at this time;
- e. The venue for this proceeding has been properly laid in _____ County;
- f. It appears that _____, the Alleged Incapacitated Person, presently suffers from various physical and mental disabilities including, but not limited to, an inability to walk, he is legally blind, he has very limited speech, requires a feeding tube, constant

suctioning of excess fluids, which cause functional limitations in his ability to manage his property;

g. As a result of the above, _____ **is** likely to suffer harm due to his inability to provide for his property needs;

h. That _____ **does** not understand the issues raised in the proceeding, including his right to be represented by counsel;

i. That _____ is unable to consent or object to the appointment of a Guardian;

J. That the resources available to _____ **have** been considered and are inappropriate to provide for his functional limitations;

k. That the appointment of a Guardian for the Property Management therefore appears necessary, and consistent with the least restrictive form of intervention.

RECOMMENDATIONS

Based upon the Pleadings herein, my investigation, legal research and review as detailed herein, I make the following recommendations:

a. That a hearing should be held to adjudicate the appointment of a Guardian of the Property Management of _____

b. That _____'s presence at the hearing be waived as he could not meaningfully participate in the hearing, his appearance would be detrimental to his health;

c. That the Court appoint _____, ESQ. as Guardian of the Property of _____ based upon all of the foregoing.

Subsequent to the hearing of this matter, I will submit an Affirmation of Legal Services and the Statement of Fees with this Court as required by law.

Dated: _____, 2014.
Huntington, New York.

Respectfully submitted,

JOHN NEWMAN, ESQ., Court Evaluator

ACCOUNTINGS AND THE ROLE OF THE COURT EXAMINER

Presented by: Debra V. Isler, Esq. and
Robert A. Isler, Esq.

Isler & Isler
25 Cambria Road
Syosset, NY 11791
Office: 516-433-0404
Fax: 516-433-8524
Email: isleresq@aol.com

ORDERS OF ABATEMENT
(AIP dies prior to issuance of Order and Judgment)

incurred on behalf of the Guardianship prior to the death of ·

and it is further

ORDERED, that the total sum of \$

awarded to

., be deemed a claim against the Estate of ·

ENTER,

A.C.C.J.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----)(
In the Matter of the Application of

for the Appointment of a Guardian for the
Personal Needs of

AFFIRMATION IN SUPPORT
OF DISCONTINUING THE
GUARDIANSHIP PROCEEDING
DUE TO THE DEATH OF
THE ALLEGED
INCAPACITATED
PERSON

An Alleged Incapacitated Person, Now Deceased.
-----)(
ROBERT A. ISLER, ESQ., an attorney duly admitted to practice law in the Courts of

Index Number:

the State of New York affirms under the penalty of perjury as follows:

1. I am a partner in the law firm of Isler & Isler, attorneys for
, the son of --_, and Petitioner in the underlying Guardianship proceeding. I
make this affirmation at the request of the Guardianship Clerk.

2. By Petition verified on the 11th day of July, 2005, made
application to this Court to have himself appointed Personal Needs for his father, '

. No request for the appointment of a Property Management Guardian was made given the
existence of a valid durable power of attorney that was signed by · on March 4,
2005 and notarized by a staff member of Nassau University Medical Center after determination by the
psychiatric department that · had the requisite capacity to execute such a
document. Said durable power of attorney appointed the attorney in fact for

3. By Order to Show Cause granted July 13, 2005, . was appointed Court Evaluator to investigate the allegation of the Petition and render a report to the Court as to his findings. A hearing on this matter was set for August 8, 2005.

4. Upon information and believe .. . began his investigation into the allegations of the verified petition.

5. passed away in his home on July 25, 2005. A copy of his death certificate is annexed hereto as Exhibit A.

6. Given the death of , it is respectfully requested that this Court set a fair and reasonable fee for the Court Evaluator for services rendered in connection with this proceeding and that said amount be deemed a claim against the Estate of

7. Further, given the death of .., it is respectfully requested that this proceeding be discontinued in all respects.

Dated: Syosset, New York

ROBERTA ISLER, ESQ.
Law offices of ISLER & ISLER
25 Cambria Road
Syosset, New York 11791
Tel. No. (516) 433-0404
Fax No. (516) 433-8524

cc:

At an IAS Part 22G of the Supreme Court of the State of New York, held in and for the County of Queens, at the Courthouse located at 88-11 Sutphin Blvd., Jamaica, New York on the 3rd day of October, 2013.

PRESENT: _____
Justice

-----X
In the Matter of the Application of

Petitioner,

for the Appointment of a Guardian for the Personal
Needs and Property Management of

Respondent,

an alleged Incapacitated Person, now deceased.
-----X

An Order to Show Cause having been duly signed by the

herein at an IAS Part _____ of this Court on the _____ day of November, 2013, directing that _____, the Alleged Incapacitated Person; Director of SIDNEY HIRSCHFELD, as regional director of Mental Hygiene Legal Service; HUMAN RESOURCES ADMINISTRATION, for the City of New York; _____ distant cousin; and _____ Court Evaluator; show cause why a Guardian of the Person and Property should not be appointed for _____ and granting other relief;

Index No.

“ JUD6-YYJGJJ”
ORDER ABATING
GUARDIANSHIP

go ...

me ...

gfi ...

...>
.....

The Court having thereupon duly considered the said petition and the proof and allegation! then and there presented and due deliberation having been had, and a hearing h ving been held on the 23rd day of December, 2013, and the Court in an on the record :1ecision having determined that . is a person requiring the appointmc.1t of a Guardian, and the Court now having been informed by Petitioner's counsel , , pursuant to an affirmation dated January 15, 2014, that the a: :ged Incapacitated Person, :died on December 27, 2013, thus requi:ng the abatement of this Guardianship, as no guardian has been officially appointed 'r qualified prior to such death, and the Court having directing the Petitioner to file th: ; Order abating the Guardianship and awarding appropriate fees for professor: 11 serviced rendered herein,

NO'./, on reading and filing the affirmation of , dated January 1:, 2014, and the death certificate indicating that the alleged Incapacitated Person h :ing died on December 27, 2013, and upon proof of service, and due deliberatic 1 having been had, without objection, it is

NO'./, on motion of rHE LAW OFFICES OF . attorneys for the GI.! :edian/Petitioner, t is hereby

OR JEREO **ANO ADJUDGED**, that the Guardianship of . is hereby ab :ed without any further proceeding; and it is further

OR iEREO **ANO ADJUDGED**, that the Petitioner pay to for ;er services rendered as the Court Evaluator appointed herein, the sum of \$750.00; : ;d it is further

OF: iERED, that the Petitioner serve a notice of entry of this Order on all interested parties within 30 days from the date of this order.

ENTER:

✓ J.S.C.d

HON. LEEA. MAYERSOHN

@

O

05

EJ/'j.REO
— — 0J.; PM
FEB 13 2014
COUNTY CLERK
COUNTY OF QUEENS

Andrew F Pfeffer
 CLERK Queens County
 2-13-2014

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
In the Matter of the Application of

Index No.

Petitioner,

AFFIRMATION

for the Appointment of a Guardian for the Personal
Needs and Property Management of

Respondent

an incapacitated Person, now deceased.

-----X

FILED & RECORDED
FEB 13 2014
COUNTY CLERK
QUEENS COUNTY


I, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following pursuant to C.P.L.R. Section 2106 and under penalty of perjury:

1. I am an attorney associated with The Law Offices of _____ who represents the Petitioner, _____, in reference to the above captioned guardianship matter. This affirmation is being submitted in support of the proposed Order Abating this Guardianship due to the death of _____.

2. This Court pursuant to an on the record decision dated December 23, 2013, appointed a Guardian for _____. Unfortunately, just 4 days later, he died. (See annexed Death Certificate).

3. As such, it is respectfully requested that the proposed Order be signed abating the guardianship without any further proceeding.

Dated: January 15, 2014
Liaise iJeck, NY



11W15 Office Clerk
By:-
Attorney for PP. titinner

ORDER TO DISCONTINUE
GUARDIANSHIP W/O FINAL ACCOUNTING
(AIP dies after the issuance of Order and Judgment
but prior to marshalling of assets)

At an Ex Parte/IAS, Part 20 of the
Supreme Court of the State of New York,
held in and for the County of Queens, at the
Courthouse located at 88-11 Sutphin Boulevard,
Jamaica, New York on the _____ day of
_____, 2003

P R E S E N T:

HON. -- _____

Justice

-----) (
In the Matter of the Application of

as Petitioner Pursuant to Article 81 of the
Mental Hygiene Law for the Appointment of
a Guardian for Personal Needs and
Property Management of

ORDER DISCONTINUING
GUARDIANSHIP AND
DISCHARGING GUARDIAN
WITHOUT ACCOUNTING

Index No. 12410/02

An Incapacitated Person.

-----) (

Upon reading and filing the annexed Affirmation of Debra V. Isler, Esq. dated March
1, 2003 from which it appears that a Commission in this proceeding issued on December 6, 2002 and
that _____ as Personal Needs and Property Management Guardian for

_____ had not marshaled any of the assets of _____ prior to that date, and upon a
copy of the death certificate of _____, an incapacitated person, from which it appears
that _____ passed away on December 6, 2002.

NOW, upon motion of Debra V. Isler, Esq., attorney for _____, it is

hereby

ORDERED AND ADJUDGED, that due to the death of . . . on
December 6, 2002, _ is hereby discharged as Personal Needs and Property
Management Guardian; and it is further

ORDERED AND ADJUDGED, that shall not be required to
file an accounting as to her actions and conduct as Personal Needs and Property Management
Guardian due to the fact that she did not marshal any of the assets of _ in said
capacity; and it is further

ORDERED AND ADJUDGED, that surety bond number dated November 11,
2002 issued by Lumbermens Mutual Casualty Company in the amount of \$ is hereby
cancelled *nunc pro tunc* to December 6, 2002, the date of death of .

ENTER

J.S.C

ANNUAL ACCOUNTING

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----)(
In the Matter of the Appointment of

DEBRA V. ISLER, ESQ. and

2012 ANNUAL ACCOUNTING

Index No.: · ·

as Co-Guardians of the Personal Needs and
Property Management of

an Incapacitated Person.

-----)(
I, DEBRA V. ISLER, ESQ., with offices at 25 Cambria Road, Syosset, New York

11791, telephone number (516) 433-0404, and

. presently residing at

. telephone number I

Co-Guardians of the Personal

Needs and Property Management of

do hereby make, render and file

the following annual account and inventory.

By Second Resettled Order of the Honorable Charles J. Thomas dated June 6,
2006, we were duly appointed Personal Needs and Property Management Co-Guardians of

Our Commission issued on August 9, 2006, upon the filing of an
Oath and Designation as well as a Realty bond in the amount of \$615,000. The Realty bond
(Surety Bond Company of America Bond Number . was cancelled by Order
Confirming Sale of Real Property dated November 15, 2006 and we were required to file a Co-
Guardian Bond in the amount of \$552,000 which issued on January 19, 2007 (Surety Bond
Company of America Bond Number). By Order dated May 7, 2009 the Bond was

reduced to \$543,000. By Order dated September 29, 2009 the Bond was further reduced to \$513,000. By Order dated September 17, 2010 the Bond was further reduced to \$ 389,000. By Order dated March 8, 2012 the Bond was further reduced to \$330,000. This Bond is still in full force and effect. There has been no change in the Surety thereon, and the Surety is in as good financial standing as when the bond was issued.

Since the issuance of our Commission, we have continued to act as such fiduciary.

The following is a true and full account of all receipts and disbursements for the period January 1, 2012 through and including December 31, 2012:

SUMMARY

Schedule "A" -Principal on hand on date oflast accounting	301,466.91
Schedule "B" –Increases or decreases to Principal	- 10,101.42
Schedule "C" -Received income and cash receipts	9,878.41
Sub Total	301,243.90
Schedule "D" -Paid disbursements	25,774.15
Schedule "E" –Balance on hand to be charged to 2013 Account . . .	275,469.75
Schedule "E-1" – Real Estate	None
Schedule "E-2" – All other Personal Property	None
Total Estate	275,469.75

**PRINCIPAL ON HAND
AS OF DATE OF LAST ACCOUNTING
DECEMBER 31, 2012**

SCHEDULE "A"

J P Morgan Chase Bank, NA

Savings Account Number: -

i/n/o Debra V. Isler and . -----r _ _ _ _ _ as

Guardians for 339.57

Checking Account Number: . _ _ _ _ _ .

i/n/o Debra V. Isler and I . as

Guardians for 11,604.85

11,944.42

Smith Barney

Brokerage Account Number:

i/n/o Debra V. Isler andts

Guardians for

Cash Account: 6,200.25

INVESTMENTS:

Blackrock Credit Allocation Income Trust IV

1,107.9408 shares 21,478.63

Franklin Templeton Founding

Funding Allocation Fund Class C

7,420.778 shares 98,809.01

Lord Abbett Balanced

Strategy Fund

7,451.788 shares 84,957.39

Lord Abbett National Tax Free
Income Fund Class
6,738.817 shares

78,077.21

283,322.24

289,522.49

301,466.91

TOTAL SCHEDULE "A": \$ 301,466.91

CHANGES AND/OR TRANSFERS TO PRINCIPAL
INCREASES AND/OR DECREASES TO PRINCIPAL

SCHEDULE "B"

J P Morgan Chase Bank, NA

Savings Account Number:

i/n/o Debra V. Isler and _____, its

Guardians for _____

On April 12, 2012 the sum of \$339.60 is transferred from this account into the Guardian checking account.

Increase in Principal: 0.00

Checking Account Number:

i/n/o Debra V. Isler and _____, as

Guardians for _____

On April 12, 2012 the sum of \$339.60 is deposited into this account from the Guardian savings account.

Increase in Principal: 0.00

On April 12, 2012 the sum of \$9,063.25 is deposited into this account. The funds came from the funds maintained in the investment account maintained at Morgan Stanley Smith Barney.

Increase in Principal: 0.00

On June 29, 2012 the sum of \$10,000.00 is deposited into this account. The funds came from the funds maintained in the investment account maintained at Morgan Stanley Smith Barney.

Increase in Principal: 0.00

On July 13, 2012 the sum of \$10,000.00 is deposited into this account. The funds came from the funds maintained in the investment account maintained at Morgan Stanley Smith Barney.

Increase in Principal: 0.00

On September 20, 2012 the sum of \$851.50 is deposited into this account. The funds came from the return of funds from an overpayment of fees to one of the Co-Property Management Guardians.

Increase in Principal: 851.50

Smith Barney
 Brokerage Account Number:
 Debra V. Isler and as
Guardians for. — — —

On July 6, 2012 the above account was converted into account
 number -- - - - - -

Increase in Principal: \$0.00

Purchases and Dividend Reinvestment:
 Blackrock Preferred & Equity Trust n/k/a
 Blackrock Credit Allocation Income Trust IV

1,107.9408 shares	21,478.63
<u>0.0002</u> shares	0.00
1,107.9410 shares	21,478.63
1,107.9410 shares (sold)	21,478.63
0.0000	0.00

Increase in Principal: \$0.00

Franklin Templeton Founding
 Fund Allocation Fund Class C

7,420.778 shares	98,809.01
254.582 shares sold 06/11112	3,391.03
1,103.956 shares sold 12/28112	14,704.69
1,358.538	18,095.72
6,062.240 shares	80,713.29

Lord Abbett Balanced Strategy Fund

7,451.788 shares	84,957.39
<u>251.762</u> shares (sold)	2,870.09
7,200.026	82,087.30
7.365 shares	76.01
7.187 shares	76.83
25.655 shares	274.76
7.226 shares	77.17
7.537 shares	74.99
40.392 shares	412.81
5.890 shares	60.55
5.696 shares	59.87
26.248 shares	280.59
5.625 shares	60.13
13.084 shares	140.91

44.445 shares	488.90	
<u>32.591</u> shares	351.33	
228.941	2,434.85	
7,428.967	84,522.15	
	Increase in Principal:	\$0.00

Lord Abbett National Tax Free Income Fund Class A

6,738.817 shares	78,077.21	
887.311 shares (sold 05/07/12)	10,283.93	
446.828 shares (sold 06/11/12)	5,178.74	
<u>1,721.170</u> shares (sold 12/28/12)	19,948.36	
3,055.309 shares	35,411.03	
3,683.508 shares	42,666.18	
	Increase in Principal:	\$0.00

SALES:

Blackrock Preferred & Equity Trust n/k/a

Blackrock Credit Allocation Income Trust IV

1,107.9410 shares	21,478.63	
1,107.0000 shares (sold 12/28/12)		
<u>0.9410</u> shares (sold 12/31/12)		
0.00		
Proceeds:	14,807.55	
Inventory Value:	- 21,478.63	
	- 6,671.08	
	Realized Gain:	- 6,671.08

Lord Abbett National Tax Free Income Fund Class A

6,738.817 shares	78,077.21	
887.311 shares (sold 05/07/12)	10,283.93	
446.828 shares (sold 06/11/12)	5,178.74	
1,721.170 shares (sold 12/28/12)	19,948.36	
3,683.508 shares	42,666.18	
Proceeds:	10,000.00	
Proceeds:	5,000.00	
Proceeds:	20,000.00	
Inventory Value:	- 10,283.93	
Inventory Value:	- 5,178.74	
Inventory Value:	- 19,948.36	
	- 411.03	
	Realized Gain:	- 411.03

Franklin Templeton Founding
Fund Allocation Fund Class C

7,420.778 shares	98,809.fff (13.32 per share)
254.582 shares sold 06/11/12	3,391.03
1,103.956 shares sold 12/28/12	14,704.69
6,062.240 shares	80,713.29

Proceeds:	2,500.00
Proceeds:	12,000.00
Inventory Value:	- 3,391.03
Inventory Value:	- 14,704.69
	- 3,595.72

Realized Gain: - 3,595.72

Lord Abbett Balanced Strategy Fund

7,680.729 shares	87,392.24
<u>251.762 shares</u> sold 06/11/12	2,870.09
7,428.967 shares	84,522.15

Proceeds:	2,500.00
Inventory Value:	- 2,870.09
	- 370.09

Realized Gain: - 370.09

Miscellaneous:

01/19/12	Refund -MSSB Annual Fee	95.00
----------	-------------------------	-------

Increase in Principal: 95.00

TOTAL SCHEDULE "B": \$ - 10,101.42

RECEIVED INCOME AND CASH INCREASES

SCHEDULE "C"

I. INTEREST:

JP Morgan Chase Bank, NA

Checking Account Number: '

i/n/o Debra V. Isler and t as

Guardians for 1

None	0.00
------	------

0.00

Savings Account Number:

i/n/o Debra V. Isler and as

Guardians for

01/31112	0.01
----------	------

02/29/12	0.01
----------	------

03/30/12	0.01
----------	------

04130112	0.01
----------	------

0.04

0.04

Citibank NA

01/31/12	0.05
----------	------

02/29/12	0.05
----------	------

03/30/12	0.05
----------	------

04/10/12	0.02
----------	------

05131112 0.14

06/29/12	0.09
----------	------

07/30/12 0.01

08/30/12	0.03
----------	------

09/27/12 0.03

10/30/12 0.05

11/29/12	0.05
----------	------

12/28/11 0.05

0.62

0.62

0.66

Smith Barney

Brokerage Account: .

I/n/o Debra V. Isler and _____ as

Guardians for**Dividends:**

Blackrock Preferred & Equity Trust

n/k/a Blackrock Credit Allocation Income Trust

01109112	86.97	
02101112	86.97	
03130112	86.97	
04130112	86.97	
05131112	86.97	
06129112	86.97	
07/31/12	86.97	
08/31/12	86.97	
09/28/12	86.97	
10/31/12	86.97	
11123/12	40.99	
11/30/12	86.97	
12/18/12	86.97	
		1,084.63

Franklin Templeton Founding

01103112	1,366.91	
07/02/12	866.39	
12/31112	1,217.54	
		3,450.84

Lord Abbett Balanced Strategy Fund

01/31/12	76.01	
02129112	76.83	
03/30/12	274.76	
04127112	77.17	
05/31/12	74.99	
06129112	412.81	
07/31/12	60.55	
08/31/12	59.87	
09/28/12	280.59	
10/31/12	60.13	
11130/12	140.91	
12/20/12	488.90	
12/28/12	351.33	
		2,434.85

Lord Abbett National Tax Free

01/03/12	283.78
02/01112	287.98
03/01112	288.08
04/02112	280.17
05/01112	281.29
06/01/12	254.47
07/02112	219.52
07/31112	206.31
08/31112	205.55
09/28112	201.08
10/31112	200.42
11130/12	198.78

2,907.43

9,877.75

9,878.41

TOTAL SCHEDULE "C": \$9,878.41

PAID DISBURSEMENTS

SCHEDULE "D"

BANK FEES:

03/21/12	JP Morgan Chase (EFT)	34.00	
			34.00

COURT ORDERED FEES/PAYMENTS:

03/16/12	Debra V. Isler, Esq.	(check # 105)		
		2,271.90 (03/08/12 Order -		
	Compensation)			
03/16/12	Debra V. Isler, Esq.	(check # 106)	4,180.00	
	(03/08/12 Order -Legal Fee)			
03/21/12	Jose M. Araujo, Esq.	(check # 107)	1,156.00	
	(03/08/12 Order -Legal Fee)			7,607.90

MEDICAL:

02/13/12	Health Net Medicare Part D	(check # 102)	58.10	
06/15/12	Health Net Medicare Part D	(check # 112)	223.60	
08/06/12	Health Net Medicare Part D	(check # 116)	111.80	
10/09/12	Health Net Medicare Part D	(check # 116)	111.80	
11/05/12	Health Net Medicare Part D	(check # 126)	55.90	
12/24/12	Health Net Medicare Part D	(check # 124)	55.90	
				617.10

MISCELLANEOUS:

01/04/12	Robert N. Brown	(check # 249)	375.00	
03/06/12	Debra V. Isler	(check # 104)	15.15	
07/02/12	Robert N. Brown	(check # 113)	325.00	
				715.15

STIPEND:

01/09/12		(check # 250)	1,400.00	
	(01/07/10 Order -January)			
02/13/12		(check # 101)	1,400.00	
	(01/07/10 Order -February)			

03/19/12	(01/07/10 Order - March)	(check # 103)	1,400.00	
06/06/12	(01/07/10 Order - April)	(check # 109)	1,400.00	
06/06/12	(01/07/10 Order - May)	(check # 110)	1,400.00	
06/11/12	(01/07/10 Order - June)	(check # 111)	1,400.00	
07/20/12	(01/07/10 Order - July)	(check # 114)	1,400.00	
09/11/12	(01/07/10 Order - August)	(check # 118)	1,400.00	
09/11/12	(01/07/10 Order - September)	(check # 119)	1,400.00	
10/05/12	(01/07/10 Order - October)	(check # 121)	1,400.00	
11/26/12	(01/07/10 Order - November)	(check # 122)	1,400.00	
12/10/11	(01/07/10 Order - December)	(check # 248)	1,400.00	16,800.00
				25,774.15

TOTAL SCHEDULE "D": \$ 25,774.15

**ON HAND AS OF DATE OF ACCOUNTING
DECEMBER 31, 2012
SCHEDULE "E"**

BANK ACCOUNTS:

J P Morgan Chase Bank, NA

Savings Account Number: _

i/n/o Debra V. Isler and .ias

Guardians for r 0.01

Checking Account Number: . - - .

i/n/o Debra V. Isler and J as

Guardians for 16,085.05

16,085.06

INVESTMENT ACCOUNTS:

Smith Barney

Brokerage Account Number:

i/n/o Debra V. Isler and . as

Guardians for 1

Cash Account: 4,675.52

Unsettled Funds: 46,807.55

51,483.07

Franklin Templeton Founding
Funding Allocation Fund Class C
6,062.240 shares

80,713.29

Lord Abbett Balanced
Strategy Fund

7,428.967 shares 84,522.15

Lord Abbett National Tax Free
Income Fund Class

3,683.508 shares 42,666.18

207,901.62

259,384.69

275,469.75

TOTAL SCHEDULE "E": \$ 275,469.75

REAL ESTATE
SCHEDULE "E-1"

REAL ESTATE:

None

TOTAL SCHEDULE "E-1":\$ 0.00

ALL OTHER PERSONAL PROPERTY
SCHEDULE "E-2"

None

TOTAL SCHEDULE "E-2": \$ 0.00

PERSONAL NEEDS INFORMATION

1. State the age, date of birth and marital Status of the Incapacitated Person.

·s-77 years old, having been born on December 25, 1935.
was never married and has no children, natural or adopted.

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

Spouse: None

Children: None

Siblings:

3. State the present residence address and telephone number of the Co-Guardians.

Debra V. Isler, Esq.
25 Cambria Road
Syosset, NY 11791
(516)433-0404

r ·

4. 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.

_____ is presently residing with _____ m _____ s home located at _____.

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

_____ : presently suffers from dementia and hypertension. There have been no changes in _____ :s medical condition and no substantial changes in his medications.

6. 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.

I have requested such a statement to be secured from the Personal Needs Co-Guardian and will forward it when received.

7. If the Guardian has been charged with providing for the personal needs of the Incapacitated Person:

- a) State whether the current placement plan is suitable to the current needs of the Incapacitated Person:

_____ ; placement is appropriate and suitable to his current needs.

- b) Attach a resume of any professional medical treatment given to the Incapacitated Person during the preceding year.

No resumes are available.

- c) State the plan for medical, dental and mental health treatment and related services for the coming year.

All of _____ s medical needs are presently monitored by _____.

Dr. Christopher J. Labban with offices at 3848 East Baseline Road, Mesa, AZ 85204, telephone number 480-497-9414. J dental needs are cared for by Dr. William L. Walden with offices at 2925 East Riggs Road,, Suite 2, Chandler, AZ 85249, telephone number 480-755-1661. They will continue to provide such services to T

AFFIDAVIT OF ACCOUNTING PARTY

STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

DEBRA V. ISLER, ESQ., being duly sworn, says: I am the Co-Guardian of the Personal Needs and Property Management Guardian for · . The foregoing annual inventory and account contains to the best of my knowledge and belief, a full and true statement of all my receipts and disbursements on account of ' ; and all money and other personal property of any kind of said person which have come into my hands or have been received by any other person by my order or authority since my appointment and of the value of all such property, together with a full and true statement and account of the manner in which I have disposed of the same and of all property remaining in my hands at the time of filing this annual inventory and account; also a full and true description of the amount and nature of each investment made by me since my appointment. I do not know of any error or omission in the annual inventory and account to the prejudice of · - ·

DEBRA V. ISLER, ESQ.

Sworn to before me this
day of March, 2013

ROBERT A. ISLER
Notary Public - State of New York
No.
Qualified in Nassau County
Commission Expires December

AFFIDAVIT OF ACCOUNTING PARTY

STATE OF ARIZONA)
) ss:
COUNTY OF)

being duly sworn, says: I am the Co-Guardian of the Personal Needs and Property Management Guardian for _ The foregoing annual inventory and account contains to the best of my knowledge and belief, a full and true statement of all my receipts and disbursements on account of .. ; and all money and other personal property of any kind of said person which have come into my hands or have been received by any other person by my order or authority since my appointment and of the value of all such property, together with a full and true statement and account of the manner in which I have disposed of the same and of all property remaining in my hands at the time of filing this annual inventory and account; also a full and true description of the amount and nature of each investment made by me since my appointment. I do not know of any error or omission in the annual inventory and account to the prejudice of

Sworn to before me this
day of March, 2013

Notary Public

SAMPLE FINAL ACCOUNTINGS

Complete Course Materials for this Section are
available online at:

www.nysba.org/Article81ECM

**MEDICAL SETTLEMENT OF FINAL
ACCOUNTING BASED ON "GET WELL"
PROVISION OF MENTAL HYGIENE LAW**

At an I.A.S. Special Term, Part VI of the
Supreme Court of the State of New York,
held in and for the County of Suffolk, at the
Courthouse located at 400 Carleton Avenue,
Central Islip, New York on the _____ day of
_____,
2012.

P R E S E N T:

HON. MARTHA L. LUFT,
Acting Justice of the Supreme Court

-----) {

In the Matter of the Application of

DEBRA V. ISLER, ESQ., as

Temporary Co-Guardian of the Personal Needs and
Property Management of

ORDER TO SHOW CAUSE
TO TERMINATE GUARDIANSHIP
AND TO JUDICIALLY SETTLE
FINAL ACCOUNTING

Index No.:

An Incapacitated Person

-----) {

UPON the reading and filing of the annexed petition of DEBRA V. ISLER, ESQ.
duly verified on the 13th day of February, 2012 seeking the termination of the Guardianship for
as her cognitive and communicative abilities have improved to the point where
she retained her own counsel and executed advanced directives appointing her friend,

i,as health care proxy and attorney in fact,

LET JOAN BARCELLOS (Incapacitated Person), NASSAU/SUFFOLK LAW
SERVICES COMMITTEE, INC. (Attorney for . . .),
(Attorney in Fact and Health Care Proxy for . . .), SUSANNE REGAN (Senior
Service Coordinator -Family Residences and Essential Enterprises); CHRISTINE MALAFI,
ESQ., (Suffolk County Attorney on behalf of Suffolk County Department of Social Services),

THOMAS J. CASEY, ESQ. (Court Examiner), . (Sister in
law and Personal Needs and Property Management Co-Guardian), 1 (Sister
in law having legal custody of : 14 year old son of .
_____ (son of J _____) and T .
! (daughter of _____, and _____ (14 year
old son of _____).

SHOW CAUSE at the Suffolk County Supreme Court Courthouse located at the
Cohalan Court Complex, Courtroom S-23, located at 400 Carleton Avenue, Central Islip, New
York 11722, on the _____ day of _____, 2012, at
_____ a.m./p.m. or as soon thereafter as counsel can be heard, why an Order should not be
made:

- (a) terminating the Guardianship for . due to the existence of
proper advanced directives;
- (b) discharging DEBRA V. ISLER, ESQ., as Personal Needs and Property
Management Guardian for :
- (c) judicially settling the Final Accounting of DEBRA V. ISLER, Esq.;
- (d) waiving the requirement, if any, to appoint a Guardian ad litem or referee to
review the Final Accounting;
- (e) Reimbursing DEBRA V. ISLER, ESQ., for out of pocket expenses incurred in
connection with this Guardianship; and
- (f) Such other and further relief as this Court shall deem just and proper.

SUFFICIENT CAUSE APPEARING THEREFORE, let service by first class mail

of a copy of this Order, and the papers upon which it is granted, on the above-named individuals on or before the _____ day of _____, 2012, be deemed good and sufficient service.

ENTER

A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----)(
In the Matter of the Application of

PETITION

DEBRA V. ISLER, ESQ., as

Temporary Co-Guardian of the Personal Needs
Property Management Guardian of

Index No.:

An Incapacitated Person.

-----)(
DEBRA V. ISLER, ESQ., an attorney duly admitted to practice law in the Courts of the

State of New York affirm under the penalty of perjury as follows:

1. By Order and Judgment of this Court dated January 16, 2002, I was
appointed Temporary Co-Guardian of the Personal Needs and Property Management of

to serve with the sister-in-law of

1. A copy of the Order and Judgment is annexed hereto as Exhibit A.

2. By Order and Judgment dated January 8, 2002, I was appointed Permanent
Co-Guardian of the Personal Needs and Property Management of 1to

serve with - The Order and Judgment did not require the filing of a
Bond as a condition of qualification.

3. Due to the failure of : (a) execute the
necessary consent, oath and designation forms, and (b) to keep a current address on file with the
Guardianship Office, a Commission was never able to issue. This issue was one of a number

¹I was originally the Court Evaluator in this Guardianship proceeding. The Court requested that I serve as Co-Guardian with a family member until an appropriate care plan was established and all financial issues were resolved.

issues addressed by the Court at a conference held on April 30, 2004. As a result, I have been acting under the authority of the Temporary Order and Judgment.

4. [redacted] is 46 years old, having been born on April 17, 1965 in Guyana, West Indies. [redacted] r, son is a widow. Her husband, [redacted] t, passed away on February 17, 2001. His death was a result of a work related accident when the forklift he was operating fell off a ramp. [redacted] t has three children: [redacted] (born January 9, 1985), [redacted] i (born October 13, 1988) and [redacted] - (born April 25, 1997). Upon information and belief, the children reside with : [redacted] , their aunt (and sister-in-law of [redacted]). Their last known address is . .

5. At the time of my first involvement in this Guardianship, [redacted] - as a patient at Southside Hospital as a result of an overdose of Zoloft. She survived the suicide attempt but unfortunately suffered a Traumatic Brain Injury which left her cognitively impaired and unable to communicate with others. She was unable to be discharged from the facility without the appointment of a Guardian.

6. The initial care plan proposed by [redacted] o, the sister-in-law of [redacted] as to place [redacted] in a skilled nursing home where she could receive the medical care she needed while at the same time resolving various issues such as conversion of Florida Community Medicaid to Chronic Care Medicaid; settle Social Security Administration overpayments of both Disability and Income benefits; resolve custody issues involving the minor children of [redacted] Upon the resolution of these issues,

[redacted] was supposed to be transferred to a New Jersey facility to live near [redacted] 's

[redacted] , who was to seek custody of the minor children from [redacted]

7. Upon my appointment as Temporary Guardian, I arranged for the discharge of [redacted] to a special medical unit at John Jay Foley Skilled Nursing Facility located at 14 Glover Drive, Yaphlik, NY 11980, which was able to take care of [redacted] special medical needs. However, soon thereafter [redacted] disappeared. She no longer returned telephone calls or responded to letters and e-mails. The telephone numbers on file were disconnected and mail was returned.

8. On November 10, 2005, with the assistance of the social worker at John Jay Foley Skilled Nursing Facility, [redacted] was approved for a Medicaid Waiver and discharged to the community. She was placed in a private home (separate living quarters on the first floor with a private entrance) with a family living upstairs. Her service coordinator in the community was and continues to be Susanne Regan of Family Residences and Essential Enterprises, Inc. who arranged for [redacted] attendance at an appropriate day program and oversees all other necessary and appropriate services provided to [redacted].

9. With all services in place, [redacted] flourished in the Community. Her cognitive and communication skills progressed to the point where it was believed that she had the capacity to execute advance directives to assist her in her personal and financial affairs.

[redacted] contacted Nassau/Suffolk Law Services Committee, Inc. to inquire about, among other things, the termination of the Guardianship. I received a telephone call from Kim Novak, Esq., who advised as to her belief that [redacted] had the requisite capacity to execute a health care proxy and durable power of attorney and select a health care agent and attorney in fact of her own choosing. I was advised that [redacted] wanted her friend, [redacted], to serve in such capacity. I had no opposition to such action but suggested that there be a period of time during which the agent and the alternative directives would be monitored to make sure that

the needs of Joan Barcellos were being appropriately handled.

10. Annexed hereto as Exhibit C is a copy of the Power of Attorney executed

J. Annexed hereto as Exhibit D is a copy of the - executed by
Joan Barcellos.

11. According to Susanne Regan, - i has been an excellent
advocate for ; and extremely attentive to her needs. Susanne Regan has advised
that the advanced directives are appropriate and sees no reason for the Guardianship to continue.
As had the requisite capacity to execute advanced directives which are now in
place and have been successfully used to assist when necessary, I agree that there
is longer the need for the Guardianship.

12. Annexed hereto as Exhibit E a copy of my Final Accounting. As -
has minimal assets, it is respectfully requested that the Court not require the
commencement of a separate proceeding for the purposes of judicial settlement and discharge.
Further, due to the minimal assets of it is respectfully requested that the Court
waive the appointment of a Guardian ad litem and/or referee to review the Final Accounting.

13. Due to the minimal assets of ;, I have not sought
compensation nor a legal fee for services rendered to ;, . However, I am seeking
reimbursement for out of pocket expenses incurred in connection with my services as Guardian
for ' It is believed that such amount will exceed the balance currently maintained
in the Guardianship account.

14. Those parties entitled to notice of this proceeding are as follows:

.-.

Nassau/Suffolk Law Services Committee, Inc
313 West Main Street
Riverhead, NY 11901

Attorney for
Incapacitated Person

Attorney in Fact and
Health Care Proxy

Susanne Regan
Family Residences and Essential Enterprises
120 Plant Avenue
Hauppauge, NY 11788

Service Coordinator for
Incapacitated Person

Christine Malafi, Esq.
Suffolk County Attorney
Suffolk County Department of Law
Family Court/Social Services Bureau
Cahalan Court Complex
400 Carleton Avenue
Central Islip, NY 11722

Attorney for Suffolk County
Department of Social
Services

Thomas J. Casey, Esq.
75 Prospect Street
Huntington, NY 11743

Court Examiner

Sister-in-law;
Personal Needs and
Property Management Co-
Guardian

Sister-in-law; Maintains
legal custody of

Son of

--- ------r - -

Daughter of ..

Son of -
(14 years old)

14. No prior request for the relief being requested has been previously made to this Court or another Court of competent jurisdiction.

WHEREFORE, it is respectfully requested that an Order issue: (a) terminating the Guardianship for .- due to the existence of proper advanced directives; (b) discharging DEBRA V. ISLER, ESQ., as Personal Needs and Property Management Guardian for ::: (c) judicially settling the Final Accounting of DEBRA V. ISLER, ESQ.; (d) waiving the requirement, if any, to appoint a Guardian ad litem or referee to review the Final Accounting; (e) reimbursing DEBRA V. ISLER, ESQ., for out of pocket expenses incurred in connection with this Guardianship; and (f) Such other and further relief as this Court shall deem just and proper.

DEBRA V. ISLER, ESQ.

**ffIDICIAL SETTLEMENT OF FINAL
ACCOUNTING BASED ON RESIGNATION OF
GUARDIAN**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----) (

In the Matter of the Final Inventory and Account of

DEBRA V. ISLER, ESQ.

as Successor Property Management Guardian for

NOTICE OF MOTION TO
RESIGN AS GUARDIAN
AND JUDICIALLY SETTLE
FINAL ACCOUNTING

Index No.:

an Incapacitated Person.

-----) (

PLEASE TAKE NOTICE that upon the annexed affiqnation of Debra V. Isler, Esq., dated June 18, 2013, together with the exhibits annexed thereto, and the Final Inventory and Accounting dated December 31, 2012 filed with the Court on January 15, 2013 and the Updated Final Accounting dated June 18, 2013 which was filed with the Court on or about June 19, 2013, the undersigned will move this Court, at Part 25 G, at the Courthouse located at 400 Carlton Avenue, Central Islip, New York 11722 on the 22nd day of July, 2013, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order:

- (a) Granting the Debra V. Isler, Esq., permission to resign as Successor Guardian;
- (b) Appointing an independent Guardian to serve as Successor Property Management Guardian for
- (c) Waiving the appointment of a Referee to review and report as to the Updated Final Accounting;
- (d) Approving and judicially settling the Updated Final Accounting as filed;
- (e) Discharging Debra V. Isler, Esq., and her surety as to all matters involved in this Guardianship;
- (f) Awarding statutory commissions for the years 2011, 2012 and that portion of 2013 in which I have served as Successor Guardian;

- (g) Awarding additional compensation for Guardianship services provided to the Guardianship at the request of the Court as a result of the January 26, 2012 conference and the instant application, and
- (h) Granting such other and further relief as this Court may deem just and proper.

Dated: Syosset, New York
June 18, 2013

. DEBRA V. ISLER, ESQ.
Law Offices of ISLER & ISLER
25 Cambria Road
Syosset, NY 11791
(516) 433-0404 telephone number
(516) 433-8524 facsimile transmission number

To:

Donna Bertolasi
69 Sugar Maple Road
Levittown, NY 11756

Murray Surety Bonds
2 Penn Plaza, Suite 1500
New York, NY 10121

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK ----- X

i-t **-M;-f** **hFi li**

;nd Account of

DEBRA V. ISLER, ESQ.

as Successor Property Management Guardian of

AFFIRMATION IN SUPPORT
OF RESIGNATION AS
GUARDIAN AND JUDICIAL
SETTLEMENT OF
FINAL ACCOUNTING

Index No.

An Incapacitated Person.-----X

DEBRA V. ISLER, ESQ., an attorney duly admitted to practice law in the
Courts of the State of New York, affirms under penalty of perjury as follows:

1. By Order of this Court dated June 2, 2004, I was appointed
Interim/Successor Property Management Guardian for . **, upon family
designation.**

2. My Commission as Successor Property Management Guardian issued
upon the filing of a Consent, Oath and Designation as well as the filing of a Bond in the
amount of \$111,000 (Western Surety Company Bond Number: The current
bond is in the amount of \$85,000.

THE INCAPACITATED PERSON

3. is 18 years old, having been born on December 13,
1994. She presently lives with her mother, i . and a number of siblings at
the home purchased by the Guardianship on December 7, 1999, located at

4. suffers from injuries sustained due to medical
malpractice at birth. As a result of a personal injury lawsuit and in accordance with an

infant compromise, a structured settlement was entered into by the parents of

The structured settlement resulted in an initial net payment of \$260,804.41 to be given to the Guardian with lump sum payments as follows:

\$100,000 on	December 13, 2012
\$150,000 on	December 13, 2015
\$200,000 on	December 13, 2019
\$250,000 on	December 13, 2024
\$250,000 on	December 13, 2029
\$325,000 on	December 13, 2034

The structured settlement provided for monthly income payments as follows:

\$1,000 per month	Commencing April 15, 1999 and guaranteed until March 15, 2004;
\$1,500 per month	Guaranteed until February 25, 2009
\$2,000 per month	Guaranteed until February 25, 2014
\$6,000 per month	Guaranteed until February 25, 2019
\$7,000 per month	Guaranteed until February 25, 2024
\$8,000 per month	Guaranteed until February 25, 2029
\$9,000 per month	Guaranteed until February 25, 2042

Thereafter, payments increase by 3% compounded annually for each year.

RELIEF BEING REQUESTED

5. At this time I am requesting permission from the Court to resign as Guardian and for the Court to appoint a Second Successor Property Management Guardian for . It is respectfully suggested that the Second Successor Property Management Guardian be an independent Guardian appointed pursuant to Part 36 Rules¹.

6. The basis for my resignation is that the Guardianship is not working.

. has repeatedly thwarted my ability to act in the best interest of I

Notwithstanding the fact that I was appointed as Successor Property

¹ In addition to the reasons set forth herein as to why the Successor Guardian should not be a family member, the appointment should be pursuant to Part 36 Rules so that . cannot, once again, "unconsent" to her nomination as Successor Guardian.

Management Guardian at the request, nomination and designation of T .tti

and i, the parents of I ², for the last 8 years

"ias refused to cooperate with the Guardianship³ in any manner. For example,

has: (a) refused to provide me access to J

(b) refused to follow proper procedures in order to have necessary and needed repairs done to the home; (c) refused to cash monthly \$250 stipend checks and then complaining that I have not sent her stipend checks⁴; (d) requested an increase in the monthly stipend amount (a request which I strongly supported) but refused to provide me with a budget so that a reasonable and appropriate monthly amount could be agreed to and submitted to the Court for approval; (e) failed to submit invoices for payment by the Guardianship and then complained that I have not paid the expenses of .and (f) upon information and belief, claiming to be : and attempted to handle, on her own, certain building department issues that affect the house the Guardianship owns.

On the very infrequent occasion has submitted an invoice for payment,

was originally appointed Property Management Guardian for her daughter by Order of the Honorable H. Patrick Leis, III, dated July 7, 1999 and qualified in such capacity upon the filing of a Bond in the amount of \$300,000. By Order dated June 2, 2004, i .was allowed to resigned as Guardian, in lieu of being removed, due to her failure to file Annual Accountings for years 1999, 2000, 2001, 2002 and 2003. During those years, spent Guardianship funds without seeking Court approval for large and extra-ordinary expenditures, without saving receipts and without explanation as to the necessity of those expenditures. Upon my qualification as Successor Guardian there was only 57,889.30 remaining in various Guardianship accounts with outstanding real estate taxes due in the amount of \$16,972.53. Further, the homeowners insurance was cancelled due to non-payment of premiums.

³ Issues with respect to : First arose when I refused to agree to have a pool installed at the home. My decision not to have a pool installed at the home was supported by the Court at a conference requested by

⁴ I had requested . to open an account at Chase Bank so that I could directly deposit the \$250 into her account so that the funds could be immediately used for the care of . This system was in place for a number of months until r "" "" Chase Bank that there was a legal hold placed ons account. I advised . of this fact and requested that she take steps to investigate the hold. Upon information and belief, no action was takP-n by .ito clear up the hold. As a result, I began mailing monthly checks to However, beginning with the stipend check for July 2012 and going forward, railed to cash the checks. As I result, I stopped sending stipend checks as of January 2013.

the submission has never included the necessary or appropriate supporting documentation. Further, when questioned and additional information/ documentation was requested from · , [he information/documentation was never provided.

7. The final straw was the most recent correspondence sent to the Court in which · distorts the truth and makes outright lies to serve her purpose of regaining control, directly or indirectly, of · funds⁵. She now wishes to have her daughter · to be appointed Successor Property Management Guardian⁶.

8. At the last conference on this Guardianship (on or about January 26, 2012), the Court made reference to the fact that it had concerns over the appointment of Kassandra Nicoletti as she resides at home under the control of · secured her current employment at the IRS through · ... (who also works at the IRS) and has no credit history to secure a surety bond. In addition, given 1 overpowering personality and · '> meek personality, it is highly unlikely that · would be able to stand up to · in order to protect the assets of · from further misuse.⁷

9. Upon information and belief, · s desire to have a family member become Successor Guardian is motivated by the fact that the Guardianship recently received a lump sum payment of \$100,000 from the structured settlement.

⁵ I will not waste the Court's time by addressing each and every allegation made by · in her correspondence. However, if the Court wishes me to do so I will be happy to submit a responsive letter with supporting documentation.

⁶ Upon information and belief, · 'Ias also recently advised the Court Examiner that her son Joseph was available to be Successor Property Management Guardian.

⁷ Upon information and belief, the prior Court Examiner never resolved the issue of the funds that · ;unable to account for.

JUDICIAL SETTLEMENT OF FINAL ACCOUNTING

10. Over the years _____ has written to the Court and complained to the Court Examiner about my handling of various the Guardianship matters. Each and every time issues were raised, the Court either agreed with me or found no basis for the complaint. However, it is painfully clear that the Guardianship is presently not working and - _____ is suffering as a result. _____; refusal to act in the best interest of _____, by failing to work with the Guardianship adversely affects the needs of _____, For this reason, I agreed to resign as Guardian at January 26, 2012 conference.

11. I was prepared, at that time, to immediately file my Final Accounting and move for Judicial Settlement thereof. However, the Court requested that prior to my resignation as Guardian that I work with _____ to resolve a number of issues that were raised at the conference and submit an "omnibus" motion to resolve them so that a new Guardian would not have to deal with them. While it was quite clear at the conference that _____ had no desire to work with me on these issues and just wanted to be rid of me, I nonetheless attempted to comply with the Court's directive.

12. The first issue concerned repairs that _____ stated were necessary for the house. The Court advised _____ that she needed to secure and submit to me estimates for the repairs she wanted to be made to the home. I advised the Court that I would secure an engineers report to determine exactly what repairs were necessary to update the home. An engineers report was secured by the Guardianship. To date neither • _____ nor any other family member desiring to be Successor Guardian has submitted a list of repairs and estimates for repairs to the

home. Upon information and belief, no such submission was made to the Court Examiner either.

13. The second issue concerned establishing a budget/stipend to be given to Dolores Nicoletti to assist her in caring for . . . The Court directed :
to provide a list of monthly expenses associated with the care of _
;o that the omnibus motion could include the establishment of a budget/stipend.
To date, , nor any other family member desiring to be Successor Guardian has submitted a list of monthly expenses for consideration. Upon information and belief, no such submission was made to the Court Examiner either.

14. The third issue was concerning the appointment of . as Successor Guardian. As stated above, the Court had serious reservations as to the appropriateness of as Successor Guardian and the ability of to secure a Surety Bond as a condition for qualification. The Court directed : contact the Court Examiner to discuss the bonding issue. Upon information and belief, neither 11 or any other family member desiring to serve as Successor Guardian has contacted the Court Examiner to discuss qualification as Guardian.

15. advised the Court that if could not qualify as Property Management Guardian on her own, she would like her to serve with an attorney who she met at an "information fair" who she intended to retain in order to have herself appointed Personal Needs Guardian for , as J was to turn 18 on December 13, 2012. advised at the conference that she did not recall the name of the attorney but that she had his business

card and would provide it to me. My omnibus motion was to include a request for a Successor Guardian to be appointed and a direction therein that if a family member wished to serve in that capacity that they be directed to appear on the return date with Counsel. To date neither •1or any family member desiring to serve as Successor Guardian has provided me with the name and contact information for the "information fair" attorney. Upon information and belief, neither nor any family member desiring to serve as Successor Guardian has provided this information to the Court Examiner either.

16. It should be noted that it now 6 months since : has turned 18 and no application has been made to the Court to expand the Guardianship to include Personal Needs powers and to have either · or any other family member serve as Personal Needs Guardian. This relief could have also been included in the omnibus motion had or any other family member wishing to serve as Personal Needs Guardian had taken any action towards securing this relief.

17. Unable to comply with the Court direction, on or about January 15, 2013, I filed with the Court my Final Accounting as Guardian. A copy of my Final Accounting is annexed hereto as Exhibit "A". The Final Accounting covers the period June 2, 2004 (the date of my appointment as Successor Guardian) through and including December 31, 2012. As a result of such filing, a 2011 and 2012 Annual Accounting was not filed with the Court.

18. In order to bring the Final Accounting up to date, annexed hereto as Exhibit "B" are amended introductory pages 1 through 4, amended Schedule "C-8" (to

correct an omission), new Schedules "B-9", "C-9", "D-9", updated Schedule "E", amended Schedule "F", amended Schedule "G" (to reflect a change of address), and a current Affidavit of Accounting Party, which brings the Final Accounting through May 31, 2013. For the convenience of the Court, I have also filed with the Court a complete Updated Final Accounting.

19. Given the minimal transactional activity conducted in the Guardianship, it is respectfully requested that the appointment of a referee to review and report on the Final Accounting be waived. It is respectfully requested that the Final Accounting be approved as filed and updated and that it be immediately forwarded to the Clerk for review in due course.

COMPENSATION

20. Throughout this Guardianship, compensation to the Guardian was calculated under SCPA 2309. This method of calculation resulted in minimal compensation in relation to the amount of work that was necessary to handle Guardianship issues as they arose and to address some of the damage that Dolores Nicoletti caused the Guardianship. During this 9 year period I was required, among other things, to investigate the unapproved purchase of a van (which was ultimately repossessed); to address issues with the Town concerning the failure to register the unapproved van which was kept on the premises; to secure homeowners insurance on the premises after it had been cancelled by the insurance company for non-payment; to address the placement of a trampoline on the premises which threatened the termination of the homeowners insurance; to inquire and bring current the real estate taxes on the premises; to secure of Court approval to repair the driveway; to address the emergency

repair of the chimney; to address necessary boiler repairs; to investigate the feasibility of a pool to be installed at the premises, and to respond to correspondence sent to the Court over the years by _____ . My letter as well attend Court appearances. This, of course, is in addition to the usual responsibilities of a Property Management Guardian which includes, among other things, the marshalling of assets, the payment of expenses and associated time expenditures to handle those responsibilities and the preparation of Annual Accountings.

21. At this time I am not requesting a modification of the compensation for past uncompensated time. However, I wish to receive additional compensation for time associated with the January 26, 2012 conference including my attendance at the conference, the work done as a result of that conference, the preparation of my Final Accounting and judicial settlement thereof. An affirmation of service setting forth the specific work done will be submitted to the Court on or before the return date of this application.

CONCLUSION

22. At this time it is respectfully requested that: (a) I be allowed to resign as Successor Guardian, (b) that an independent Successor Guardian be appointed in my place and stead, (c) that given the minimal transactional activity in the Guardianship checking account that the appointment of a referee to review the Final Accounting be waived, (d) that the Final Accounting dated December 31, 2012 and updated through and including May 31, 2013 be approved as filed and updated, (e) that my surety and I be discharged as to all matters involved in this Guardianship, (f) that I be awarded statutory

compensation for the years 2011, 2012 and that portion of 2013 in which I have served as Guardian, (g) that I be awarded additional compensation for Guardianship services provided to the Guardianship at the request of the Court as a result of the January 26, 2012 conference and the instant application, and (h) such other and further relief as this Court may deem just and proper.

Dated: Syoset, New York
June 18, 2013

DEBRA V. ISLER

YOUR PERSONAL NEEDS AND FINANCIAL AFFAIRS. DEBRA V. ISLER 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 DEBRA V. ISLER BELIEVES YOU MAY BE UNABLE TO TAKE CARE OF YOUR PERSONAL NEEDS AND 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.

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THE NAME AND ADDRESS AND TELEPHONE NUMBER OF
THE CLERK OF THE COURT ARE: JOSEPH PANICO, SUPREME COURT,
SUFFOLK COUNTY, PART 6, COHALAN COURT COMPLEX, 400
CARLETON AVENUE, CENTRAL ISLIP, NEW YORK 11722 TELEPHONE
NUMBER 631-853-6215.

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.

1. AT THAT HEARING AND IN THIS PROCEEDING YOU
HAVE THE FOLLOWING RIGHTS:

(A) YOU HAVE THE RIGHT TO PRESENT EVIDENCE.

(B) YOU HAVE THE RIGHT TO CALL WITNESSES,
INCLUDING EXPERT WITNESSES.

(C) YOU HAVE THE RIGHT TO CROSS EXAMINE
WITNESSES, INCLUDING ANY WITNESSES CALLED
BY THE COURT.

{D) YOU HAVE THE RIGHT TO BE REPRESENTED BY
A LAWYER OF YOUR OWN CHOICE. 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.**

2. Said Guardian, if appointed for you, shall have the authority to exercise the following powers on your behalf:

PROPERTY MANAGEMENT POWERS

- 1) Collect all income, including but not limited to Social Security, dividends, interest, annuity and pension;
- 2) Endorse, collect, negotiate, deposit and withdraw Social Security, Veterans Administration and/or other pension, annuity or benefit checks and/or negotiable instruments;
- 3) Authority to exercise such powers necessary and sufficient to manage the property, financial affairs and legal affairs of _____, „
- 4) Apply for and maintain government and private benefits on behalf of _____, „
- 5) Deal with Medicare and Medicaid claims, litigation and settlement;
- 6) Claim, negotiate, obtain and settle claims and actions for government entitlements and benefits of all kinds with all government

nayi:: -5-

- administrations and agencies;
- 7) Deal with all pension, retirement incentives, IRA/Keogh/SEP and similar type plans, programs and annuities;
 - 8) Sign tax returns and deal with all federal, state and local tax authorities on all claims, litigation, settlements and other matters;
 - 9) Marshal _____'s assets, and invest and reinvest such assets as a prudent person of discretion and intelligence in such matters seeking reasonable income, and apply so much of the income and principal as necessary for _____'s comfort, support, maintenance and well-being;
 - 10) Pay the reasonable funeral expenses of _____;
 - 11) Pay bills after the death of _____ if incurred prior to said death, if authority to pay any such bill would otherwise have existed;
 - 12) Buy and sell stocks, bonds and Treasury bills;
 - 13) Implement and make tax savings decisions;
 - 14) Create revocable or irrevocable trusts of property of the estate which may extend beyond your incapacity or your life;
 - 15) Enter into contracts, including the sale of real property subject to approval by the Court;
 - 16) Retain attorneys concerning _____-property and affairs and

ITayE -6-

pay the same, subject to prior approval of the Court;

- 17) Retain accountants, investment counsel and similar professionals
concerning _____'s property and affairs and pay the
same subject to prior Court approval;
- 18) Handle all banking transaction;
- 19) Defend, commence or maintain any civil judicial proceedings;
- 20) Authorize or access release of confidential financial records, reports and
statements;
- 21) Access safe-deposit boxes/vaults/safes, if any; and
- 22) Any other power which the Court in its discretion shall deem appropriate to
meet the Alleged Incapacitated Person's property management needs.

PERSONAL NEEDS POWERS

- 1) Determine who shall provide personal care or assistance;
- 2) Make decisions regarding social environment and other social aspects of
_____ -s life;
- 3) Determine whether : _____ should travel;
- 4) Determine whether _____ . should possess a license to drive;
- 5) Authorize access to or release of medical and other confidential records;
- 6) Apply for and maintain government and private benefits;
- 7) Consent to or refuse generally accepted routine or major medical, psychiatric,

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psychological or dental treatment, including voluntary or involuntary hospitalizations;

- 8) Choose the place of abode, including a medical, psychiatric or residential or a group home for similarly afflicted individuals; and
- 9) Any other power which the Court in its discretion shall deem appropriate to meet the _____'s personal needs.

Upon reading and filing the annexed petition of DEBRA V. ISLER, duly verified on 1st day of October, 2003 from which it appears that _____, a person having been previously been determined to be in need of a Guardian, domiciled in the County of Suffolk and presently homeless in Suffolk County is likely to suffer harm because: the person is unable to provide for property management and personal needs and the person does not realize the consequences of such inability; and it appearing that _____ owns or possesses certain real and personal property within the State of New York:

LET _____, NANCY BURNER, ESQ., / _____ L(ex-husband and natural guardian of minor children _____, and / - - - - -), and MENTAL HYGIENE LEGAL SERVICE

SHOW CAUSE before me at a hearing on this application to be held before me at the Federal Courthouse and Building located at 100 Federal Cami Plaza, Courtroom _____ Central Islip, New York, on the _____ day of _____, 2003, at _____ a.m./p.m.

WHY an Order should not be made and entered herein:

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(a) converting the present guardianship from one based on consent to one based on a determination of incapacity and awarding the powers set forth in this petition;

(b) allowing DEBRA V. ISLER, ESQ. to resign as Temporary Co-Guardian and Trustee of a certain Special Needs Trust created for the benefit of /

(c) allowing NANCY BURNER, ESQ., to resign as Temporary Co-Guardian; and

(d) appointing a Permanent Guardian and Successor Trustee for LUDMILA FRENKEL;

WHY Petitioner shall not have such other and further and different relief as may be just and proper.

SUFFICIENT reason appearing therefore, it is

ORDERED, that_____

_____ 18
hereby appointed COURT EVALUATOR herein to explain this proceeding to the Alleged Incapacitated Person, and to investigate the claims made in the application, and it is further

ORDERED, that this Order to Show Cause, a copy of the Petition upon which it is based and supporting affirmation shall be served upon ¹ _____, the person alleged to be incapacitated, by certified mail and regular mail to _____ not less than fourteen (14) days prior to the return date of this Order to Show Cause; and it is further

ORDERED, that this Order to Show Cause, a copy of the Petition upon which

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it is based and affirmation in support shall be served by mail or by deliver to the office of

the Court Evaluator, within seven (7) days of the date of this Order to Show Cause;

ORDERED, that this Order to Show Cause and a copy of the Petition upon which it is based shall be served by mail upon Nancy Burner, Esq.,, and Mental Hygiene Legal Service: not less than fourteen (14) days prior to the return date of this Order to Show Cause.

ORDERED, that the Court Evaluator appointed herein shall comply with Part 36 of the Rules of the Chief Judge and file the certificate required by Section 36.1(d) and the notice of appointment required by Section 36.3 of the Rules of the Chief Judge.

ENTER:

J.S.C.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----)(
In the Matter of the Application of

DEBRA V. ISLER

as Petitioner Pursuant to Article 81 of the
Mental Hygiene Law and as Temporary Co- Guardian
for

VERIFIED PETITION

Index No. .

An Alleged Incapacitated Person,

To convey the prior Guardianship from one based on
Consent to one Based on a Determination of Incapacity,
allow the current Temporary Co-Guardians to resign,
allow the current Trustee of a certain Special Needs Trust
for the benefit of! .to resign, the
appointment of a Personal Needs and Property
Management Guardian and the appointment of a
Successor Trustee.

-----) (

TO THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF SUFFOLK

The Petition of DEBRA V. ISLER, ESQ., respectfully states and alleges:

PETITIONER

1. Petitioner DEBRA V. ISLER, with offices located at 2141 Deer Park Avenue,
Deer Park, NY 11729 telephone number (631) 242-2700 and 25 Cambria Road, Syosset, NY 11791 is
presently the Temporary Co-Guardian of having been appointed by an Order

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of this Court dated March 27, 2003 at the request of _____, A copy of the Order is annexed hereto as Exhibit A.

2. Petitioner DEBRA V. ISLER is a person entitled to commence this proceeding pursuant to Section 81.06(6) of the Mental Hygiene Law.

ALLEGED INCAPACITATED PERSON

3. _____ is 39 years old, having been born on June 1, 1964 in the former Union of Soviet Socialist Republics in the area which now is within the boundaries of Russia. _____'s parents and sister are still alive and residing in Russia¹.

4. _____ is recently divorced from her husband, _____, whom she married in or about August 1985 and whom she had been living separate and apart from since in or about 1998. _____ and _____, have two children, _____ (born June 13, 1986) and _____, (born September 26, 1997). _____ has sole custody of both children. _____ is allowed visitation with the children as long as she is medication compliant.

5. The current whereabouts of _____, are unknown. On August 12, 2003 _____ was admitted to the psychiatric ward at St. Catherine of Siena located at 50 Route 25A, Smithtown, NY 11787. She was to be discharged on October 1, 2003 to the

¹ _____:ts refused to provide any information as to the exact whereabouts of her family in Russia.

Brookhaven Townhouse, an adult home located at 111 Beaver Dam Road, Brookhaven, NY 11717.

After the social worker from St. Catherine of Siena and Jeanette McDonnell of Suffolk County Bridger

Service (the outpatient coordinator) discharged : , from the hospital and brought

her to the post office to secure her mail, announced that she would not go to

Brookhaven Townhouse. I requested that _ _ _ oe returned to St Catherine of Siena

but was advised by the nurse practitioner at the hospital that the psychiatric assigned to

>I could not take her back unless she came through C-PEP. The outpatient coordinator

refused to take her to C-PEP and advised that she would take to her car and

leave her there. I left numerous messages for the outpatient social worker to update me as to what

happened to , but as of the filing of this petition, I have not received a return

telephone call.

6. Prior to that admission and while she was medication compliant, --

"had been living with her friend, ., in Ms. I home located at

BACKGROUND

7. By Order to Show Cause dated January 14, 2001,

-- I --, ::ought the appointment of a guardian for the personal needs and property

management of ,... The powers of the personal needs and property management

²¹ . was appointed Guardian *ad Litem* for _ _ _ . I in a matrimonial proceeding that was commenced by her then husband, Anatoly Frenkel. Said appointment

guardian were to include the ability to appear on behalf of . ____ and assist

with the defenses and/or prosecution of her marital and economic interests in the matrimonial action and to settle her property, custody, visitation and support interests. A copy of the original Order to Show Cause and Verified Petition is annexed hereto as Exhibit B.

8. Petitioner was the Comt Evaluator in the initial Guardianship proceeding. A copy of my Report is annexed hereto as Exhibit C.

9. A hearing on the merits of the application was held on February 4, 2002 at which time ,,,, was represented by ELYNDA HICKSON-TINNIE, ESQ. an attorney from Mental Hygiene Legal Services. At that time it was determined that _

, suffered from a schizophrenic disorder which "comes and goes apparently at times."

consented to the Guardianship and certain personal needs and property management powers. A copy of the decision is annexed hereto as Exhibit D.

10. At the request of ., your petitioner was appointed personal needs and property management Guardian. Given your petitioner's unfamiliarity in matrimonial proceedings, your petitioner requested that a co-guardian be appointed to handle that matter. The Comt appointed Nancy Burner, Esq., in said capacity.

11. Due to the immediate needs of - - ., your petitioner and Nancy Burner were appointed Temporary Guardians with the authority to act in the matrimonial

was pursuant to an Order of the Honorable Donald R. Blydenburgh.

action as well as to apply, secure and maintain government and private benefits for __

12. Your petitioner immediately acted on behalf of __
assisting her in applying for and securing both Social Security Disability and Social Security Income.
However, notwithstanding the Order of the Court and at the insistence of __, the
Social Security Administration would not forward duplicate notices and/or correspondence to your
petitioner.

13. Further, your petitioner contacted the Department of Social Services and took
the appropriate steps to secure Medicaid for __. Your petitioner also made
financial arrangements to have __ return to school to take various courses of
interest.

14. My co-guardian, Nancy Burner, Esq., immediately took steps to move forward
with the matrimonial action. A settlement was reached between the parties and as a result of her
actions, __, was to receive a total of \$633 a month from /
a portion of which represented the value of his professional degree and a portion of which represented
support due to her impoverished status. So as not to adversely affect __'s Social
Security benefits and Medicaid status, a Special Needs Trust was established for the benefit of

A copy of the Special Needs Trust is annexed hereto as Exhibit E.

15. Not being able to locate anyone who was willing to serve as Trustee, Nancy
Burner, Esq. inquired as to whether I would consent to being the Trustee of the Special Needs Trust.

mayE: -15-

Given the fact that I was assisting _____ in the day to day aspects of her life, I consented to the position.

16. _____ has made the required monthly payments in a timely manner.

**NECESSITY TO CONVERT GUARDIANSHIP BASED ON CONSENT TO GUARDIANSHIP
BASED ON DETERMINATION OF INCAPACITY**

17. Unfortunately, your petitioner has found that since the date of the hearing, _____ has become more irrational which makes assisting her extremely difficult. _____, does not believe that she is ill and has repeatedly demanded that I cancel her Medicaid and her Social Security benefits. _____ allows me to "assist" her only when she deems it necessary or appropriate and those situations are usually emergent in nature.

_____ believes that I am harassing her by not turning over the funds in the special needs trust and becomes angry when I request supporting documentation for her requests for money. She also has repeatedly requested that I cancel her Medicaid because she does not need it. A copy of various correspondence is annexed hereto as Exhibit F.

18. On May 10, 2003 your petitioner received a telephone call from _____. _____ advising that he believed that _____ had stopped taking her medication and that she was becoming dangerous. I attempted to contact _____, and her roommate _____, but I did not receive any return telephone calls.

19. On May 16, 2003 your petitioner received a telephone call from [redacted] [redacted] advised that [redacted] was acting oddly. [redacted] [redacted] advised that [redacted] had stopped taking her medication in April. [redacted] [redacted] 2 had advised that she did not tell me about [redacted] 's non-compliance with her medication because she did not want to upset [redacted] [redacted] advised that [redacted] [redacted] was not attending her classes at Stony Brook University and had been working at Macy 's.

20. On May 22, 2003 I received a telephone call from a friend of [redacted] [redacted] advising that [redacted] had left knives and scissors all over the house and that [redacted] [redacted] was scared that [redacted] [redacted] would hurt her. She insisted that [redacted] had to leave the house immediately. On that same day, your petitioner received a telephone call from [redacted] advising that she had to move out of [redacted] : house, that she needed to find a new job and a new place to live and that she was no longer taking her medication because she was cured.

21. On that same day, your petitioner spoke to Frank Dooley, the nurse practitioner at Pederson Krag, the outpatient facility that [redacted] attended for therapy. He confirmed that [redacted] stopped taking her medication (Serequil and Haldol) and had not been to the facility in at least two weeks. He advised that there was no outreach mobile mental health entity affiliated with the facility to help [redacted]

22. On May 29, 2003 your petitioner went to the local Social Security [redacted]

Administration office to inquire as to the status of _____; benefits. Your petitioner discovered that _____'s benefits were in a "non-payment" status due to her employment at Macy's. Your petitioner immediately took steps to reinstate both Social Security Disability and Social Security Income benefits for _____. Your petitioner also assisted in securing a determination of incapacity from _____'s psychiatrist at Pederson Krag for Social Security Administration purposes. Based upon this determination, Social Security will now allow a third party payee to receive, _____'s Social Security Disability and Income benefits.

23. On June 5, 2003 your petitioner received a telephone call from _____:1Jvising that she learned that I had reinstated her benefits and that she was upset because she was no longer disabled and therefore no longer entitled to the money. She also requested that I return whatever money I had in the Special Needs Trust to _____ for the same reason.

24. On June 29, 2003 your petitioner received a telephone call from _____. _____advising me that... _____threatened my life because I was not releasing funds to her for her own purposes.

25. On June 30, 2003 your petitioner received a telephone call from _____. _____that she had no money and needed food. She advised that she was living in her car and did not want money to find an apartment because the weather was perfect. She also requested that I send her money so she could retain an immigration attorney and a criminal attorney to press charges

against _____ and her boyfriend. Your petitioner purchased grocery store gift cards and mailed them to _____ s post office box so that she could purchase food. Your petitioner refused to forward money for the retention of the attorneys. Your petitioner advised her to go to the hospital at which time _____ L ended the telephone call.

26. On July 1, 2003 _____ filed a complaint against _____ due to a letter received by _____ from _____ which threatened harm to various individuals. That same day, your petitioner received a telephone call from Police Officer Gabor at the 611th precinct inquiring as to _____. Your petitioner convinced him not to pursue the criminal complaint and charges against _____, . At his suggestion I filed a missing person's report with the 2nd Precinct and submitted proof that _____ was a danger to herself and others.

27. On July 8, 2003 your petitioner received a telephone call from Police Office Wilken of the 411th Precinct. He advised that _____ had appeared at the precinct to press charges against _____ and her boyfriend. Police Officer Wilken advised that _____, appeared clean and somewhat rational. _____ L was allowed to leave the precinct notwithstanding my report that she was a danger to herself and others.

28. On August 12, 2003 _____ appeared at NANCY BURNER's office and inquired as to my home address. _____ also inquired as to whether her family was still alive since she knew your Petitioner going to kill them. She stated that she was so angry that she wanted to "shoot me in between the eyes." At my request and insistence, the police

Day0 -19-

were called and _____ . was taken to C-PEP at Stony Brook University Medical Center and admitted to St. Catherine's of Siena where she was an inpatient for approximately 6 weeks.

29. While admitted at St. Catherine of Siena, your Petitioner inquired as to whether intra-muscular injections of _____ , 's medication could be given to her to assure her compliance with medication. I was advised that since _____ , was currently taking her medication, a KENDRA type hearing was not appropriate.

30. Your petitioner received a number of telephone calls from Vince DeSimone, the social worker at St. Catherine of Siena assigned to _____ , that _____

_____ will be ready for discharge shortly and that she had been evaluated at and accepted by Brookhaven Townhouse, an adult group home located at 111 Beaver Dam Road, Brookhaven, NY 11717. This facility was perfect for _____ , since given it's status with Medicaid, it would (a) raise _____ 's Social Security benefits from approximately \$600 to \$1,000; (b) only cost her \$863 which included food and housekeeping; and (c) would allow her to receive the overage amount of \$137 a month for spending money. Your petitioner was advised that _____

_____ wanted to go to this facility and wanted me to make financial arrangements for her.

31. After speaking with the Martin Hoffman, the administrator of the group home, it was decided that Brookhaven Townhouse should be the representative payee to insure payment of the monthly charges. Arrangements were made by Jeanette McDonnell of Suffolk County Bidger Service (an outpatient coordinator) to discharged _____ . _____ in October 1, 2003.

TiayE -20-

32. After the social worker from St. Catherine of Siena and Jeanette McDonnell of Suffolk County Bids Service (the outpatient coordinator) discharged from the hospital and brought her to the post office to secure her mail, [redacted] announced that she would not go to Brookhaven Townhouse. As your petitioner stated previously in this petition, your petitioner requested that [redacted] be returned to St Catherine of Siena but was advised by the nurse practitioner at the hospital that the psychiatrist assigned to [redacted] would not take her back unless she came through C-PEP. The outpatient coordinator refused to take her to C-PEP and advised that she would take [redacted] to her car and leave her there. I left numerous messages for the outpatient social worker to update me as to what happened to [redacted], but as of the filing of this petition, I have not received a return telephone call.

33. According to the nurse practitioner assigned to [redacted] L at St. Catherine of Siena, [redacted] was discharged with only prescriptions. While [redacted] has Medicaid and should not have a problem filling the prescriptions, it is not known as to whether she will actually fill them.

34. [redacted] is impaired, has poor judgment and lacks insight. She is currently homeless and if medication non-compliant, will become a danger to others and herself.

35. Your Petitioner is requesting that the following Property Management powers pursuant to Mental Hygiene Law 81.21 be awarded to the permanent guardian:

- 1) Collect all income, including but not limited to Social Security, dividends, interest, annuity and pension;

Days -21-

- 2) Endorse, collect, negotiate, deposit and withdraw Social Security, Veterans Administration and/or other pension, annuity or benefit checks and/or negotiable instruments;
- 3) Authority to exercise such powers necessary and sufficient to manage the property, financial affairs and legal affairs of
- 4) Apply for and maintain government and private benefits on behalf of
- 5) Deal with Medicare and Medicaid claims, litigation and settlement;
- 6) Claim, negotiate, obtain and settle claims and actions for government entitlements and benefits of all kinds with all government administrations and agencies;
- 7) Deal with all pension, retirement incentives, IRA/Keogh/SEP and similar type plans, programs and annuities;
- 8) Sign tax returns and deal with all federal, state and local tax authorities on all claims, litigation, settlements and other matters;
- 9) Marshal _____'s assets, and invest and reinvest such assets as a prudent person of discretion and intelligence in such matters seeking reasonable income, and apply so much of the income and principal as necessary for _____'s comfort, support, maintenance and well-being;
- 10) Pay the reasonable funeral expenses of T -
- 11) Pay bills after the death of _____ if incurred prior to said death, if authority to pay any such bill would otherwise have existed;
- 12) Buy and sell stocks, bonds and Treasury bills;
- 13) Implement and make tax savings decisions;
- 14) Create revocable or irrevocable trusts of property of the estate which may extend beyond your incapacity or your life;

Dayi:: -22-

- 15) Enter into contracts, including the sale of real property subject to approval by the Court;
- 16) Retain attorneys concerning _____'s property and affairs and pay the same, subject to prior approval of the Court;
- 17) Retain accountants, investment counsel and similar professionals concerning _____'s property and affairs and pay the same subject to prior Court approval;
- 18) Handle all banking transaction;
- 19) Defend, commence or maintain any civil judicial proceedings;
- 20) Authorize or access release of confidential financial records, reports and statements; and
- 21) Access safe-deposit boxes/vaults/safes, if any;

36. Your Petitioner is requesting that the following Property Management powers pursuant to Mental Hygiene Law 81.22:

- 1) Determine who shall provide personal care or assistance;
- 2) Make decisions regarding social environment and other social aspects of _____'s life;
- 3) Determine whether _____ should travel;
- 4) Determine whether _____ should possess a license to drive;
- 5) Authorize access to or release of medical and other confidential records;
- 6) Apply for and maintain government and private benefits;
- 7) Consent to or refuse generally accepted routine or major medical, psychiatric,

nays -23-

psychological or dental treatment, including voluntary or involuntary hospitalizations;

- 8) Choose the place of abode, including a medical, psychiatric or residential or a group home for similarly afflicted individuals; and
- 9) Any other power which the Court in its discretion shall deem appropriate to meet the _____'s personal needs.

**PERMISSION FOR PETITIONER TO RESIGN AS TEMPORARY
GUARDIAN AND TRUSTEE OF THE SPECIAL NEEDS TRUST**

35. Since my appointment as Temporary Guardian and acceptance of the position as Trustee of the Special Needs Trust created for the benefit of 1 _____ your petitioner has worked very hard to assist _____ .. ____!... However, since her non-compliance with her medication, your petitioner is concerned as to her family's safety and well being. While your petitioner made a conscious decision to become an elder law attorney and specifically a guardian for _____, my family should not have to live in fear. I have young children and do not want them to be in danger.

36. Further, it is clear that ' _____ requires a guardian with more experience in handling the mentally ill and who has more knowledge as to the resources available to the mentally ill. It is therefore respectfully requested that I be allowed to resign as both Temporary Guardian and Trustee.

37. It is my understanding that : _____ has sent correspondence to the Court as well as placed a number of telephone calls to Court personnel complaining as to my

IlayE -24-

handling of her assets and wishing that a new Guardian and Trustee be appointed by the Comt.

PERMISSION FOR TEMPORARY CO-GUARDIAN TO RESIGN

38. Your petitioner has been advised by NANCY BURNER, ESQ., that she wishes to resign as Temporary Co-Guardian as well. Your petitioner had planned to attach an affirmation to this petition from NANCY BURNER, ESQ. to that effect but given the events of October 1, 2003 petitioner could no longer delay the filing of this petition. Such affidavit will be filed with this Court prior to the return date of this Order to Show Cause.

DURATION OF POWERS BEING SOUGHT

39. Your petitioner requests that the powers granted by the Comt be for an indefinite period of time. This is based on the nature of the incapacity of --

PERSONS ENTITLED TO NOTICE

40. The names, addresses, telephone numbers, and relationships of the interested parties are:

NAME	<u>ADDRESS and TELEPHONE NO.</u>	RELATIONSHIP
		AIP
Nancy Burner, Esq.	46 Route 25A Suite 4 Setauket, NY 11733 631- 941-3434	Temporary Co-Guardian
		Ex-husband and natural guardian of minor children

Mental Hygiene
Legal Service

998 Crooked Hill Road
West Brentwood, NY 11717

41. No previous application has ever been made for the relief sought herein to this Court or any other Court of competent jurisdiction.

WHEREFORE, your Co-Petitioners respectfully request:

- a. That the annexed Order to Show Cause be signed by this Court;
- b. That in the discretion of the Court, some proper person(s) be appointed as Court Evaluator for _____, an Alleged Incapacitated Person, to give guidance to the Court and, further, to protect her interests in this proceeding;
- c. That this Court find _____ to be incapacitated and in need of a Court appointed Guardian with powers necessary to meet the needs of _____;
- d. That this Court find, _____ to be incapacitated and convert the prior Guardianship from one based on consent to one based on a determination of incapacity;
- e. That this Court allow DEBRA V. ISLER, ESQ. to resign as Temporary Co-Guardian and Trustee of a certain Special Needs Trust created for the benefit of _____;
- f. That this Court allow NANCY BURNER, ESQ., to resign as Temporary Co-Guardian;
- g. That this Court appoint a permanent personal needs and property management

Tiuyf; -26-

Guardian and Successor Trustee for - · , and

h. That the Petitioner have such other, further or different relief as may be just and property.

Dated: Deer Park, New York
October 1, 2003

DEBRA V. ISLER, Temporary Co-Guardian and
Trustee of a Special Needs Trust for the benefit of

2141 Deer Park Ave
Deer Park, NY 11729
Tel. No. (631) 242-2700
Fax No. (631) 242-0505

nuye -27-

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

DEBRA V. ISLER, being duly sworn, deposes and says that she is the Petitioner herein; that she has read the foregoing Petition and knows the contents thereof; and that the same is true of her own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters she believes it to be true.

DEBRA V. ISLER

Sworn to before me this
day of October, 2003.

ROBERT A. ISLER
Notary Public, State of New York
No. 5005785
Qualified in Nassau County
Commission Expires December 14, 2006

Daye -28-

JUDICIAL SETTLEMENT OF FINAL ACCOUNTING BASED ON DEATH OF IP

At an I.A.S. Part 19 of the Supreme Court of
the State of New York, County of Nassau, at
the Courthouse located at 100 Supreme Court
Drive, Mineola, New York on the
day of _____, 2010.

P R E S E N T:

HON. JOEL K. ASARCH,
Justice of the Supreme Court

-----) {
In the Matter of the Final Accounting of the
Proceedings of

ROBERT A. ISLER, ESQ.,

EX PARTE ORDER

as Successor Guardian for the Personal Needs
and Property Management of

Index No.:

an Incapacitated Person, now Deceased.

-----) {

ROBERT A. ISLER, ESQ., as Successor Guardian for the Personal Needs and
Property Management of _____ an Incapacitated Person, now Deceased, having
complied with the prior Order of the Court dated March 29, 2010 which judicially settled the
Final Account of Successor Guardian, directed the payment of certain fees and the payment of
remaining funds to Nassau County Department of Social Services, the preferred creditor; and
having submitted proof of his compliance with the provisions of the March 29, 2010 Order as to
all required fees and payments,

NOW, on motion of ROBERT A. ISLER , the Successor Personal Needs and
Property Management Guardian seeking discharge, it is

ORDERED that the said Successor Guardian is hereby discharged from all liability

in connection with all matters embraced in said final account, and it is further

ORDERED that Guardian Bond Number _____ in the amount of \$10,000 issued by Western Surety is hereby cancelled and the Surety on the Guardian's bond is discharged from all liability in connection with all matters embraced in the said final account.

ORDERED, that the clerk of the Guardianship Part shall close her file as this matter is now concluded.

ENTER:

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----)(
In the Matter of the Final Accounting of

ROBERT A ISLER, ESQ.

as Successor Personal Needs and
Property Management Guardian of

NOTICE OF MOTION JUDICIALLY
SETTLING FINAL ACCOUNTING
AND DISCHARGING GUARDIAN

Index No.:

An Incapacitated Person, Now Deceased.
-----) (

PLEASE TAKE NOTICE, that pursuant an Order of the Honorable Joel K.
Asarch, together with the papers upon which it was granted, a Final Accounting of the
proceedings of Robert A. Isler, Esq, as Personal Needs and Property Management Guardian of
_____, has been filed in the Office of the Clerk of the County of Nassau on or about the
30th day of March, 2009.

PLEASE TAKE FURTHER NOTICE, that the undersigned will move this
Court at an I.A.S. Part 27 thereof, to be held at the Courthouse located at 100 Supreme Court
Drive, Mineola, New York on the 20th day of April, 2009, at 9:30 o'clock in the forenoon of that
day, or as soon thereafter as counsel can be heard, for an Order

- (a) Judicially Settling the Final Account of Robert A. Isler, Esq., as Successor
Personal Needs and Property Management Guardian for _____, an
Incapacitated Person, now deceased;
- (b) Awarding fair and reasonable compensation to Robert A. Isler, Esq. as Guardian
for services rendered to _____ well as reimbursement of out of pocket
expenses incurred on behalf of _____
- (c) Awarding a legal fee to David S. Zeidman, Esq., the Court Examiner assigned to
this Guardianship for services rendered, if any;
- (d) Directing that after the payment of all Court Ordered fees, outstanding Court

Ordered fees, and outstanding NAMI payments due Grace Plaza Rehabilitation and Nursing Center, the balance of Guardianship funds, if any, to be paid over to Nassau County Department of Social Services in full satisfaction of its Medicaid Liens with respect to chronic care benefits provided to both -

- (e) Discharging the Guardian and his Bond; and
- (t) Such other and further relief as the Court may deem just and proper.

Dated: Syosset, New York
March 30, 2009

ROBERT A. ISLER, ESQ.
25 Cambria Road
Syosset, NY 11791
(516) 433-0404 telephone number
(516) 433-8524 facsimile transmission number

TO: Emily F. Franchina, Esq.
Guardian for Rolf G. Roxin, Jr.
1100 Franklin Avenue, Suite 205
Garden City, NY 11530

Administrator
Grace Plaza Rehabilitation and
Nursing Center
15 St. Paul's Place
Great Neck, NY 10021

Mental Hygiene Legal Service
1 Court Street
Riverhead, NY 11901

David S. Zeidman, Esq.
16 Donald Drive
Syosset, NY 11791

Lisa Petrocelli, Esq.
Supreme Court /Nassau County
100 Supreme Court Drive
Mineola, NY 11530

Robert H. Solomon, Esq.
24 East Park Avenue
Long Beach, NY 11561

Surety Bonding Company of America
c/o Murray Surety Bonds
2 Penn Plaza, Suite 1500
New York, NY 10121

Nassau County Department of Social Services
60 Charles Lindbergh Blvd, Suite 1600
Uniondale, NY 11553

Nassau County Department of Law
60 Charles Lindbergh Blvd, Suite 1600
Uniondale, NY 11553

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----)(
In the Matter of the Final Accounting of

ROBERT A. ISLER, ESQ.

VERIFIED PETITION

as Successor Personal Needs and
Property Management Guardian of

Index No

An Incapacitated Person, Now Deceased.

-----)(
TO THE JUSTICE OF THE SUPREME COURT:

1. Your Petitioner was appointed Successor Personal Needs and Property Management Guardian for_ . by Order dated September 16, 2005.
2. Your Petitioner was required to file a Bond in the amount of \$10,000 as a condition of his appointment. Said Bond is still in full force and effect as of the date of this Petition.
3. Your Petitioner was required to file a Final Accounting as to his actions as Guardian by an Order of this Court. Said filing was based on depletion of assets.
4. That passed away on January 6, 2009.
5. Your Petitioner filed his Final Accounting on March 30, 2009. A true and exact copy of the final inventory and account is annexed hereto. as Exhibit A.
6. Your Petitioner now seeks the judicial settlement of the Final Accounting and his discharge as Personal Needs and Property Management Guardian for
7. Your Petitioner respectfully requests that fair and reasonable compensation be

set for his services to ., as well as reimbursement for out of pocket expenses paid on behalf of . An affirmation of legal services shall be filed with the Court on or before the return date of this motion.

8. Your Petitioner respectfully requests that fair and reasonable compensation be set for David S. Zeidman, Esq., the Court Examiner assigned to this Guardianship, if appropriate. An affirmation of services should be filed with the Court on or before the return date of this motion if compensation is being requested.

9. Your Petitioner requests that he be directed to pay all Court Ordered fees to be determined by the Court as part of this final accounting. In addition, your Petitioner requests that he be directed to pay all outstanding Court Fees associated with this Guardianship as well as the Guardianship for , the deceased wife of ; . Finally, your Petitioner requests that he be directed to pay Grace Plaza Rehabilitation and Nursing Center the outstanding NAMI amounts due in connection with I have been advised that given the issuance of a zero NAMI budget for . . - . there are no outstanding NAMI amounts due Grace Plaza Rehabilitation and Nursing Center in connection with .

10. Your Petitioner respectfully requests that he be directed to pay any balance remaining to Nassau County Department of Social Services in full satisfaction of any and all Medicaid Liens associated with chronic care benefits paid on behalf of both • t and

11. Your Petitioner respectfully requests that upon payment of the above-mentioned Court Ordered fees and outstanding NAMI payments due, that your Petitioner be discharged as Guardian and his Bond be discharged as well.

11. That those people entitled to notice of this proceeding are as follows:

Emily F. Franchina, Esq. 1100 Franklin Avenue, Suite 205 Garden City, NY 11530	(Distributee Guardian for)
--	--------------------------------

Administrator Grace Plaza Rehabilitation and Nursing Center 15 St. Paul's Place Great Neck, NY 10021	(Statutory Party/ Creditor of -NAMI)
--	---

Lisa Petrocelli, Esq. 21 Canterbury Road, Apt 14 Great Neck, NY 11021	(Creditor)
---	------------

Robert H. Solomon, Esq. 24 East Park Avenue Long Beach, NY 11561	(Creditor)
--	------------

David S. Zeidman, Esq. 16 Donald Drive Syosset, NY 11791	(Creditor/Court Examiner)
--	---------------------------

Surety Bonding Company of America c/o Murray Surety Bonds 2 Penn Plaza, Suite 1500 New York, NY 10121	(Statutory Party)
--	-------------------

Mental Hygiene Legal Service 1 Court Street Riverhead, NY 11901	(Statutory Party)
---	-------------------

Nassau County Department of Social Services 60 Charles Lindbergh Blvd, Suite 1600 Uniondale, NY 11553	(Creditor/Statutory Party)
---	----------------------------

Nassau County Department of Law 60 Charles Lindbergh Blvd, Suite 1600 Uniondale, NY 11553	(Attorney for Creditor)
---	-------------------------

WHEREFORE, it is respectfully requested that this Court issue an Order:

- (a) Judicially Settling the Final Account of Robert A. Isler, Esq., as Successor Personal Needs and Property Management Guardian for _____ Sr., an Incapacitated Person, now deceased;
- (b) Awarding fair and reasonable compensation to Robert A. Isler, Esq. as Guardian for services rendered to _____ .. as well as reimbursement of out of pocket expenses incurred on behalf of _____ r.;
- (c) Awarding a legal fee to David S. Zeidman, Esq., the Court Examiner assigned to this Guardianship for services rendered, if any;
- (d) That after the payment of all Court Ordered fees, outstanding Court Ordered fees, and outstanding NAMI payments due Grace Plaza Rehabilitation and Nursing Center, the balance of Guardianship funds, if any, to be paid over to Nassau County Department of Social Services in full satisfaction of its Medicaid Liens with respect to chronic care benefits provided to both _____ and _____
- (e) Discharging the Guardian and his Bond; and
- (f) Such other and further relief as the Court may deem just and proper.

Dated: Syosset, New York
March 30, 2009

ROBERT A. ISLER, ESQ.
Law Offices of ISLER & ISLER
25 Cambria Road
Syosset, NY 11791
(516) 433-0404 telephone number
(516) 433-8524 facsimile transmission

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

ROBERT A. ISLER, ESQ, being duly sworn, deposes and says that he is the Petitioner herein; that he has read the foregoing Petition and knows the contents thereof; and that the same is true of his own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

ROBERT A. ISLER

Sworn to before me this
day of March, 2009.

DEBRA V. ISLER
Notary Public, State of New York
No. 4963651
Qualified in Nassau County
Commission Expires March 12, 2010

**JUDICIAL SETTLEMENT OF FINAL
ACCOUNTING BY DECREE**

At a Special Term Part VI of the Supreme Court of the State of New York, County of Suffolk, at the Courthouse located at 88-11 Sutphin Boulevard, Jamaica, New York on _____day of _____, 2009.

P R E S E N T :

THE HONORABLE

Justice

-----) {
In the Matter of the Application for a Decree Releasing
and Discharging

DEBRA V. ISLER, ESQ.,

DECREE DISCHARGING
GUARDIAN UPON
APPROVAL OF
REPORT

as Special Temporary Guardian of

Index No.:

An Incapacitated Person, Now Deceased.

-----) {

Upon the reading and filing of the petition of Debra V. Isler, Esq., the
Special Temporary Guardian of _____ . duly verified on the 4th day of August, 2009,
in the above entitled matter, praying that a Decree be made and entered herein releasing and
discharging the Petitioner from all further liability and responsibility as Special Temporary
Guardian of _____ . the Incapacitated Person herein and releasing and discharging
Fidelity & Deposit Company of Maryland, the surety on Petitioner's bond from all further
liability and responsibility to persons interested in the property of said _____ , *nunc*
pro tunc to June 14, 2008, the date of death of

Page - 1 -

And it appearing that Petitioner has fully accounted and has made full disclosure in writing of all her proceedings affecting the property of _____ to all persons interested in her Report of Special Temporary Guardian sworn to on July 31, 2009 ,

And upon reading the Consents of _____ . (the nephew, sole distribute and Administrator of the Estate of _____), LONG ISLAND STATE VETERANS HOME (the facility in which _____ resided at the time of his death), JOSE MIGUEL ARAUJO, ESQ. (the Court Examiner assigned to the Special Temporary Guardianship), and FIDELITY & DEPOSIT COMPANY OF MARYLAND (the Surety), and said Consents being duly acknowledged and stating said person's approval of the report of the Petitioner and consenting to the discharge of the Petitioner and the surety on Petitioner's bond *nunc pro tune* to June 14, 2008, the date of death of _____ :, and no one appearing in opposition, and due deliberation having been had thereon,

Now on application of Debra V. Isler, Esq., it is

ORDERED, that the Petitioner is released and discharged from further liability to the consenting interested persons listed in the petition with respect to the administration of the property of _____ and it is further

ORDERED, that the Surety on Petitioner's bond is released and discharged from further

liability to interested person listed in the petition with respect to the administration of the
property of :., *nunc pro tune* to June 14, 2008, the date of death of ;.

E N T E R

J. S. C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----)(
In the Matter of the Application for a Decree Releasing
and Discharging

DEBRA V. ISLER, ESQ.,

as Special Temporary Guardian of

ACKNOWLEDGED CONSENT
OF INTERESTED PARTY TO
DISCHARGE OF GUARDIAN

Index No.:

An Incapacitated Person, Now Deceased.
-----)(
TO THE SUPREME COURT, STATE OF NEW YORK
COUNTY OF QUEENS

TO THE SUPREME COURT, STATE OF NEW YORK
COUNTY OF QUEENS

_____, residing at _____ \ does

hereby certify:

1. I am an interested party in the above-referenced Guardianship in that I am the son of _____, the predeceased brother of _____,;. I am the sole distributee of the Estate of _____ as well as the Administrator of this Estate (Suffolk County Surrogate's Court File Number _____!).

2. Debra V. Isler, Esq., as Special Temporary Guardian of _____ has delivered to me a copy of her Report and Final Accounting as Special Guardian and has represented to the undersigned that the said report is complete and accurate.

3. The undersigned caused such report to be examined and approves same and all claims of the undersigned against the Petitioner as Special Temporary Guardian are discharged and the undersigned, in his individual and fiduciary capacity, does hereby consent, **without**

further notice, to the discharge of the said Special Temporary Guardian as aforesaid, and to the discharge of the surety on the Special Temporary Guardian's bond, *nunc pro tune* to June 14, 2008, the date of death of ...

Dated: _____, New York
August '2009

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On the _____ day of August, 2009, before me personally came _____, known to me and known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Sworn to before me this _____
day of August, 2009

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----)(
In the Matter of the Application for a Decree Releasing
And Discharging

DEBRA V. ISLER, ESQ.

NOTICE OF MOTION FOR
DECREE RELEASING AND
DISCHARGING
GUARDIAN

as Special Temporary Guardian of

Index No.:

An Incapacitated Person, Now Deceased.
-----)(

PLEASE TAKE NOTICE, that pursuant to the terms of the Order of the

Honorable . dated October 10, 2008 together with the papers upon which it was
granted, a Report of Special Temporary Guardian of DEBRA V. ISLER, ESQ, has been filed in
the Office of the Clerk of the County of Queens on or about the th day of August, 2009.

PLEASE TAKE FURTHER NOTICE, that the undersigned will move this
Court at an I.A.S. Part 20 thereof, to be held at the Courthouse located at 88-11 Sutphin
Boulevard, Jamaica, New York on the 10th day of September, at 9:30 o'clock in the forenoon of
that day, or as soon thereafter as counsel can be heard, for an Order:

- (a) Approving the Report of Special Temporary Guardian as filed;
- (b) Issuing a Decree releasing and discharging Debra V. Isler, Esq., as Special
Temporary Guardian for ;
- (c) Discharging the Surety, *nunc pro tune*, to June 14, 2008, the date of death of

----- . _ _ _ ; and

(d) Such other and further relief as this Court may deem just and proper.

Dated: Syosset, New York
August 7, 2009

DEBRA V. ISLER, ESQ.
Special Temporary Guardian for
Law Office of ISLER & ISLER
25 Cambria Road
Syosset, NY 11791
(516) 433-0404 telephone number
(516) 433-8524 facsimile transmission number

TO:

_____, NY
Administrator of the Estate of _____ ending

Fidelity and Deposit Company
c/o Murray Surety Bonds
2 Penn Plaza Suite 1500
New York, NY 10121
Surety

Jose Miguel Araugo
118-35 Queens Boulevard, 14th Floor
Forest Hills, NY 11375
Court Examiner

Long Island State Veterans Home
State University of New York @ Stony Brook
100 Patriots Road
Stony Brook , NY 11790-3300

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----)(
In the Matter of the Application for a Decree Releasing
and Discharging

DEBRA V. ISLER, ESQ.,

VERIFIED PETITION

as Special Temporary Guardian of

Index No.:

An Incapacitated Person, Now Deceased.
-----)(
The Petition of DEBRA V. ISLER, ESQ., respectfully alleges:

1. That your Petitioner was duly appointed Special Temporary Guardian of
by Order of this Court dated January 2, 2003.
2. That your Petitioner filed an initial bond in the amount of \$ with this
Court (Fidelity & Deposit Company of Maryland bond number) and duly qualified
as Special Temporary Guardian of . This bond is still in full force and effect.
3. That by Order dated May 30, 2006, the Guardianship was expanded for an
additional two year period.
4. That by Order dated July 14, 2008 (based on a proceeding that was commenced
prior to the death of), the Guardianship was expanded for an additional two year
period.
5. That your Petitioner has continuously acted as such Guardian since her
appointment as Guardian for .
6. That . passed away, intestate, on June 14, 2008 at the age of 86

while a resident at the Long Island State Veterans Home located at 100 Patriots Road, Stony Brook, NY 11790-3300. A copy of his death certificate is annexed hereto as Exhibit A.

7. That pursuant to an Order of the Honorable _____ ' dated October 10, 2008, I was directed to file a Final Accounting.

8. That a Final Accounting as to my actions as Special Temporary Guardian was previously filed with the Court.

9. That subsequent to that filing, I was able to locate _____, the son of _____, the predeceased brother of _____. In order to expedite the termination of the Guardianship and the transfer of the remaining funds to the Estate of _____,

_____ advised that he would consent to the termination of the Guardianship in both his individual capacity (as sole distribute) as well as in his fiduciary capacity (as Administrator of the Estate of _____).

10. That a Report of Special Temporary Guardian was prepared and updated to include all payments made by me as Special Temporary Guardian as well as on behalf of the Estate of _____. A copy of that report is annexed hereto as Exhibit B.

11. Consents have been forwarded to the following interested parties:

Nephew/Sole Distributee/Administrator of
the Estate of _____

Long Island State Veteran's Home Statutory Party
100 Patriots Road
Stonybrook, NY 11790

Jose Miguel Araugo, Esq. Court Examiner
118-35 Queens Boulevard, 14th Floor
Forest Hills, NY 11375

Fidelity and Deposit Company Surety
c/o Murray Surety Bonds
2 Penn Plaza, Suite 1500
New York, NY 10121

The signed consent of Fidelity and Deposit Company is annexed hereto as Exhibit C. While I received a consent from J . an error therein required me to send him a new Consent which has not yet been received. Consents from both Long Island State Veterans Home and the Court Examiner should be available for filing on or before the return date of this motion.

12. That there are no persons, other than those above-mentioned, interested in this proceeding, and all of the above-named persons are of full age and sound mind.

13. That there are no taxes are due.

14. That . was not a Medicaid recipient.

15. That Schedule F sets forth the payments made on behalf of the Estate of and the funds to be turned over to the Estate of

16. That your Petitioner is desirous that a decree of this court be made and entered releasing and discharging Petitioner and the surety on her bond from all further liability and responsibility as Special Temporary Guardian of *nunc pro tune*, to June 14, 2008, the date of death of .

WHEREFORE, it is respectfully requested that a decree be made and entered herein releasing and discharging the Petitioner from all further liability and responsibility as Special

Temporary Guardian of . and releasing the surety on Petitioner's bond, from all further liability and responsibility to persons interested in the property

Dated: Syosset, New York
August 4, 2009

DEBRA V. ISLER, ESQ.
Special Temporary Guardian for
LAW OFFICES OF ISLER & ISLER
25 Cambria Road
Syosset, NY 11791
(516) 433-0404 telephone number
(516) 433-8524 facsimile transmission number

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

DEBRA V. ISLER, being duly sworn, deposes and says that she is the Petitioner herein; that she has read the foregoing Petition and knows the contents thereof; and that the same is true of her own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters she believes it to be true.

DEBRA V. ISLER, ESQ.
Special Temporary Guardian for

Sworn to before me this
day of August, 2009

ROBERT A. ISLER
Notary Public, State of New York
No.
Quahna in Nassau County
Commission Expires December

At a Special Term Part VI of the Supreme Court of the State of New York, County of Suffolk, at the Courthouse located at 88-11 Sutphin Boulevard, Jamaica, New York on _____ day of _____, 2011.

PRESENT:

THE HONORABLE LEE A. MAYERSON,
Justice

In the Matter of the Final Inventory and Account of

as Personal Needs and
Property Management Guardian for

DECREE DISCHARGING GUARDIAN UPON APPROVAL OF FINAL INVENTORY AND ACCOUNT

Index No.: .

An Incapacitated Person, Now Deceased.

Upon the reading and filing of the petition of _____ the
Personal Needs and Property Management Guardian for _____ . duly verified on the 22nd
day of December, 2010, in the above entitled matter, praying for the Judicial Settlement of her
Final Inventory and Account; and the Affirmation of Debra V. Isler, Esq., amending the relief
being requested in said application so that a Decree can be made on consent of all interested
parties and entered herein releasing and discharging _____ from all further liability and
responsibility as Guardian of _____ the Incapacitated Person herein and releasing and
discharging Surety Bond Company of America, the surety on Petitioner's bond from all further

liability and responsibility to persons interested in the property of said . :r, *nune pro tune* to December 18, 2009, the date of death of

And it appearing that Petitioner has fully accounted and has made full disclosure in writing of all her proceedings affecting the property of r to all persons interested in her Final Inventory and Account sworn to on December 22, 2010,

And upon reading the Consent of . (individually and as Co-Executor with of the Estate of), said Consent being duly acknowledged and stating said person's approval of the Final Inventory and Account of the Petitioner and consenting to the discharge of the Petitioner and the surety on Petitioner's bond *nune pro tune* to December 18, 2009, the date of death of . without further notice; and having not received any objections from Charles Taibi, Esq., (Second Successor Court Examiner), Surety Bonding Company of America (Bond Company), and Sunrise Senior Living @ Glen Cove (the place where. resided at the time of his death), and due deliberation having been had thereon,

Now on application of the Law Office of Isler & Isler, Esq., attorneys for Petitioner/Guardian it is

ORDERED, that the Petitioner is released and discharged from further liability to the consenting interested persons listed in the petition with respect to the administration of the property of John Aigner, and it is further

ORDERED, that Maspeth Federal Savings release to , in her individual capacity, the balance of the funds (including all accrued interest since date of death) presently maintained in savings account number , checking account number .

both in the name of _____ as Guardian for _____ : in substantial settlement of her claims against the Guardianship Estate which are as follows in the following order of priority:

- (i) reimbursement for expenses personally paid by _____ on behalf of the Guardianship of _____ totaling \$4,990.00 calculated as follows: Barbara Rosenblatt (check #1813) in the amount of \$200.00; Murray Surety Bonds (check #129) in the amount of \$1,390.00; DiMaggio & Rocco CPA (check # 108) in the amount of \$400.00 and Prakash Home Improvement (check # 112) in the amount of \$3,000.00;
- (ii) reimbursement for legal fees and disbursements personally paid by _____ to Counsel retained to represent her in the Guardianship of _____ totaling \$20,848.91 calculated as follows: 2006 to 10/13/07 in the amount of \$2,972.51; 10/14/07 to 05/20/08 in the amount of \$4,740.00; 05/21/08 to 02/11/09 in the amount of \$2,445.00; 02/12/09 through and including the issuance of a Decree in this proceeding in the amount of \$10,691.40; and
- (iii) compensation to _____ J in full satisfaction of compensation due her as calculated under section 2307 of the SCPA for services rendered as Personal Needs and Property Management Guardian; and it further

ORDERED, that _____ shall be entitled to any surety premium refund(s) that may issue in further settlement of her claims against the Guardianship Estate; and it is further

ORDERED, that all Guardianship claims alleged against _____ r individually for funds due the Guardianship are withdrawn; and it is further

ORDERED, that no claim shall be made against _____ individually and/or the

estate of ' by seeking additional funds to satisfy the balance due her
with respect to Guardianship Commissions and reimbursement of out of pocket expenses paid on
behalf of the Guardianship; and it is further

ORDERED, that the Surety on Petitioner's bond is released and discharged from further
liability to interested person listed in the petition with respect to the administration of the
property of *nunc pro tune* to December 18, 2009, the date of death of

E N T E R

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
In the Matter of the Final Inventory and Account of

As Personal Needs and
Property Management Guardian for

ACKNOWLEDGED CONSENT
OF INTERESTED PARTY TO
DISCHARGE OF GUARDIAN
AND SURETY

Index No.:

An Incapacitated Person, Now Deceased.

-----X

TO THE SUPREME COURT, STATE OF NEW YORK
COUNTY OF QUEENS

residing at , does hereby

certify that:

1. I am an interested party in the above-referenced Guardianship in that I am the son
of I am one of two distributees of the Estate of , serve as Co-Executor
of the Estate of (Queens County Surrogate's Court File Number : 7) and am one of two
beneficiaries/legatees of the Estate of

2. , as Personal Needs and Property Management Guardian of our father,
. has delivered to me a copy of her Final Inventory and Account and has
represented to the undersigned that the said Final Inventory and Account is complete and

accurate.

3. The undersigned caused such Inventory and Final Accounting to be examined and approves same, as amended herein, and all claims of the undersigned against the Petitioner as Personal Needs and Property Management Guardian are discharged and the undersigned, in his individual and fiduciary capacity, does hereby consent, **without further notice**, to the discharge of the said Personal Needs and Property Management Guardian and to the discharge of the Surety, *nunc pro tune* to December 18, 2009, the date of death of

4. _____, as Personal Needs and Property Management Guardian of .. has delivered to me a copy the Decree being offered in this matter and I consent to its terms as follows:

A) That the balance of Guardianship funds totaling \$57,656.28 as of December 31, 2010 in Maspeth Federal Savings in savings account number 11: i/n/o . as Guardian for in the amount of \$32,254.66 and in checking account number i/n/o t , as Guardian for in the amount of \$25,401.62 plus any accrued interest at the time of the closing of the accounts by and surety premium refunds, if any, shall be paid to I , in her individual capacity, in satisfaction of the following claims, in the following order of priority:

- (i) reimbursement for expenses personally paid by on behalf of the Guardianship of totaling \$4,990.00 calculated as follows: Barbara Rosenblatt (check #1813) in the amount of \$200.00; Murray Surety Bonds (check

#129) in the amount of \$1,390.00; DiMaggio & Roccamo CPA (check# 108) in the amount of \$400.00 and Prakash Home Improvement (check# 112) in the amount of \$3,000.00;

- (ii) reimbursement for legal fees and disbursements personally paid by
to Counsel retained to represent her in the Guardianship of
totaling \$20,848.91 calculated as follows: 2006 to 10/13/07 in the amount of
\$2,972.51; 10/14/07 to 05/20/08 in the amount of \$4,740.00; 05/21/08 to 02/11/09
in the amount of \$2,445.00; 02/12/09 through and including the issuance of a
Decree in this proceeding in the amount of \$10,691.40; and
- (iii) compensation to ;• in full satisfaction of compensation due her
as calculated under section 2307 of the SCPA for services rendered as Personal
Needs and Property Management Guardian.

B) That no claim shall be made against r, individually, concerning funds
he may owe the Guardianship.

5. This Consent is being executed in order to expedite the termination of the

Dated: _____, New York
June _____, 2011

On the _____ day of June, 2011, before me personally came _____, to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----)(
In the Matter of the Final Inventory and Account of

As Personal Needs and
Property Management Guardian for

AFFIRMATION AMENDING
RELIEF BEING REQUESTED
CONCERNING SETTLEMENT
OF FINAL ACCOUNTING

Index No.:

An Incapacitated Person, Now Deceased.
-----)(
DEBRA V. ISLER, ESQ., an attorney duly admitted to practice law in the Courts of the

State of New York affirms under the penalty of perjury as follows:

1. I am a member of the Law Offices of Isler & Isler, attorneys for the Personal Needs and Property Management Guardian of . an Incapacitated Person, Now Deceased. I make this affirmation to modify the relief being requested in the Order to Show Cause to Judicially Settle Final Accounting which is presently pending before the Court so that the Final Accounting can be approved by Decree on consent of all interested parties rather than by judicial settlement by the Court.

1. By Order to Show Cause issued on March 2, 2010, ., the Personal Needs and Property Management Guardian of . , an Incapacitated Person, Now Deceased, moved this Court to judicially settle her Final Accounting and discharge bond, *nunc pro tunc* to December 18, 2009, due to the death of

2. As reflected in the Verified Petition in support of the judicial settlement of the Final Accounting, the interested parties to the Final Accounting are as follows: (a)

(individually and as Co-Executor with _____ of the Estate of their father _____);

(b) Charles Taibi, Esq. (Second Successor Court Examiner); (c) Surety Bonding Company of America (Bond Company); and Sunrise Senior Living @ Glen Cove (the place where _____ resided at the time of his death).

3. Prior to the filing of the Order to Show Cause, the Guardian attempted to expedite her release and discharge as Guardian by Decree upon consent of all parties by providing a copy of the Final Accounting to her brother, _____. Due to the contentious nature of the underlying Guardianship, _____ refused to consent to the Final Accounting.

4. The Guardian has now been advised that _____ will consent to the Final Accounting upon a modification of the relief requested therein. Said modifications are acceptable to _____ and are as follows:

A) That the balance of Guardianship funds totaling \$57,656.28 as of December 31, 2010 in Maspeth Federal Savings in savings account number 0300017954 i/n/o _____

as Guardian for _____ " in the amount of \$32,254.66 and in checking account number _____ i/n/o _____, as Guardian for _____, --- in the amount of \$25,401.62 plus any accrued interest at the time of the closing of the accounts by _____ and any surety premium refunds, if any, shall be paid to _____.

_____, in her individual capacity, in satisfaction of the following claims, in the following order of priority:

(i) reimbursement for expenses personally paid by _____ on behalf of the Guardianship of _____ totaling \$4,990.00 as calculated as follows: Barbara Rosenblatt (check #1813) in the amount of \$200.00; Murray Surety Bonds (check

#129) in the amount of \$1,390.00; DiMaggio & Roccamo CPA (check# 108) in the amount of \$400.00 and Prakash Home Improvement (check# 112) in the amount of \$3,000.00;

- (ii) reimbursement for legal fees and disbursements personally paid by
to Counsel retained to represent her in the Guardianship of
totaling \$20,848.91 calculated as follows: 2006 to 10/13/07 in the amount of
\$2,972.51; 10/14/07 to 05/20/08 in the amount of \$4,740.00; 05/21/08 to 02/11/09
in the amount of \$2,445.00; 02/12/09 through and including the issuance of a
Decree in this proceeding in the amount of \$10,691.40; and
- (iii) balance of the Guardianship funds plus accrued interest and surety
premium refunds, if any, to be paid to . . . in full satisfaction of
compensation due her as calculated under section 2307 of the SCPA representing
for services rendered as Personal Needs and Property Management Guardian for

- B) That no claim shall be made against . . . , individually, concerning funds
he may owe the Guardianship.

5. Consents are being circulated to all parties and will be filed with the Court within 30 days from the date that this application is marked submitted. If a Consent is not received and filed by . . . within this time period and without an explanation, it is respectfully requested that the original requested relief be addressed by the Court and the Final Accounting be judicially settled.

- 6. Consents are being submitted in order to expedite the termination of the

Guardianship through the issuance of a Decree discharging the Guardian and Surety *nunc pro tune* to December 18, 2009, the date of death of John To date, no party has appeared in this matter, filed objection to the judicial settlement of the Final Accounting or has a monetary interest in the funds remaining in the Guardianship.

Dated: Syosset, New York
June 21, 2011

DEBRA V. ISLER, ESQ.
Law Offices of Isler & Isler
25 Cambria Road
Syosset, NY 11791
Telephone Number: 516-433-0404
Facsimile Transmission Number: 516-433-8524

At an IAS Part of the Supreme Court of the State of New York held in and for the County of Queens at the Courthouse located at 88-11 Sutphin Boulevard, Jamaica, New York on the _____ day of _____ 2011.

P R E S E N T:

THE HONORABLE

J.S.C.

-----X
In the Matter of the Final Inventory and Account of

as Personal Needs and Property Management Guardian of

ORDER TO SHOW CAUSE

Index No.: .

an Incapacitated Person, Now Deceased.
-----X

Upon the reading and filing of the annexed Verified Petition of
Personal Needs and Property Management Guardian of _____:1, duly verified the 22nd day of
December, 2010, in support thereof, and it appearing that said _____ r passed away on 18th
day of December 2009, and upon the proceedings heretofore had herein including the Final
Inventory and Accounting of ; _____, dated December 22, 2010,

LET J _____ distributee), Charles Taibi (Court Examiner), Surety Bond
Company of America (surety), and Sunrise Senior Living @ Glen Cove (statutory party)

SHOW CAUSE before this Court at IAS Part ____ thereof, Room _____ held in
and for the County of Queens at the Courthouse located at 88-11 Sutphin Boulevard, Jamaica,
New York on the ____ day of _____, 200__ at _____ o'clock in the forenoon or as

soon thereafter as counsel can be heard, why an Order should not be entered:

(a) approving and judicially settling the Final Inventory and Accounting of

, as Property Management Guardian for John Aigner;

(b) awarding fair and reasonable legal fee as well as reimbursement of out of pocket expenses to Debra V. Isler, Esq. for services rendered to the Guardian;

(c) reimbursing for legal fees paid to Debra V. Isler, Esq., for services rendered over the years in connection with the Guardianship;

(d) reimbursing . for out of pocket expenses paid on behalf of .

(e) awarding compensation to • as Guardian as calculated under section 2307 of the Surrogate's Court Procedure Act;

(f) Directing that be personally responsible for up to \$7,500 of Guardianship expenses if there are insufficient funds to pay all Court Ordered expenses due to his failure to pay required rental charges to the Guardianship upon the death of

(g) directing that all remaining Court Ordered Guardianship expenses be deemed a claim against the Estate of ; to be the responsibility of . and equally;

(h) discharging the Guardian and her surety, *nunc pro tune*, to December 18, 2009, the date of death of md

(i) Such other and further relief as the Court may deem just and proper; and it is further

ORDERED, that service of a copy of this order and verified petition upon the above-listed parties by mail, on or before the _____ day of _____, 2011 shall be deemed good and sufficient service.

E N T E R

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----)(
In the Matter of the Final Inventory and
Account of

VERIFIED PETITION

as Personal Needs and Property Management
Guardian for

Index No.: .

An Incapacitated Person, Now Deceased.

-----)(
TO THE SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS

1. Your Petitioner was appointed Personal Needs and Property Management
Guardian for _ by Order and Judgment of the Honorable Charles J. Thomas dated
August 10, 2006. A copy of the Order and Judgment is annexed hereto as Exhibit A.

2. Your Petitioner's Commission issued on October 27, 2006, upon the filing of an
Oath and Designation as well as a bond in the original amount of \$490,000. The bond (number
3 still in full force and effect with Surety Bonding Company of America, as Surety.
A copy of the Commission is annexed hereto as Exhibit B. A copy of the Bond is annexed
hereto as Exhibit C.

3. passed away on December 18, 2009_ A copy of the death certificate
is annexed hereto as Exhibit D.

4. The Last Will and Testament of _ executed on March 1, 2004 was
admitted to probate by the Queens County Surrogate's Court. Your Petitioner and her brother,
, are the Co- Executors of the Estate of . Your Petitioner and .

Aigner are the sole beneficiaries of the Estate of .

5. Your Petitioner has prepared and filed with this Court a Final Inventory and Account. The Final Inventory and Account covers the date of your Petitioner's appointment as Guardian (August 10, 2006) through and including December 21, 2010. A true and exact copy of the Final Inventory and account is annexed hereto as Exhibit E.

6. Your Petitioner seeks the judicial settlement of the Final Inventory and Accounting and her discharge as Property Management Guardian for . .

7. Your Petitioner respectfully requests that the Court award a legal fee to Debra V. Isler, Esq., for her services to the Guardian as well as reimbursement for out of pocket expenses paid on behalf of . . . An affirmation of legal services will be filed with the Court and served upon all parties prior to the return date of the Order to Show Cause. The legal fee requested is listed on Schedule F of the Final Inventory and Accounting.

8. Your Petitioner respectfully requests that the Court reimburse her for legal fees already paid to Debra V. Isler, Esq. for services rendered to the Guardian over the years. Affirmations of legal services will be filed with the Court and served upon all parties prior to the return date of the Order to Show Cause. The legal fees paid are listed on Schedule F of the Final Inventory and Accounting.

9. Your Petitioner respectfully requests that the Court reimburse her for out of pocket expenses paid by her on behalf of . . . •. The expenses erroneously paid from her personal account rather than the Guardianship account are listed on Schedule F of the Final Inventory and Accounting.

10. Your Petitioner respectfully requests she receive statutory commissions to be set by this Court to compensate her for services rendered to Given the

extraordinary amount of time your Petitioner spent carrying out her duties as Personal Needs and Property Management Guardian, it is respectfully requested that Commissions be calculated pursuant to section 2307 of the Surrogate's Court Procedure Act. The total Commissions due and the manner in which they were calculated are set forth on Schedule F of the Final Inventory and Accounting.

11. Your Petitioner was unable to collect due and owing rent from . after the death of . This resulted in the Guardianship having \$7,500 less to pay the expenses of the Guardianship. It is therefore requested that if there are insufficient funds to pay all the expenses of the Guardianship, that . be personally responsible for the first \$7,500 due and payable.

12. Your Petitioner respectfully requests that any remaining fees set by this Court be deemed a claim against the Estate as the equal responsibility of : and .

13. Your Petitioner requests that an Order issue discharging her as Personal Needs and Property Management Guardian as well as discharging her Bond, *nunc pro tune*, to December 18, 2009, the date of death of

14. Those people entitled to notice of this proceeding are as follows:

Distributee/Co-Executor

Distributee/Co-Executor

CHARLES TAIBI, ESQ.
770 Allerton Avenue
Bronx, NY 10467

Second Successor
Court Examiner

SURETY BONDING COMPANY
OF AMERICA
c/o Murray Surety Bonds
2 Penn Plaza Suite 1500
New York, NY 10121

Surety

SUNRISE SENIOR LIVING @
GLEN COVE
39 Forest Avenue
Glen Cove, NY 11542

Statutory Party

15. Your Petitioner is filing this application by Order to Show Cause since the Successor Court Examiner resigned prior to filing with the Court a Notice of Death of Ward and Demand to File Final Accounting. The Court Examiner being served with this application is the Second Successor Guardian who was appointed by Order of this Court dated October 12, 2010.

16. No prior application has been made for the relief requested herein.

WHEREFORE, it is respectfully requested that this Court issue an Order:

(a) approving and judicially settling the Final Inventory and Accounting of .

., as Property Management Guardian for :_ , (b) awarding fair and reasonable legal fee as well as reimbursement of out of pocket expenses to Debra V. Isler, Esq. for services rendered to the Guardian; (c) reimbursing . for legal fees paid to Debra V. Isler, Esq., for services rendered over the years in connection with the Guardianship; (d) reimbursing

.l for out of pocket expenses paid on behalf of : (e) awarding compensation to .l as Guardian as calculated under section 2307 of the Surrogate's Court Procedure Act; (f) Directing that , be personally responsible for up to \$7,500 of Guardianship expenses if there are insufficient funds to pay all Court Ordered expenses due to his failure to pay required rental charges to the Guardianship upon the death of

(g) directing that all remaining Court Ordered Guardianship expenses be deemed a claim against the Estate of . be the responsibility of . l and I , equally;

FEE APPLICATIONS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

) {----- } {
In the Matter of the Appointment of

DEBRA V. ISLER, ESQ.

as Personal Needs and Property Management of

AFFIRMATION OF
SERVICES OF
TEMPORARY GUARDIAN

Index No.

An Incapacitated Person.

) {----- } {

DEBRA V. ISLER, an attorney duly admitted to practice law before the Courts of
the State of New York, affirms under the penalty of perjury as follows:

1. By Order dated September 11, 2013, I was appointed Temporary Guardian for

. ' This Affirmation is submitted in support of a request that the Court fix and
direct payment of a fee for services rendered by me to . is Temporary Guardian
covering the period September 11, 2013 to December 31, 2013. The reason for the request is due
to the substantial amount of time that has been expended by me in the caring of the personal
needs of Stephanie Spigel as well as in the handling of her financial matters. It is my
understanding that the proposed Order and Judgment settled by LaSalle & LaSalle includes a
paragraph concerning the setting of a fee for me as Temporary Guardian.

2. As the Court will recall, at the time of my appointment as Temporary
Guardian, i was a 93 year old woman who was forcibly removed from her
home by police when it was discovered that she was living in deplorable conditions. She
was admitted to Hospital where her immediate personal needs were tended to. Based
upon a psychiatric evaluation conducted by Hospital, it was determined that

_____ did not have the capacity to participate in her discharge planning. Specifically, she was unrealistic in her belief that she could return home in its deplorable condition and without assistance. As a result, _____ Hospital commenced a Guardianship proceeding pursuant to Article 81 of the Mental Hygiene Law seeking the appointment of both a Personal Needs and Property Management Guardian. The application was based upon _____'s lack of insight and judgment into her inability to safely maintain herself at home without any assistance and her refusal to allow anyone to assist her in cleaning/restoring her home to a habitable condition.

3. During the duration of the Guardianship proceeding, it became clear that _____ had no family or friends willing to serve as her Personal Needs and Property Management Guardian. _____ has two adult children C _____ and

_____ who have been estranged from her for over 40 years. Neither one of her children were willing to have their whereabouts known to the Court or the Court Examiner, let alone serve as Personal Needs and Property Management Guardian for their mother¹. _____ has a niece (_____) who was named: (a) health care proxy under a certain document dated October 6, 2008, (b) attorney-in-fact under a certain durable power of attorney dated October 6, 2008 and (c) Executrix in _____'s Last Will and Testament dated October 6, 2008 but she was unwilling to serve in any capacity with respect to :

- has a long time friend/neighbor that has shown some concern for

¹ Serious allegations of physical, verbal and emotional abuse have been made by _____ against their mother, -

md .

s health and well-being but she was also unwilling to serve as Guardian². As a result, the Court (upon the recommendation of the Court Evaluator) sought to appoint an independent Guardian from the Part 36 eligibility list. The plan of the Court was to have 's home cleaned and restored to a habitable condition and have her returned to her home with the assistance of an aide. The hours of the aide would be 24/7 which would be reassessed from time to time and reduced, if appropriate.

4. The September 11, 2013 Order appointing me Temporary Guardian awarded me with the following powers:

- a) marshal enough assets of : - to pay such bills as may be reasonably necessary to maintain the alleged incapacitated person;
- b) provide for arrange for [sic], -'s maintenance and support;
- c) provide the necessary documentation and information to file for any governmental entitlements or benefits, including a Medicaid application for home care or nursing care on behalf of : and, if necessary, to request and attend a Fair Hearing before the Nassau County Department of Social Services and take whatever steps that are necessary for the purpose of acquiring Medicaid and other social service assistance, including, but not limited to, a request for judicial review;
- d) make decisions regarding the general environment and other social aspects of the life of
- e) determine whether ; ; should travel;

² While . considers ' r her oldest and dearest friend, states that she is not a friend to . Rather, she is just a long time neighbor who is just trying to assist another neighbor during a time of need.

- f) consent to or refuse generally accepted routine and major medical or dental treatment for
- g) choose .- - 's place of abode;
- h) to authorize access to or release of confidential records, including medical records, of .-· !in accordance with HIPAA; and
- i) arrange for the safe discharge of the Incapacitated Person, including the remediation of her home.

5. Upon my appointment as Temporary Guardian, I met with -
to introduce myself, assess her situation and determine whether she was going to be able to cooperate with the cleaning and restoring of her home to a habitable and acceptable condition. Unfortunately, given the extent of · 's poor insight and judgment, she was only able to provide limited assistance in the cleaning and restoration of her home. As I result, I took steps to clean 's home, made necessary repairs to 's home with Court approval (when the cost to repair was substantial), purchased necessary personal items for the home and arranged for the discharge of ' . to her home on November 13, 2013³. I retained Right At Home, a home health care agency, to provide 24/7 home health aides to assist in her activities of daily living (over her objection). In addition, I ordered, purchased and dispensed ; "s medication, purchased and delivered food to the home and transported and attended medical appointments with :

6. Soon after 's return to her home, began

³ I provided the Court with updates as to my actions regarding the preparing of the home for : _ 's return within letters dated October 3, 2013, October 16, 2013 and November 7, 2013. Copies of these letters are annexed hereto for the Court's convenience.

exhibiting paranoid, bizarre and irrational behaviors that made it almost impossible to continue maintaining her in her home. _____ believed that I was the ringleader of a huge fraud being committed upon her for the sole purpose of stealing her money. She believed that the Court, her Court Appointed Attorney, the home health aides and the doctors were all "friends" of mine trying to ruin her life. She refused to go to scheduled doctor's appointments (claiming they were cancelled when they were not); she refused to cooperate with the home health aides when they were attempted to care for her personal needs (refused to bath, refused to change clothes, threw feces at them and both cursed and used racial slurs against them); she made up unsubstantiated and fantastic stories about the aides (that they were having parties at the house, that they hit her or pushed her down the stairs, that they slept all day and did no work); she refused to allow the aides to use the washing machine for their clothes, refused to allow them to use her toilet papers or paper towels, refused to allow them to eat her food. On at least two occasions she made two separate home health aides empty out the refrigerator and pantry so that she could inventory the food in the home and accused one of them of eating food that she did not authorize her to eat. Without my knowledge, _____ 1 (with the assistance of

_____) located and attempted to retain her own home health aide to assist in her care.

_____ claimed that the aide was a long time friend when she was not and, after one telephone call with her and a short visit to the house, _____ gave her a new television as a "gift".

With the assistance of the _____ : police, I was able to get the "gift" returned to -

_____ s home.

7. In order to provide _____ with the medical care she needs I have retained an Agency that provides physicians "on call" for home visits. Her current medical

doctor is Dr. Koorosh Dawoodi (with offices located at 21 South Drive, Great Neck, New York 11021) who comes to the home once a month and on an "as needed" basis⁴. As a result,

s behavior, although still somewhat bizarre, is manageable. She has also been seen by a podiatrist and has had a number of medical tests and x-rays in the home. I have also arranged for food to be delivered to the home from Peapod delivery service and have arranged for personal hygiene items to be delivered from CVS.com. I still go to the home at least once a month to purchase and dispense medications.

8. As you can see, I have spent a substantial amount of time in addressing many issues regarding this Guardianship which now seems to be under control. According to the detailed time records annexed hereto, during the period of September 11, 2013 (date of appointment as Temporary Guardian) through and including December 31, 2013, I have spent a total of 171.30 hours on the dated indicated performing the services set forth therein. The time charges were recorded in 6 minute intervals. While my usual and customary billing rate is \$350.00 per hour, I will accept such a fee as this Court may deem just and proper.

9. I have been practicing law for over 24 years. As an Elder Law attorney, I work with Guardianships and related capacity matters on a regular basis. I have also served as Guardian, Counsel for Alleged Incapacitated Persons, Court Evaluator pursuant to prior Orders of this Court as well as Orders issued by Justices in Queens County and Suffolk County. I am also a Court Examiner for the County of Queens.

WHEREFORE, it is respectfully requested that this Court enter an Order

⁴ . believes that Dr. Dawoodi is not a real doctor and is giving her "fake" medication.

awarding fees for Temporary Guardianship services provided from September 11, 2013 to December 31, 2013 and grant such other, further and different relief as this Court deems just and proper.

Dated: Syosset, New York
February 24, 2014

Yours, etc.,

Debra V. Isler, Esq.
25 Cambria Road
Syosset, NY 11791
(516) 433-0404 telephone number
(516) 433-8524 facsimile transmission number

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----)(
In the Matter of the Application of

DEBRA V. ISLER, ESQ.

AFFIRMATION

as Personal Needs and
Property Management Guardian for

Index No.: '

An Incapacitated Person.
-----)(
DEBRA V. ISLER, ESQ., an attorney duly admitted to practice law in the Courts of the

State of New York affirms under the penalty of perjury as follows:

1. This application is being made in order to set a fair and reasonable plan of compensation for services rendered by me to , her Personal Needs and Property Management Guardian.

2. By Order of this Court dated February 29, 2005, I was appointed Temporary Personal Needs and Property Management Guardian for By Order and Judgment dated June 24, 2005, I was appointed Permanent Guardian for ..

The Order and Judgment requires that I visit with . . . once a month. A copy of the February 29, 2005 and June 24, 2005 Orders are annexed hereto as Exhibit A.

3. As reflected in the second to last ORDERED paragraph in both the February 29, 2005 and June 24, 2005 Orders, the Court awarded me a monthly stipend of \$500 a month as an advance of my compensation as both Temporary and Permanent Guardian until a formal plan of compensation was approved by the Court. Both Orders state that the plan of compensation would

retroactive to the date of the Orders.

4. It is respectfully suggested that at the time of an appointment as Guardian, it is extremely difficult to determine a fair and reasonable plan of compensation as one does not know exactly what matters will have to be handled¹. As this Guardianship has been in existence for a number of years, it is respectfully suggested that the only fair and reasonable plan of compensation is one based on a theory of quantum meruit determined on the basis of time expended at a fixed hourly rate. It is respectfully requested that the rate of compensation be set at \$125 per hour.

5. Annexed hereto as Exhibit "B" is a detailed breakdown of the time I have spent as Personal Needs and Property Management Guardian for the period February 29, 2005 through and including December 31, 2005. As reflected in Exhibit "B", I spent a total of 146.40 hours handling various matters on behalf of. .. The proposed plan of compensation results in an award of \$18,300.00 less the stipend payments advanced of \$6,000.00, leaving a balance due of \$12,300.00. It is respectfully suggested that such an award is fair and reasonable under the circumstances of this Guardianship.

6. It is respectfully suggested that plans of compensation under either SCPA 2307 or 2309 would not be fair and reasonable given the amount and time required to be expended in this Guardianship. Upon information and belief, a plan of compensation established under SCPA 2307 would result in compensation totaling \$5,254.31 which would require me to return to the

¹ While a plan of compensation was suggested by me in the initial report (\$500 a month for compensation of personal needs services and commissions as calculated under SCPA 2309 for property management services), it was never approved and I have never been fully compensated for my time.

Guardianship \$745.69. Upon information and belief, a plan of compensation under SCPA 2309 would entitle me to compensation totaling \$3,988.06 which would require me to return to the Guardianship \$2,011.94. This was not the compensation level contemplated by the Court when it established the monthly stipend in advance of compensation.

7. Annexed hereto as Exhibit "C" is a detailed breakdown of the time I have spent as Personal Needs and Property Management Guardian for the period January 1, 2006 through and including December 31, 2006. As is reflected in Exhibit "C" I spent a total of 135.90 hours handling various matters on behalf of . The proposed plan of compensation would result in an award of \$16,987.50 less the stipend payments advanced of \$6,000.00, leaving a balance due of \$10,987.50.

8. It is respectfully suggested that plans of compensation under either SCPA 2307 or 2309 would not be fair and reasonable given the amount and time required to be expended in this Guardianship. Upon information and belief, a plan of compensation established under SCPA 2307 would result in compensation totaling \$3,228.66 which would require me to return to the Guardianship \$2,771.34. Upon information and belief, a plan of compensation under SCPA 2309 would entitle me to compensation totaling \$2,853.11 which would require me to return to the Guardianship \$3,146.89. This was not the compensation level contemplated by the Court when it established the monthly stipend in advance of compensation.

9. Annexed hereto as Exhibit "D" is a detailed breakdown of the time I have spent as Personal Needs and Property Management Guardian for the period January 1, 2007 through and including December 31, 2007. As reflected in Exhibit "D" I spent a total of 92.30 hours on this Guardianship handling various matters on behalf of . The proposed plan of

compensation would result in an award of \$3,007.24 less the stipend payments advanced of \$6,000.00, leaving a balance due of \$5,537.50.

10. I respectfully suggested that plans of compensation under either SCPA 2307 or 2309 would not be fair and reasonable given the amount and time required to be expended in this Guardianship. Upon information and belief, a plan of compensation established under SCPA 2307 would result in compensation totaling \$3,007.24 which would require me to return to the Guardianship \$2,992.76. Upon information and belief, a plan of compensation under SCPA 2309 would entitle me to compensation totaling \$1,666.81 which would require me to return to the Guardianship \$4,333.19. This was not the compensation level contemplated by the Court when it established the monthly stipend in advance of compensation.

11. Annexed hereto as Exhibit "E" is a detailed breakdown of the time I have spent as Personal Needs and Property Management Guardian for the period January 1, 2008 through and including December 31, 2008. As reflected in Exhibit "E" the affirmation of services provided, I spent a total of 111.10 hours on this Guardianship handling various matters on behalf of ,

'the proposed plan of compensation would result in an award of \$13,887.50 less the stipend payments advanced of \$6,000.00, leaving a balance due of \$7,887.50.

12. It is respectfully suggested that plans of compensation under either SCPA 2307 or 2309 would not be fair and reasonable given the amount and time required to be expended in this Guardianship. Upon information and belief, a plan of compensation established under SCPA 2307 would result in compensation totaling \$12,632.89 which would result in additional compensation due me of \$6,632.89. Upon information and belief, a plan of compensation under SCPA 2309 would entitle me to compensation totaling \$5,544.17 which would require me to

return to the Guardianship \$455.83. This was not the compensation level contemplated by the Court when it established the monthly stipend in advance of compensation.

13. Given the amount of time expended in this Guardianship, awards calculate under Section 2309 and 2307 would not be fair and reasonable under the circumstances.

14. Given the above-mentioned, it is respectfully requested that this Court issue an Order: (a) approving a fair and reasonable Plan of Compensation for the Guardian for services provided to , . as Guardian; (b) awarding compensation to the Guardian for years 2005, 2006, 2007 and 2008; and (c) such other and further relief as the Court may deem just and proper.

Dated: Syosset, New York
February 1, 2010

DEBRA V. ISLER, ESQ.
Personal Needs and
Property Management Guardian for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----)(
In the Matter of the Final Account of

ROBERT A. ISLER, ESQ.

as Successor Personal Needs and
Property Management Guardian of

NOTICE OF MOTION JUDICIALLY
SETTLING FINAL ACCOUNTING
AND DISCHARGING GUARDIAN

Index No.: -

An Incapacitated Person, Now Deceased.
-----)(

PLEASE TAKE NOTICE, that pursuant an Order of the Honorable Joel K.

Asarch, together with the papers upon which it was granted, a Final Accounting of the
proceedings of Robert A. Isler, Esq, as Successor Personal Needs and Property Management
Guardian of . , has been filed in the Office of the Clerk of the County of Nassau on
or about the 7th day of August, 2009.

PLEASE TAKE FURTHER NOTICE, that the undersigned will move this
Court at an I.A.S. Part 27 thereof, to be held at the Courthouse located at 100 Supreme Court
Drive, Mineola, New York on the 31st day of August, 2009, at 9:30 o'clock in the forenoon of
that day, or as soon thereafter as counsel can be heard, for an Order

- (a) Judicially Settling the Final Account of Robert A. Isler, Esq., as Successor
Personal Needs and Property Management Guardian for , , an
Incapacitated Person, now deceased;
- (b) Waiving the appointment of a Referee to review the Final Accounting of
Successor Guardian;
- (c) Awarding a fair and reasonable compensation to Robert A. Isler, Esq. as Guardian
for services rendered to as well as reimbursement of out of pocket
expenses incurred on behalf of , ..
- (d) Awarding a fair and reasonable fee to David S. Zeidman, Esq., the Court

Examiner assigned to this Guardianship for services rendered, if any;

- (e) Directing the payment \$16,087.82 (less the amount presently maintained in /
s personal, account maintained at the facility which shall be turned over
to the facility in partial satisfaction of the amount due) to Woodmere
Rehabilitation & Healthcare Center;
- (f) Directing the payment of \$2,160 to The Moore Funeral Home for funeral/burial
services provided to . . .
- (g) Directing, after the payment of the above-mentioned fees/payments, that the
balance remaining in the Guardianship account be paid to Nassau County
Department of Social Services in satisfaction of its claim for chronic care services
paid on behalf of . ,
- (h) Discharging the Successor Personal Needs and Property Management Guardian,
and
- (i) Such other and further relief as the Court may deem just and proper.

Dated: Syosset, New York
July 31, 2009

ROBERT A. ISLER, ESQ.
Law Offices of ISLER & ISLER
25 Cambria Road
Syosset, NY 11791
(516) 433-0404 telephone number
(516) 433-8524 facsimile transmission

TO:

SUPREME COURT OF THE STATE OF NEW YORK
C O U N T Y O F N A S S A U _____X

, In the Matter of the Final Accounting of

ROBERT A. ISLER, ESQ.

AFFIRMATION OF
SERVICES RENDERED

as Successor Personal Needs and Property Management
Guardian of

Index No. :

An Incapacitated Person.

-----X

ROBERT A. ISLER, an attorney duly admitted to practice law before the Courts of
the State of New York, affirms under the penalty of perjury as follows:

1. I maintain offices at 25 Cambria Road, Syosset, New York, 11791.

2. I make this Affirmation in support of my request that this Court fix and direct
payment of a fee for services rendered by me as Successor Guardian for) during the period
September 16, 2008 (date of last application for legal fees) to date of filing Final Accounting.

3. The following sets forth the time expended in connection with this matter.

11/18/08	Receipt and review of recertification request faxed to me by Nursing Home.	0.10
11/20/08	Preparation for recertification of Medicaid with preparation of correspondence and supporting documentation.	2.00
11/24/08	Preparation for renewal of Bond.	0.10
12/02/08	Receipt and review of Order Confirming Report of Court Examiner with provision to request permission to file Final Accounting.	0.10
	Correspondence to Court requesting permission to file Final Accounting.	0.30
12/05/08	Payment of Court Ordered Fees.	0.20

12/07/08	Receipt and review of Order Confirming Sale of Real Property	0.10
12/15/08	Supplemental submission to Medicaid in connection with Recertification.	0.30
12/23/08	Telephone conversation with Funeral Home to establish Irrevocable Pre Needs Burial Account.	0.30
	Review of proposed charges included in Irrevocable Pre Needs Burial Account	0.20
01/06/09	Telephone conversation with Nursing Home as to death of IP.	0.10
	Telephone conversation with Funeral Home.	0.30
	Telephone conversations/E-mails with Emily Franchina, Esq. advising as to death of IP and whereabouts of	0.30
01/07/09	E-mail from Emily Franchina, Esq.	0.10
01/09/09	Telephone conversation with Director of Assisted Living Facility in order to locate	0.10
01/14/09	Receipt and Review of funeral charges, follow up telephone conversations, authorization to go forward with funeral.	0.50
01/15/09	Telephone conversation with Court as to whether new Order needed directing Final Accounting based on death of IP.	0.10
01/20/09	Attended Funeral	No charge
	E-mails to/from Emily Franchina, Esq.	0.10
	Finalizing of Funeral Charges (reduced for undisclosed charges).	0.70
03105109	Preparation of Final Accounting, Notice of Motion and Verified Petition	6.10
	Telephone conversation with Nursing Home confirming no NAMI due and request for release of personal account.	0.30
	Telephone conversation with NCDSS to determine lien amount.	0.20
03/16/09	Updating Final Accounting	0.30
	Preparation for and service of motion to judicially settle Final Accounting on all parties.	1.30

	Court Appearance – Filing of Final Accounting and Motion to Judicially Settle Final Accounting	1.20
12/10/09	Correspondence from Court requesting additional information on Final Accounting.	0.10
12/11/09	Review of file to locate copy of claim of Nassau County Department of Social Services.	0.30
	Correspondence to Court with requested information	0.10
		15.90 hrs

4. Said time was recorded in 6 minute intervals and totals 15.90 hours. While my usual and customary billing rate is \$300.00 per hour, I will accept such a fee this Court may deem just and proper.

5. I have been practicing law for over 18 years. As an Elder Law attorney, I work with Guardianships and related capacity matters on a regular basis. I have also served as Guardian, Counsel for Alleged Incapacitated Persons, and/or Court Evaluator pursuant to prior Orders of this Court as well as Suffolk County and Queens County. I also have a background in general litigation.

WHEREFORE, it is respectfully requested that this Court enter an Order awarding

fees for services rendered and grant such other, further and different relief as this Court deems just and proper.

Dated: Syosset, New York
December 11, 2009

Yours, etc.,

ROBERT A. ISLER, ESQ.
Law Offices of ISLER & ISLER
25 Cambria Road
Syosset, NY 11791
(516) 433-0404 telephone number
(516) 433-8524 facsimile transmission number

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----)(
In the Matter of the Application of

DEBRA V. ISLER, ESQ.

as Personal Needs and
Property Management Guardian for

NOTICE OF MOTION TO SET
PLAN OF COMPENSATION

Index No.:

An Incapacitated Person.
-----)(

PLEASE TAKE NOTICE, that upon the annexed affirmation of Debra V. Isler, Esq., dated February 8, 2013, together with the exhibits annexed thereto, the undersigned will move this Court, at Special Term Part VI, at the Courthouse located at 400 Carlton Avenue, Central Islip, New York, on the 8th day of March, 2013 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an Order:

- (a) Setting a fair and reasonable Plan of Compensation to Debra V. Isler for services provided to :as Personal Needs and Property Management Guardian;
- (b) Such other and further relief as the Court may deem just and proper.

Dated: Syosset, New York
February 18, 2013

DEBRA V. ISLER, ESQ.
Law Offices of Isler & Isler
25 Cambria Road
Syosset, NY 11791
(516) 433-0404 telephone number
(516) 433-8524 facsimile transmission number

To:

Staten Island, NY 10306

Lake Ronkonkoma, NY 11779

Selden, NY 11784

Elmont, NY 11003

Lisa Blaustein, Esq.
1979 Marcus Avenue, Suite 210
Lake Success, NY 11042
Court Examiner

Mental Hygiene Legal Service
320 Carleton Avenue, Suite 3200
Central Islip, NY 11722
Statutory Party

Murray Surety Bonds
2 Penn Plaza, Suite 1500
New York, NY 10121
Surety

William Holts, Esq.
Assistant Suffolk County Attorney
Suffolk County Department of Law
Family Court/Social Services Bureau
Cohalan Court Complex
400 Carleton Avenue
Central Islip, NY 11722
Attorney for Suffolk County Department of Social Services

Abrams Fensterman Fensterman Eisman Greenberg Formato and Einiger
1111 Marcus Avenue, Suite 107
Lake Success, NY 11042
Attorney for Nesconset Nursing Center, LLC J 4

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----)(
In the Matter of the Application of

DEBRA V. ISLER, ESQ.

AFFIRMATION

as Personal Needs and
Property Management Guardian for

Index No.: 1

An Incapacitated Person.
-----) (

DEBRA V. ISLER, ESQ., an attorney duly admitted to practice law in the Courts of the State of New York affirms under the penalty of perjury as follows:

1. This application is being made in order to set a fair and reasonable plan of compensation for services rendered to as her Personal Needs and Property Management Guardian for over seven years.

2. By Order and Judgment of this Court dated March 31, 2006 I was appointed Personal Needs and Property Management Guardian for - . A copy of the Order and Judgment as well as the Order and Memorandum upon which it is based is annexed hereto as Exhibit "A".

3. My Commission issued on July 6, 2006, upon the filing of a Bond in the amount of \$25,000. A copy of my Commission is annexed hereto as Exhibit "B". The Bond is still in full force and effect.

4. By Order to Show Cause granted on May 15, 2009, I made application to the Court to expand my powers as Guardian. Such relief was necessary as: (a) the prior powers were

no longer sufficient to handle the personal and property management needs of · as the plan of care was originally to return _____ to her home; (b) permanent placement in a nursing home was appropriate; (c) authority was needed to place · _____ :s home on the market for sale; and (d) authority was needed to defend : _____ _ in a specific performance litigation in which it was alleged that she entered into a contract for the sale of vacant real property located in Lake Grove, New York. By Order dated June 5, 2009 my powers were expanded as requested. A copy of the June 5, 2009 Order is annexed hereto as Exhibit "C".

5. A Supplemental Commission to Guardian issued on June 8, 2010. A copy of the Supplemental Commission is annexed hereto as Exhibit "D".

6. The February 23, 2006 Memorandum and Order states that as Guardian, I am entitled to compensation and allows for the submission of a proposed plan for compensation within the initial report. Due to inadvertence and error, a plan of compensation was not included in the Initial Report or raised by the Court Examiner.

7. Based on the above, it is respectfully requested that a fair and reasonable plan of compensation for services rendered by me as Personal Needs and Property Management Guardian be set by the Court at this time.

8. It is respectfully requested that the plan of compensation to be set by the Court be one based on a theory of quantum meruit. It is respectfully suggested that awarding a fee for services rendered on the basis of time expended at a fixed hourly rate is the only fair and reasonable manner of compensating the Guardian under the circumstances. It is respectfully requested that the rate of compensation be set at \$120 per hour.

9. Compensation plans under Section 2309 and 2307 of the Surrogate Court

Procedure Act are inappropriate for this Guardianship as calculations thereunder are based either upon a percentage of the funds received and funds disbursed or a fixed rate based upon the value of the Guardianship Estate, respectively. Given the fact that [REDACTED] had minimal commissionable assets until the sale of her home, such calculations would not result in an award of fair and reasonable compensation to the Guardian.

10. It should be noted that an award of compensation has been requested within an application by Notice of Motion to Confirm Sale of Real Property and Distribution Funds which has been filed contemporaneously with the Court and is returnable on same day.

11. Given the above-mentioned, it is respectfully requested that a plan of compensation be set in this matter. Under the specific circumstances of this Guardianship, it is respectfully requested that such plan be based on a theory of quantum meruit. It is further requested that the time expended as Personal Needs and Property Management Guardian be compensated at an hourly rate of \$120 and the time expended providing legal services be compensated at a rate to be determined by the Court.

Dated: Syosset, New York
February 18, 2013

DEBRA V. ISLER, ESQ.
Personal Needs and Property Management
Guardian for

-----) (

Inthe Matter of the Application of

ROBERT A. ISLER, ESQ.

as Property Management Guardian for

NOTICE OF MOTION TO SET
COMPENSATION TO GUARDIAN
AND FEE FOR LEGAL SERVICES
RENDERED

Index No.: ;

An Incapacitated Person.

-----) (

PLEASE TAKE NOTICE, that upon the annexed affirmation of Robert A. Isler, Esq., dated June 5, 2013, together with the exhibits annexed thereto, the undersigned will move this Court, at Special Term Part VI, at the Courthouse located at 400 Carlton Avenue, Central Islip, New York, on the 20th day of June, 2013 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an Order:

- (a) Setting fair and reasonable compensation to Robert A. Isler for services provided to _____ as Property Management Guardian for the period February 17, 2010 through and including June 6, 2013;
- (b) Awarding a fee to Robert A. Isler, Esq., for legal services rendered in connection with the Turnover proceeding and settlement thereof; and
- (c) Such other and further relief as the Court may deem just and proper.

Dated: Syosset, New York
June 6, 2013

ROBERT A. ISLER, ESQ.
Law Offices of Isler & Isler
25 Cambria Road
Syosset, NY 11791
(516) 433-0404 telephone number
(516) 433-8524 facsimile transmission number

To: Eric Cherches, Esq.
220 East Main Street
Port Jefferson, NY 11777
Attorney for .

Darrell Conway, Esq.
179 Little East Neck Road
Babylon, NY 11704
Attorney for .d,

Jason Atlas, Esq.
Wolf, Haldenstein, Adler, Freeman & Herz, LLP
270 Madison Avenue
New York, NY 10016
Attorney for Oak Hollow Nursing Center

William B. Holst, Esq.
Assistant Suffolk County Attorney
Suffolk County Department of Law
Family Court/Social Services Bureau
Cohalan Court Complex
400 Carleton Avenue
Central Islip, NY 11722
Attorney for Suffolk County Department of Social Services

Mental Hygiene Legal Service
320 Carleton Avenue, Suite 3200
Central Islip, NY 11722
Statutory Party

Joseph Hanshe, Esq.
116 Greene Avenue
Sayville, NY 11782
Court Examiner

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----) {
In the Matter of the Application of

ROBERT A. ISLER, ESQ.

as Property Management Guardian for

AFFIRMATION IN SUPPORT
OF SETTING COMPENSATION
TO THE GUARDIAN AND FEE
FOR LEGAL SERVICES RENDERED

Index No.:

An Incapacitated Person.
-----) {

ROBERT A. ISLER, ESQ., an attorney duly admitted to practice law in the
Courts of the State of New York, affirms under the penalty of perjury as follows:

1. This application is being made in order for the Court to: (a) set fair and
reasonable compensation to Robert A. Isler for services provided to . as
Property Management Guardian for the period February 17, 2010¹ through and including
June 6, 2013, and (b) award a fee for legal services rendered by Robert A. Isler, Esq., to
in connection with the Turnover proceeding and the settlement thereof.

2. By Order and Judgment of this Court dated April 27, 2010, I was
appointed Property Management Guardian² for . . . My powers included the
authority to conduct an investigation and bring a proceeding pursuant to Section 81.43 of
the Mental Hygiene Law to recover property on behalf of A copy of the
Order and Judgment is annexed hereto as Exhibit "A".

¹ Although the Order and Judgment appointing Property Management Guardian was not signed until April 27, 2010, I was contacted by the Court to inquire as to whether I would accept this appointment on February 17, 2010. The hearing in this Guardianship was held on February 9, 2010.

² Personal Needs powers were not awarded as the Court determined that the Health Care Proxy executed by . in favor of was sufficient to handle her personal needs.

3. My Commission issued on July 31, 2010 upon the filing of a Consent, Oath and Designation. A Bond was not a condition of qualification. A copy of my Commission is annexed hereto as Exhibit "B".

4. At the time of my appointment, [REDACTED] was 92 years old and had been residing at Oak Hollow Nursing Center located at 49 Oakcrest Avenue, Middle Island, NY 11953 since May 23, 2008. Chronic Care Medicaid benefits were unable to be secured for [REDACTED] due to an incomplete Medicaid application, lack of co-operation from the family of [REDACTED] with the Medicaid application process, an alleged sale of [REDACTED]'s house for less than fair market value and other alleged improper uses and transfers of [REDACTED]'s funds that Suffolk County Department of Social Services was alleging were not for her benefit.

5. Upon my appointment as Property Management Guardian I was able to secure and submit sufficient information/documentation to Suffolk County Department of Social Services to secure chronic care benefits for [REDACTED] under a hardship exception. I then commenced a Turnover Proceeding in order to further investigate and recover assets that were believed to have been wrongfully taken by family members. The Order to Show Cause granting such relief was signed by the Court on November 30, 2010. The Order to Show Cause also included a request that I be appointed Counsel for myself with respect to the Turnover Proceeding as my familiarity with the facts and circumstances of the matter as well as Court oversight of fees would substantially benefit [REDACTED].

6. After numerous conferences, document/information exchanges and

³ I was appointment Counsel for myself on the return date of the Order to Show Cause.

lengthy negotiations, the parties have reached a settlement of all issues. As Guardian for _____, the settlement is acceptable as it would (a) allow for the continuation of Chronic Care Medicaid benefits to pay for the cost of care at Oak Hollow Nursing Center, (b) establish an irrevocable pre-needs burial account for _____ and _____, and (c) establish a personal account at Oak Hollow Nursing Center for _____. Under the terms of the Stipulation of Settlement, long term repayments of funds are made directly by _____ to Suffolk County Department of Social Services.

7. The proposed Stipulation of Settlement was submitted to the Court for review. By Order of the Court dated May 22, 2013, the Court approved the settlement agreement with some minor changes that are presently being incorporated into the final draft which is to be signed by all parties and "So Ordered" by the Court. A copy of the May 22, 2013 Order is annexed hereto as Exhibit "C".

8. As part of the Stipulation of Settlement, the parties consent to the payment of my fees from the funds currently being maintained by me in the Guardianship account for the benefit of _____. Those funds are an accumulation of NAMI payments that were retained by me upon the commencement of the Turnover proceeding for the purpose of covering the cost of the Turnover Proceeding as well as Guardianship fees and expenses. Those funds currently total approximately \$38,000.

9. At this time it is respectfully requested that the Court set fair and reasonable compensation to me for Guardianship services rendered from February 17, 2010 through and including June 6, 2013. The return date of this application is the control date set by the Court with respect to the submission of a signed Stipulation of Settlement to be "So Ordered" by the Court.

10. With respect to my compensation as Guardian, it is respectfully suggested that it be calculated under a theory quantum meruit. Compensation calculations under Section 2309 and 2307 of the Surrogate Court Procedure Act are inappropriate for this Guardianship as calculations thereunder are based either upon a percentage of the funds received and funds disbursed or a fixed rate based upon the value of the Guardianship Estate, respectively. The fact that ' has no commissionable assets and income of less than \$2,000 a month would be not fairly and reasonably compensate the Guardian for the substantial amount of time he has spent on this Guardianship.

11. Annexed hereto as Exhibit "D" is a detailed time sheet setting forth the time expended as Guardian for . Time has been recorded in 6 minute intervals and totals 97.40 hours. It is respectfully requested that the rate of compensation be set at \$125 per hour.

12. With respect to my fee for legal services rendered, I have annexed hereto as Exhibit "E" a detailed time sheet setting forth the time expended handling the Turnover Proceeding. Time has been recorded in 6 minute intervals and totals 80.50 hours. While my usual and customary rate is \$350 an hour, I will accept whatever the Court determines to be appropriate.

13. It should be noted that once the Stipulation of Settlement is signed and "So Ordered" and the terms of the Stipulation of Settlement complied with, I will be seeking my discharge as Property Management Guardian due to depletion of assets. There will no longer be a need for a Property Management Guardian as . s social security and pension benefits will be redirected to Oak Hollow Nursing Center. Medicaid recertifications will be handed by the Medicaid office at Oak Hollow Nursing

Center and/or its Counsel. I have already prepared the Final Accounting (which will just have to be updated to reflect the payment I will have to make pursuant to the Stipulation of Settlement) as well as my application for its judicial settlement. The time charges with respect to the preparation of these documents have been included in the itemized time sheet annexed hereto as Exhibit "D".

14. Based on the above, it is respectfully requested that the Court issue an Order to: (a) set fair and reasonable compensation to Robert A. Isler for services provided to _____ as Property Management Guardian for the period February 17, 2010⁴ through and including June 6, 2013, (b) award a fee for legal services rendered by Robert A. Isler, Esq., to _____ in connection with the Turnover proceeding and the settlement thereof, and (c) such other and further relief as the Court may deem just and proper.

Dated: Syosset, New York
June 6, 2013

ROBERT A. ISLER, ESQ.
Property Management Guardian for

⁴ Although the Order and Judgment appointing Property Management Guardian was not signed until April 27, 2010, I was contacted by the Court to inquire as to whether I would accept this appointment on February 17, 2010. The hearing in this Guardianship was held on February 9, 2010.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X
In the Matter of the Guardianship of

Index No.: _____

An Incapacitated Person

**STATEMENT OF DEATH
OF INCAPACITATED PERSON**

-----X

TO THE SUPREME COURT (COUNTY COURT) OF THE STATE OF NEW YORK,
COUNTY OF _____

1. Name of Guardian: _____
2. Name of Incapacitated Person: _____
3. Last address or residence of Incapacitated Person: _____

4. Date of Death of Incapacitated Person: _____
5. Place of Death of Incapacitated Person: _____

6. Name of Nominated or Appointed Personal Representative of Incapacitated Person's estate, if any (e.g. executor): _____
Address: _____
7. Names and addresses of persons entitled to notice of further guardianship proceedings as ordered by the court pursuant to MHL 81.16(c)(3) (Add additional pages, if necessary):

A. **Name:** _____
Address: _____
Relationship to Incapacitated Person: _____

B. **Name:** _____
Address: _____
Relationship to Incapacitated Person: _____

C. **Name:** _____
Address: _____
Relationship to Incapacitated Person: _____

D. Name: _____

Address: _____

Relationship to Incapacitated Person: _____

E. Name: _____

Address: _____

Relationship to Incapacitated Person: _____

Dated: _____, New York

_____ 20____

Signature of Guardian

State of New York

ss.:

County of _____

On the day of in the year 20..... before me, the undersigned, personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public, State of New York

To:

_____, Court Examiner, and

_____ Court-Appointed Personal
Representative, or

If no Court-Appointed personal representative:

_____ Personal Representative
Named in Incapacitated Person's will or trust, **and**
_____, Public Administrator or
Chief County Fiscal Officer.

Debra V. Isler, Esq. is a partner at Isler & Isler. Ms. Isler graduated from Brooklyn Law School in 1989 and has been concentrating her practice in Guardianship and capacity related matters since 1998. Ms. Isler has served as Guardian, Counsel for the Alleged Incapacitated Person and Court Evaluator pursuant to Orders issued by Justices in Nassau, Queens and Suffolk counties. In addition, Ms. Isler is a Court Examiner for the Second Department, Queens County. Ms. Isler also has a background in civil litigation, estate administration and residential real estate transactions.

Robert A. Isler, Esq. is a partner at Isler & Isler. Mr. Isler graduated from Fordham Law School in 1990 and has been concentrating his practice in Guardianship and capacity related matters since 2005. Mr. Isler has served as Guardian, Counsel for the Alleged Incapacitated Person and Court Evaluator pursuant to Orders issued by Justices in Nassau, Queens and Suffolk counties. In addition, Mr. Isler is a Court Examiner for the Second Department, Queens County. Mr. Isler also has a background in a variety of other areas including commercial and general litigation, real estate and insurance coverage and litigation based upon my past employment including as in house counsel and having worked for an insurance carrier.

COMMENCEMENT OF A GUARDIANSHIP PROCEEDING

- **HOW?**

An Article 81 guardianship proceeding is commenced by the filing of an Order to Show Cause and Verified Petition. An Index number must be purchased for \$210.00 and a Request for Judicial Intervention must be filed along with \$95.00.

- **WHO?**

Section 81.06 provides who may file a guardianship proceeding, specifically:

- (1) the Alleged Incapacitated Person;
- (2) a person entitled to a share in the estate of the Alleged Incapacitated Person;
- (3) an Executor or Administrator of an estate in which the Alleged Incapacitated Person is or may be a beneficiary;
- (4) a Trustee of a Trust when the Alleged Incapacitated Person is or may be the grantor or beneficiary;
- (5) any person with whom the Alleged Incapacitated Person resides;
- (6) a person otherwise concerned with the welfare of the Alleged Incapacitated Person, which may include a corporation or public agency (Nassau County Department of Social Services would be an example)
- (7) the Chief Executive Officer of a facility, including a nursing home, hospital, assisted living facility, etc.

- **WHAT?**

The Order to Show Cause and Verified Petition must contain specific information. Section 81.07 provides specific language that must be included in the Order to Show Cause and how it should be written, including 12 point, double spaced bold type.

Section 81.08 provides the specific information that must be included in the Verified Petition. Generally, the following information should be included in the Verified Petition:

- (1) an explanation of the functional level of the Alleged Incapacitated Person;
- (2) the reasons for the guardianship;
- (3) the available alternative resources that have been explored;
- (4) the particular powers sought and their relationship to the functional level of the Alleged Incapacitated Person;
- (5) the proposed guardian and the reasons why the proposed guardian is suitable.

- **WHEN?**

Section 81.07 requires that the guardianship hearing be scheduled 28 days from the signing of the Order to Show Cause by the Court.

The Order to Show Cause will contain several pertinent dates, including the hearing date

and the dates when service must be made. The Alleged Incapacitated Person must be personally served at least 14 days prior to the hearing. Court appointees must be served 3 days from the signing of the Order to Show Cause. All other interested parties must be served at least 14 days prior to the hearing. The Order to Show Cause will specify the manner of service.

Notice of the proceeding must be given to the following persons:

- (1) the spouse, parents, siblings and children of the Alleged Incapacitated Person;
- (2) persons with whom the Alleged Incapacitated Person resides;
- (3) agents under a power of attorney or health care proxy;
- (4) any person or organization that has demonstrated a genuine interest in the well-being of the Alleged Incapacitated Person;
- (5) the local department of social services if appropriate;
- (6) the Chief Executive Officer of the facility in which the Alleged Incapacitated Person resides;
- (7) Mental Hygiene Legal Service if the Alleged Incapacitated Person resides in a mental hygiene facility; and
- (8) other persons as directed by the Court.

A Court Evaluator should always review the Order to Show Cause and all Affidavits of Service to ensure that jurisdiction is proper. A Court Evaluator should always inquire as to any additional persons that should be entitled to notice.

PARTIES AND PLAYERS IN A GUARDIANSHIP PROCEEDING

• PETITIONER

The Petitioner bears the burden of proof in the guardianship proceeding. The standard is clear and convincing evidence. The Petitioner must be prepared to present evidence to the Court to demonstrate how the Alleged Incapacitated Person has functional limitations that impair his/her ability to handle his/her own affairs. If the Petitioner does not meet the burden of proof, the Petitioner risks being charged with all of the costs of the proceeding.

• ALLEGED INCAPACITATED PERSON

The Alleged Incapacitated Person is essentially the star of the guardianship hearing. The Court's focus will only be on the interests of the Alleged Incapacitated Person. The purpose of the guardianship is to bring help to the Alleged Incapacitated Person with the least restrictive form of intervention. The Alleged Incapacitated Person does not have any burden of proof to sustain. The Alleged Incapacitated Person has a right to be present in Court and his/her appearance should only be waived if he/she is unable to meaningfully participate in the hearing.

- **COURT EVALUATOR**

Section 81.09 governs the appointment and role of the Court Evaluator. The Court Evaluator is the “eyes and ears of the Court” and the role of the Court Evaluator will be more fully set forth in that section of today’s presentation. The appointment of a Court Evaluator can be waived if the Court appoints counsel for the Alleged Incapacitated Person.

- **COUNSEL FOR THE ALLEGED INCAPACITATED PERSON**

Counsel for the Alleged Incapacitated Person must protect the rights and interests of the Alleged Incapacitated Person. There is some disagreement amongst the members of the bar as to the role of counsel for the Alleged Incapacitated Person, specifically whether the attorney should follow somewhat of a “best interests” standard or, conversely, provide zealous advocacy of the Alleged Incapacitated Person’s position with respect to the appointment of a Guardian. One should always bear in mind that an Article 81 guardianship proceeding is an adversarial proceeding.

Section 81.10 governs the appointment of counsel for the Alleged Incapacitated Person. The role of counsel to the Alleged Incapacitated Person will be more fully set forth in that section of today’s presentation. The Court is not required to appoint counsel for the Alleged Incapacitated Person in every proceeding. However, the Court must always appoint counsel if there is a Temporary Guardian; if the Alleged Incapacitated Person requests counsel; if the Alleged Incapacitated Person contests the proceeding or any part of the relief sought; or if the Alleged Incapacitated Person opposes placement in a skilled nursing facility or any other placement aside from his/her current placement.

- **OTHER**

In more complex guardianship matters, there may be other players, including but not limited to:

- (1) counsel for any of the family members/respondents
- (2) counsel for any Cross-Petitioner
- (3) Court-appointed Geriatric Care Manager

THE GUARDIANSHIP HEARING

- **28 DAYS**

As aforesaid, the guardianship hearing should be scheduled 28 days from the signing of the Order to Show Cause.

- **JURY OR JUDGE**

The Alleged Incapacitated Person has a right to a trial by jury if he/she chooses. A request

for a trial by jury must be made by the Alleged Incapacitated Person or his/her counsel on or before the return date of the Order to Show Cause or it will be waived.

- **BURDEN OF PROOF**

The Petitioner bears the burden of proof and the standard is clear and convincing evidence. The Petitioner must demonstrate by clear and convincing evidence that:

- (1) the Alleged Incapacitated Person either consents to the appointment of a guardian OR that he/she is incapacitated; AND
- (2) there is a need for the appointment of a guardian in order to provide for the personal needs and property management of the Alleged Incapacitated Person.

Section 81.02 provides that the determination of incapacity shall be based on clear and convincing evidence and shall consist of a determination that the Alleged Incapacitated Person is likely to suffer harm because: 1. the person is unable to provide for personal needs and/or property management; and 2. the person cannot adequately understand and appreciate the nature and consequences of such inability.

- **MEDICAL EVIDENCE**

Medical evidence or testimony from a physician or medical profession is not required.

- **RULES OF EVIDENCE**

The Rules of Evidence apply in a contested guardianship proceeding, including all hearsay rules. In an uncontested proceeding, however, the Court may waive the Rules of Evidence.

- **COURT EVALUATOR REPORT**

The Court Evaluator must submit a written report of his/her findings to the Court. The Court Evaluator Report may be entered into evidence provided that the Court Evaluator testifies and is subject to cross-examination.

- **PRESENCE OF THE ALLEGED INCAPACITATED PERSON**

The hearing must be conducted in the presence of the Alleged Incapacitated Person. In fact, if the Alleged Incapacitated Person cannot come to the Courthouse, Section 81.11 provides that the hearing must be held where the Alleged Incapacitated Person resides unless he/she is not present in New York state or the Court determines that the Alleged Incapacitated Person is completely unable to participate and no meaningful participation would result from his/her presence.

Typically, the Court Evaluator will inform Petitioner's counsel as to whether he/she is recommending that the Alleged Incapacitated Person appear in Court or if the appearance of the Alleged Incapacitated Person should be waived.

- **DECISION**

In most cases, the Court will render its decision on the record at the conclusion of the hearing. The Petitioner must submit an Order and Judgment Appointing Guardian on notice to all parties. The time frame for submission of the Order and Judgment Appointing Guardian and the format of the Order itself varies from county to county.

THE ORDER AND JUDGMENT APPOINTING GUARDIAN

- **DRAFTING**

Petitioner's counsel drafts the proposed Order and Judgment Appointing Guardian. The Order and Judgment memorializes the decision of the Court and any specific directives as placed on the record at the conclusion of the hearing. Petitioner's counsel should follow the transcript of the Court's decision when drafting the Order and Judgment Appointing Guardian.

- **NOTICE**

The Order and Judgment should be settled on 10 days notice to all parties.

If the name of the individual or agency that is being appointed as Guardian is known at the time of the drafting of the Order and Judgment Appointing Guardian and they were not originally listed as someone entitled to notice, then the proposed Guardian should also receive a copy of the proposed Order and Judgment with Notice of Settlement.

Objections to the Order and Judgment Appointing Guardian can be made at any time during the 10 day settlement period.

- **WHAT IS CONTAINED IN THE ORDER AND JUDGMENT?**

Each paragraph of the Order and Judgment that begins with the words "Ordered and Adjudged" will provide a specific directive that the Court wants the Court-appointed Guardian to do. Most importantly, the Order and Judgment Appointing Guardian will provide:

- (1) the type of guardianship (i.e. property management, personal needs, or both);
- (2) whether a bond is required and if so, the amount of the bond;
- (3) the specific powers granted to the Guardian and whether any of them require

- Court approval;
- (4) the name and address of the Court Examiner who reviews the reports;
- (5) the amount of times the guardian must visit with the Incapacitated Person;
- (6) the fees to be paid upon receipt of the Order and Judgment to Petitioner's counsel, Court Evaluator, counsel to the Alleged Incapacitated Person, and any other Court appointee;
- (7) the time frame to obtain the Commission and any compliance conference date; and
- (8) the time frame for submitting the initial and annual reports;

- **PROPERTY MANAGEMENT AND PERSONAL NEEDS POWERS**

The Order and Judgment Appointing Guardian will specifically outline the powers that are granted to the Court-appointed guardian.

Sections 81.21 and 81.22 contain the different powers that can be granted by the Court. The Order to Show Cause and Verified Petition should include a list of powers being sought in each matter and those powers should essentially conform to the powers outlined in the statute.

It is important for a Court Evaluator to review the Order to Show Cause and Verified Petition to ascertain whether all of the powers sought by the Petitioner are necessary in each individual case. The Court Evaluator should make recommendations in the Court Evaluator Report with regard to the specific powers.

It is important for a Court-appointed guardian to review the powers granted in the Order and Judgment Appointing Guardian and be familiar with them. A guardian can only perform the tasks that he/she is authorized to do in the Order and Judgment Appointing Guardian. It is also crucial for the Court-appointed Guardian to know which powers require prior Court approval before the guardian is able to act. Typically, major actions, such as selling the Incapacitated Person's property, engaging in Medicaid planning or the transfer of the Incapacitated Person's assets, and changing the Incapacitated Person's place of abode, require Court approval.

- **EFFECT OF THE ORDER AND JUDGMENT APPOINTING GUARDIAN**

After the Order and Judgment Appointing Guardian is signed, the Court-appointed guardian will still need to obtain a Commission from the County Clerk in order to act as guardian. Typically, counsel for the Petitioner can assist in obtaining the Commission.

Ellen L. Flowers is a senior partner and director of the Guardianship Law Practice at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrar & Wolf, LLP. Ms. Flowers concentrates her practice in the area of Article 81 of the Mental Hygiene Law, which is the New York State guardianship statute. Ms. Flowers is a member of the Trusts and Estates and Elder Law Sections of the New York State and Nassau County Bar Associations. Ms. Flowers was a past Co-Chair of the Nassau County Bar Association Elder Law Committee. Ms. Flowers received her law degree from Hofstra University School of Law and her undergraduate degree from Adelphi University cum laude.

**COUNSEL TO AN
ALLEGED INCAPACITATED PERSON**

**Article 81 Guardianship Training Program
For Guardians & Court Evaluators**

**THE NASSAU ACADEMY OF LAW
March 28, 2014**

BRIAN R. HEITNER, ESQ.

**SELTZER SUSSMAN
HABERMANN & HEITNER LLP**

Attorneys at Law

100 JERICO QUADRANGLE JERICO NEW YORK 11753
(516) 935-3600

NASSAU COUNTY ACADEMY OF LAW

**COUNSEL TO AN
ALLEGED INCAPACITATED PERSON**

Brian R. Heitner, Esq.

I. Role of Counsel

A. Advocate for client

- Ensure that AIP's point of view is presented to the court
- Art. 81 commentaries: "At a minimum that representation should include conducting personal interviews with the person, explaining to the person his or her rights and counseling the person regarding the nature and consequences of the proceeding; securing and presenting evidence and testimony; providing vigorous cross-examination; and offering arguments to protect the rights of the allegedly incapacitated person."
- Ethical obligations and responsibilities
- Query: what if you cannot determine your client's views about the proceeding?

B. Should every AIP have counsel in an A81 proceeding?

- The individual's liberty interests are at stake, creating a compelling reason for counsel in every case
- AIP is entitled to counsel. See, Matter of St. Luke's Roosevelt Hosp. (Marie H.), 159 Misc.2d 932 (Sup. Ct., NY Cty., 1993), modified and remanded 215 A.D.2d 337 (1st Dept. 1995), affirmed 640 N.Y.S.2d 73 (1st Dept. 1996), affirmed 89 N.Y.2d 889 (1996).
- Practically speaking, not every AIP retains counsel or has counsel appointed

C. As counsel, must you oppose the petition?? No

D. Appointed Counsel vs. Retained Counsel

- No difference in duties and responsibilities

E. Representing a participating client vs. a non-participating client - otherwise categorized as "clearly" incapacitated (comatose) vs. "allegedly" incapacitated

II. Court-Appointed Counsel

- A. §81.10(c)(1-6) mandates that counsel be appointed under specific circumstances:
 - (1) AIP requests counsel
 - (2) AIP wishes to contest the petition
 - (3) AIP objects to the request contained in the petition to move him/her to a nursing home or other residential facility
 - (4) Petition alleges that AIP is in need of major medical or dental treatment and the AIP does not consent
 - (5) Petition requests the appointment of a temporary guardian under MHL 81.23
 - (6) Court determines that a conflict may exist between the court evaluator's role and the advocacy needs of the AIP
- B. §81.10(c)(7) - Catch-all - "If at any time the court determines that the appointment of counsel would be helpful to the resolution of the matter."
- C. §81.10(d) - court may appoint counsel even if AIP refuses counsel
- D. If counsel is not appointed in the original Order to Show Cause, the court evaluator must assist in making the determination and shall alert the court if any of the §81.10(c) factors exist which require that counsel be appointed

III. Retained Counsel

- A. Every AIP has the right to "legal counsel of the person's choice." §81.10(a); see also §81.11(b)(4): the AIP shall have the right to "be represented by counsel of his or her choice."
- B. AIP's retention of counsel must be made "freely and independently" - Court has obligation to determine, but what level of inquiry is required? See, Strauss and Trigoboff, *Freely and Independently*: *Diluting the Right of an AIP to Retain Counsel in an Article 81 Proceeding*, NYSBA Elder and Special Needs Law Journal, Spring 2012, Vol. 22, No. 2 (great deference should be given to AIP's choice of counsel)
- C. Counsel must treat an AIP client just like any other client - written retainer agreement/letter of engagement, privacy and confidentiality

IV. Pre-Hearing Actions / Obligations of Counsel

A. As counsel, you have an ethical and legal obligation to:

- READ AND KNOW THE LAW - Article 81
- determine client's wishes and desires with respect to the proceeding
- research and investigate the allegations contained in the petition and determine if there is any evidentiary support for the allegations
- identify alternate resources that are in existence *or could be implemented* as an alternative to the appointment of a guardian
- identify advance directives or testamentary plans
- preserve confidentiality of client's personal and private information
- interview potential witnesses
- protect client during course of proceeding

B. Must your client, the AIP, meet with the Court Evaluator?

- NO, the AIP is not obligated to speak with the court evaluator to assist evaluator in the preparation of his/her report See, Matter of Heckl, 44 A.D.3d 110 (4th Dept. 2007)
- It is not for the AIP to help petitioner prove his/her case
- Meeting with court evaluator is a strategic decision to be determined by counsel
- Can failure or refusal of the AIP to meet with the court evaluator result in an "adverse inference" by the Court?

C. Make an initial determination as to whether there is any evidence (other than bald allegations in petition) of client's *functional limitations or incapacities*

- Will help counsel to determine trial strategy

D. Determine whether any confidential information in, or exhibits to, the Petition should be stricken

- Medical records
- Hearsay letters / affidavits / unauthenticated documents

- E. Determine if all jurisdictional predicates have been met
- Subject matter jurisdiction (correct court)
 - In personam jurisdiction (has AIP been properly served and have all other necessary parties been noticed)
 - Is venue of proceeding proper
- F. Determine if client wishes to attend Hearing
- §81.11(c) says hearing must be conducted in presence of AIP unless AIP is (1) not present in the state or (2) is unable to participate or no meaningful participation will result from AIP's presence at the Hearing
 - It is not for AIP's counsel to determine or submit opinion as to level of client's potential participation or its meaningfulness
 - Court evaluator must recommend dispensing with AIP's presence if evaluator believes AIP is would not be able to meaningfully participate - see, §81.09 (c)(5)(iii) - (v)
 - Counsel should not prejudice client by opining on ability to participate
 - Query: may AIP refuse to appear?
 - §81.11(c) says hearing MUST be conducted in presence of AIP unless AIP is (1) not present in the state or (2) is unable to participate or no meaningful participation will result
 - Practically speaking, you cannot force AIP to attend if AIP does not want to attend and authorizes counsel to waive appearance
 - However, court may draw a negative inference based on AIP's non-appearance at hearing. Matter of Alice Zahnd, 27 Misc.3d 1215A (Sup. Ct., Suffolk Cty., 2010)
- G. Determine if AIP does not object to petition but wishes to nominate a person to serve as guardian. §81.17
- must be in writing, acknowledged and filed prior to the appointment of a guardian (Form 1)
 - Court must appoint the nominee unless the nomination is revoked or the Court determines that the nominee is ineligible pursuant to MHL §81.19

H. If there is an issue of fact regarding the need for the appointment of a guardian, determine if a trial by jury is in AIP's best interests. §81.11(f)

- only AIP or AIP's counsel may demand a jury trial

- issue for jury is need and incapacity; court determines who is to serve as guardian

- failure to file jury demand is deemed a waiver

V. Hearing

A. §81.02(a) - Court may appoint a guardian only if:

- (1) it is necessary

AND

- (2) AIP consents OR the AIP is determined to be incapacitated

B. Petitioner has the burden of proving by clear and convincing evidence that AIP is incapacitated. §81.02(b) and §81.12(a).

- THE BURDEN OF PROOF FOR A PETITIONER IS A STEEP ONE. IT SHOULD BE HARD FOR A PETITIONER TO SATISFY THE BURDEN SUCH THAT A GUARDIAN IS APPOINTED FOR AN AIP!

- As counsel for the AIP, make the petitioner prove his/her case

C. COME TO THE HEARING PREPARED!

- Counsel must:

- be familiar the facts

- familiar with the pleadings

- familiar with the rules of evidence

- understand proper objections and how to make them

- know how to get documents into evidence

- know how to address and react to the court

- consider the role of counsel valuable to the client

- D. Counsel helps preserve the integrity of the legal process and the system by making sure petitioner satisfies his/her burden with legally sufficient and admissible evidence
- Counsel must not merely be a spectator at the hearing; however, do not make yourself, as attorney, the focus of the proceeding
- E. Cross-Examine the witnesses, *including* the Court Evaluator
- Use the petition to examine the petitioner and highlight untruths, exaggerations and/or inconsistencies
 - Use the court evaluator's report to identify weaknesses in petitioner's case or highlight shortfalls in evaluator's investigation, etc.
- F. Object when appropriate or necessary based on the rules of evidence
- MHL allows for the waiver of the rules of evidence "for good cause shown"
 - §81.12(b) Waiver is permissive, not mandatory.
 - Evidentiary rules may not be waived where the alleged incapacitated person contests the proceeding. (Matter of Rosa B.-S., 767 NYS2d 33 (2nd Dept., 2003), citing Matter of Janczak, 167 Misc. 2d 776, 771, 634 NYS2d 1020 (1995).)
 - Object to testimony that is privileged (Physician, Social Worker, Clergy, Attorney)
 - Nothing in the statute requires medical testimony in a guardianship proceeding. (See, Matter of Harriet R., 224 AD2d 625, 639 NYS3d 390 (2nd Dept., 1996), *appeal denied* 88 NY 2d 805.)
 - The 2004 statutory amendments to MHL Article 81 specifically state that "the court shall not require that supporting papers [to the Order to Show Cause] contain medical information." (MHL §81.07(b)(3).)
 - The appointment of a guardian pursuant to MHL Article 81 must be based on a "functional assessment" of the alleged incapacitated person. Although the medical history and medical prognosis of the alleged incapacitated person may be one component in assessing one's potential need for the assistance of a guardian, the thrust of Article 81 is not one of medical diagnoses, but one of how well, or how poorly, an individual functions
 - Petitioner's attempt to use a non-treating medical professional as a witness

- the testimony of a non-treating physician may be admissible. Matter of Marie H., 25 AD3d 704, 811 NYS2d 708 (2nd Dept., 2006).

- Voire Dire - did medical professional advise AIP of role; that information gathered may be used in a court proceeding; that AIP is not obligated to be examined or treated

- Counsel must determine whether a waiver of privilege is appropriate

- Only the client can waive a privilege, not the attorney

- Counsel may not waive a privilege for a “non-participating” client

G. Motion to Dismiss -

- A motion to dismiss is appropriate at the close of petitioner’s case if petitioner has failed to introduce evidence that is clear and convincing that AIP needs a guardian and is incapacitated

- §81.11(a) - a determination of the need for a guardian shall only be made after a hearing

- Pre-hearing motions to dismiss pursuant to CPLR §3211(a) (e.g. for failure to state a cause of action §3211(a)(7) or a defense based on documentary evidence §3211(a)(1)) are not useful

- Move to dismiss before the court evaluator testifies (see H. Below)

H. Can Court Evaluator’s Report be used to satisfy burden of proof?

- §81.02(a)(2): “ the court shall consider the report of the Court Evaluator. See also, Matter of Smauel S., 96 A.D.3d 954 (2nd Dept., 2012)

- Many courts do not allow petitioner to call the court evaluator as a witness. See, Matter of Eugenia M., 20 Misc.3d 1110A (Sup. Ct., Kings Cty., 2008) (petitioner cannot rely on court evaluator to establish the case)

- However, court may deem court evaluator’s testimony necessary before ruling on motion to dismiss. See, Matter of Incorporated Village of Patchogue v. Zahnd, NYLJ 3/12/2010, pg. 29, col. 1 (Sup. Ct. Suffolk Cty)

- Court Evaluator’s Report cannot be admitted as evidence unless he/she testifies and is subject to cross-examination. §81.12(b)

- I. Determine if you will allow the AIP to testify at the Hearing
 - Can AIP be compelled to testify? Matter of AG (United Health Services), 6 Misc.3d 447 (Sup. Ct. Broome Cty., 2004)
 - Can adverse inference be made from failure to testify
 - if AIP testifies, do you put medical/mental condition in issue, creating a waiver of physician-patient privilege
 - The physician-patient privilege is not waived “unless he or she [the alleged incapacitated person] has affirmatively placed his/her medical condition in issue.” Matter of Rosa B.-S., 767 NYS2d 33 (2nd Dept., 2003)
- J. Counsel may not consent to the appointment of a guardian without the AIP’s authority and consent

VI. Post-Hearing

- A. Orders and Judgments
 - If court appoints guardian, review proposed Order and Judgment to assure that only those powers authorized by court are included; submit counter-order and judgment if necessary
 - If court dismisses petition, consider request that court direct petitioner to pay counsel fees and/or sanctions
- B. Conclusion of representation
 - As court-appointed counsel, upon entry of Order and Judgment, your representation of AIP is concluded
 - No obligation to continue representation of client on appeal

BRIAN R. HEITNER is a Partner in the law firm of SELTZER SUSSMAN HABERMANN & HEITNER LLP in Jericho, New York. He is a guardianship and trusts and estates practitioner with extensive experience in contested Article 81 guardianship proceedings and estate litigation. He has appeared in countless Article 81 proceedings as counsel for petitioners, counsel for respondents, court evaluator, counsel for an alleged incapacitated person and as guardian. Brian has lectured to professionals and the public at large on trusts and estates, guardianship and elder law issues and is a regular panelist and moderator for Article 81 guardianship training programs. Brian was the contributing author/editor for the 2005 and 2006 updates to *Kassoff, Elder Law and Guardianship in New York*, a recognized authoritative treatise on guardianship law. He has been named to the list of *Super Lawyers* in the metropolitan area for his expertise in estate planning for the years 2010, 2011, 2012 and 2013. Brian is a past President and former Chairman of the Board of Directors of the Nassau Lawyers Association of Long Island, Inc.; a member of the New York State Bar Association and its Trusts and Estates Law Section and Elder Law Section; a member of the Queens County Bar Association, its Surrogate's Court Committee and Committee for the Elderly and Disabled; and a member of the Nassau County Bar Association and its Elder Law Committee and Surrogate's Court Estates and Trusts Committee. Brian received his undergraduate degree from the School of Management at Binghamton University and his Juris Doctorate from Brooklyn Law School.

FORM 1 - NOMINATION OF GUARDIAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

----- X

In the Matter of the Application of

Index No.: 2014-I-123456

JOHN DOE,

for the Appointment of Personal Needs and
Property Management Guardian for

**NOMINATION OF GUARDIAN
PURSUANT TO MHL § 81.17**

JANE SMITH,

An Alleged Incapacitated Person.

----- X

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

JANE SMITH, being duly sworn, deposes and says that:

1. I am the Respondent "Alleged Incapacitated Person" in the above-captioned proceeding brought pursuant to Mental Hygiene Law (MHL) Article 81 for the appointment of a guardian of my person and property.

2. I do not agree nor concede that the appointment of a guardian of my personal needs and/or property management is necessary, nor that I am an "incapacitated person" as alleged in the Petition filed by John Doe. However, if, and only if, the Court determines that a guardian is

SELTZER SUSSMAN
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Attorneys at Law
100 JERICO QUADRANGLE JERICO NEW YORK 11753
(516) 935-3600

to be appointed over me, I hereby nominate my daughter, EDITH SMITH, residing at 9876 Main Street, Anywhere, NY, as my guardian, pursuant to MHL §81.17, to exercise such powers which the guardian may be authorized by the Court to exercise under MHL §§ 81.21 and 81.22 and which the Court determines constitute the least restrictive form of intervention on my behalf.

3. Furthermore, under no circumstances would I ever accept this Court appointing JOHN DOE as a guardian for me, the Petitioner in this proceeding.

Dated: Hometown, NY
March 28, 2014

JANE SMITH

State of New York, County of Nassau : ss.:

On the 28th day of March, in the year 2014, before me, a Notary Public in and for the said State, personally appeared JANE SMITH, 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 by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

SELTZER SUSSMAN
HABERMANN & HEITNER LLP
Attorneys at Law
100 JERICHO QUADRANGLE JERICHO NEW YORK 11753
(516) 935-3600

*Post Appointment – The
Legal Duties & Responsibilities
of the Guardian*



Tammy Lawlor, Esq. & Lisa Petrocelli, Esq.

Overview



- Bonding
- Commission
- Training Course
- Initial Report
- Ancillary Proceedings

Bonding



- Court generally requires a Bond to be filed;
 - Bond is based on total amount of IP's assets (excluding real estate), plus 2 years income;
- OR
- Total amount of assets and income the Guardian will be handling over a 2 year period.

Types of Bonds



- Guardian
- Guardian/Trustee
- Trustee
- Real Property

The Bonding Process



- Choose a Bonding Company
(List of companies is attached as Exhibit A)
- Complete an application to provide background information, and confirm assets and liabilities.
(Sample application is attached as Exhibit B)
- Certain requirements to be fulfilled by the Guardian
(Letter of instruction is attached as Exhibit C)

Bond Issuance



- Upon receipt of Bond, ensure amount of Bond is correct and all names are spelled correctly.
- Bond should be signed & notarized. (Sample Bond is attached as Exhibit D).
- Keep a copy of executed Bond for your records.

Bond Issuance, continued



- File the original Bond with Guardianship Part to be approved by the Court.
- Keep a copy of Court approved Bond for your records.
- Bond is then filed with the County Clerk.

Bond Premiums



- Can range from \$100 to \$2,634 (for \$1 Million in assets). (Breakdown of average premiums is attached as Exhibit E).
- Premiums can be higher if applicant has bad credit.
- Guardianship funds used to pay the premium.

Commission



- Commission must be issued within 90 days of the date of the Order and Judgment.
- Guardian or Guardian's attorney prepares the Commission. (Sample Commission is attached as Exhibit F)
- Commission is the document that gives the Guardian the legal authority to act.

Commission Format



- Commission includes the names, addresses and telephone numbers of the Guardian and IP.
 - Indicates terms of Guardianship:
 - indefinite
 - specific term
- *Terms in Order & Judgment
- **Special Guardians don't have specific terms.

Commission Format



- The Commission should mirror the powers and authority in the Order and Judgment.
- File the Commission with the Bond, Consent to Act and Designation.
- Consent to Act: (Sample Consent to Act is attached as Exhibit G)
 - Citizen of the United States;
 - 21 years of age;
 - Consenting to faithfully and honestly discharging duties as Guardian
- Designation (Sample Designation is attached as Exhibit H)
 - Form that designates the Nassau County Clerk to accept service if the Guardian is unable to be located.

Commission Format



- Obtain certified copies of the Commission at the County Clerk's Office.
- Obtain multiple certified (raised seal) copies to provide to the financial institutions.

Training Course – 81.39



- Required under Mental Hygiene Law Section 81.39 to complete a training program approved by the Chief Administrator:
 - The legal duties and responsibilities of the Guardian;
 - The rights of the Incapacitated Person;
 - The available resources to aid the Incapacitated Person;
 - An orientation to medical terminology:
 - Diagnostic
 - Assessment procedures
 - The preparation of annual reports.

*The Court may, in its discretion, waive some or all of the requirements based on the Guardian's education and experience.

Training Course – 81.39



- Lay Guardians (Family and Friends only) can take the training course online.
(Information regarding Guardian Assistance Network is attached as Exhibit I.)
- List of certified training programs for Part 36 Fiduciaries and Appointees is attached as Exhibit J.

Statement ID Real Property



- Pursuant to MHL Section 81.21 (a)(6)(vi)
(Sample of Statement is attached as Exhibit K.)
- File with the recording office of the county
where the IP is possessed of real property.

Statement ID Real Property



- Acknowledged statement to be recorded and indexed under the name of the IP.
- Identifies the following:
 - The real property;
 - The tax map numbers of the real property;
 - The date of adjudication of incapacity of the person;
 - The name, address, and telephone number of the Guardian;
 - The Surety.

Initial Report – 81.30



- Filed Within 90 days of Commission;
(Sample Initial Report is attached as Exhibit L)
- Educational requirement fulfilled?
 - Attach a copy of Certificate of Attendance.
- Inventory of Assets:
 - How to piece together Assets:
 - Start with Verified Petition;
 - Review Court Evaluator's Report;
 - Review Transcript from Hearing;
 - Forward mail/check 1099's at end of year.

Initial Report – 81.30



- Inventory of Assets:
 - Are all banks accounted for?
 - If stocks, do you have Certificates?
 - Unmarshalled assets:
 - Need to be listed and indicate why they have not been marshaled.
- Has IP's Last Will and Testament been filed?
 - Was a thorough search done?
 - Original Will, certified copy of Order & Judgment, and check for \$45 made out to the Surrogate's Court.
 - Proof of filing provided with Initial Report.

Initial Report – 81.30



- Personal Needs Guardian:
 - Report the number of personal visits with the Incapacitated Person;
 - Copies of Advance Directives;
 - Outline proposed plan of care.
- Set forth any reason for change in powers:
 - A separate application must be made to Court.
- Report must be verified:
 - Sworn under oath or affirmed as to truth.

Initial Report – 81.30



- The Guardian shall send a copy of the Initial Report to:
 - The Incapacitated Person by mail unless the Court orders otherwise.
 - The Court Evaluator and Counsel for the Incapacitated Person unless the Court orders otherwise.
 - The Court Examiner.
 - If the Incapacitated Person resides in a facility, to the Chief Executive Officer of that facility.
 - If the Incapacitated Person resides in a Mental Hygiene facility, to the Mental Hygiene Legal Service of the judicial department in which the residence is located.

Initial Report – 81.30



- MUST keep separate bank accounts.
- Must have a Guardianship Account;
- No co-mingling of funds.
- Compliance notice will be issued if Guardian fails to fulfill their obligations.

Initial Report – 81.30



- Review by Court Examiner
- Supposed to be reviewed within 30 days of filing
- May be formal, (appear before the CE) or informal (correspondence between Guardian and CE).
- In some counties, the Guardianship Clerk reviews

Annual Reports



- Sample Annual Reports for Personal Needs Guardian is attached as Exhibit M
- Instructions and Sample Annual Report for Personal Needs and Property Management Guardian are attached as Exhibit N.

Ancillary Proceedings



- Sale or purchase of real property – RPAPL 17
- Reverse Mortgages
- Gifting/Medicaid Planning
- Extraordinary Expenses
- Ex Parte Application for Approval of Secondary Appointment
- Get-Well Hearing

Real Property



- Order to Show Cause to Sell Real Property (Sample OSC and Verified Petition are attached as Exhibit O).
 - File in the County where the property is located.
 - With VP attach a copy of the Executed Contract of Sale to be approved. Contract of Sale should include "subject to Court approval."
- The signed Order to Show Cause:
 - Sets Hearing date;
 - Appoints an Independent Appraiser;
 - Complies with RPAPL 17, and section 1722(5) regarding advertising
 - Practice Tip: If the Petitioner seeks either to shorten the period of posting or publication or to have the Court dispense with posting or publication, the VP MUST set forth facts constituting cause for such relief.

Real Property



- Hearing
 - Petitioner testifies
 - Appraiser testifies
 - *Compare the contract of sale price to appraisal value;
 - Sets Real Property Bond amount
 - Appraiser's fees determined

Real Property



- Order Approving Contract of Sale:
(Sample Order is attached as Exhibit P)
 - Memorializes Hearing
 - Directs Guardian to get Real Property Bond.
*Bond needs to be approved by Court.
 - Awards Appraiser's fees
- Closing Occurs:
 - Prepare Closing Statement

Real Property



- Order Confirming Sale of Real Property (Sample Order is attached as Exhibit Q).
 - Confirms the Closing
 - Awards Legal Fees
 - Fee Section
- (Guidelines attached as Exhibit R).
 - Cancels Real Property Bond and directs the filing of a subsequent Bond.

Reverse Mortgages



- Order must provide Guardian with the authority to apply for Reverse Mortgage (Sample Order is attached as Exhibit S).
 - Powers can be given in Order & Judgment
- Apply for Reverse Mortgage;
- Provide specifics to Court via letter application or as the Judge requires on notice to all parties .

Reverse Mortgages



- Order Approving Reverse Mortgage:
(Sample Order is attached as Exhibit T).
- Approves the terms of the Reverse Mortgage
- Authorizes the execution of any of the
necessary documents directs that a Real
Property bond be obtained and approved by
the Court
- Closing Occurs

Reverse Mortgages



- Order Confirming Reverse Mortgage (Sample Order is attached as Exhibit U).
- Approves the Closing.
- Authorizes certain payments
- Provides for payment of legal fees
- Discharges Real Property Bond and directs a subsequent bond.

Gifts



- MHL § 81.21(b) – The Petition to transfer assets to another (incl. Guardian or Petitioner) must include:
 - Amount/nature of financial obligations and funds;
 - The property that is subject to the application;
 - Proposed disposition and reasoning;
 - Previously written instrument by the IP;
 - IP's significant gifts or patterns of gifts;
 - Names of Presumptive Distributees.

Gifts



MHL § 81.21(d) - What the Court will consider:

- Whether the IP has sufficient capacity to make the proposed disposition;
- Whether the disability of the IP is likely to be of sufficiently short duration;
- Whether the IP's needs and his dependents' needs for support can be met from the remainder assets after transfer is made;
- Whether the beneficiaries of the proposed disposition are the IP's natural objects of bounty; prior known testamentary plan or pattern of gifts.
- Will it produce estate, gift, income or other tax savings for IP?

Gifts



MHL § 81.21(e)- Court may Grant on the basis of clear convincing evidence of the following:

- IP lacks the requisite mental capacity for which approval has been sought and is not likely to regain such capacity within a reasonable period of time; or if the IP has capacity and consents;
- A competent, reasonable individual in the IP's position would likely perform the act under similar circumstances;
- IP has not manifested an intention inconsistent with the performance of the act that is being sought.

Gifts/Medicaid Planning



¶

Matter of Shah, 95 N.Y.2d 148, 711 N.Y.S.2d 824, 733 NE2d 1093, (2000); *affirming*, 257 A.D.2d 275; 694 N.Y.S.2d 82 (2nd Dept., 1999)

- Wife (Guardian) was permitted to transfer all of her husband's (IP) assets to herself to make him Medicaid eligible and maintain her support.
- Court emphasizes that a person should normally have absolute right to do anything with their assets, including giving those assets away to someone else "for any reason or for no reason."
- Look to whether a competent, reasonable individual in IP's position likely to make such a transfer, under similar circumstances.

Extraordinary Expenses



- Auto
- Gifting
- Renovations
- Vacation

(Sample Orders and Affirmations attached as Exhibit V).

Ex Parte Application for Approval of Secondary Appointment



- When a Guardian is subject to the provisions of Part 36 seeks to retain counsel, or an accountant, appraiser, auctioneer, property manager or real estate broker, the retained professional becomes a Part 36 appointee (§ 36.1[a][10]).
- The Guardian must request that the judge appoint such a professional (§ 36.2 [a]), and the professional must comply with all the provisions of Part 36, including those governing list enrollment (§ 36.3), disqualification and limitation based on compensation (§ 36.2), and all filing requirements (§ 36.4). (Secondary Appointments Form is attached as Exhibit W).

Get-Well Proceeding



- MHL § 81.36a (1)
- The Court shall discharge the Guardian, if it appears to the satisfaction of the Court.
 - IP has become able to exercise some or all of the powers necessary to provide for personal needs or property management which the Guardian is authorized to exercise;
 - Application may be made by the Guardian, IP, or any person entitled to commence a proceeding under this Article.
 - Hearing on notice to the persons entitled to notice in MHL § 81.16 must be held.
 - Burden of proof on the person objecting to such relief.

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

Nassau 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 NASSAU

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

as Guardian of

Index #: _____

INITIAL REPORT

An Incapacitated Person.

-----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:

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)

STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

I, _____, being duly sworn, say I am the Guardian for the above-named Incapacitated Person, the foregoing account and inventory contain, to the best of my knowledge and belief, a full and true statement of all my receipts and disbursements on account of said Incapacitated Person; and of all money and other personal property of said Incapacitated Person which have come to my hands or have been received by any other persons by my order or authority or for my use since my appointment, and of the value of all property. I do not know of any error or omission in the report to the prejudice of said Incapacitated Person.

Guardian

Sworn to before me this _____

day of _____, 20 .

Notary Public-Commissioner of Deeds

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
IN THE MATTER OF THE ANNUAL
REPORT OF

ANNUAL REPORT OF
PERSONAL NEEDS GUARDIAN

_____, AS
PERSONAL NEEDS GUARDIAN FOR

Index No. _____ - I - _____

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 Nassau County dated the _____ day of _____, _____ and have continued to act as such fiduciary since that date.

List here the following information:

1. State the present residence address and telephone number of all Guardians.
2. List the name and present address of the spouse, children and siblings of the Incapacitated Person.

Spouse:

Children:

Siblings:

3. State the age, date of birth and marital status of the Incapacitated Person.
4. 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.
5. State whether there have been any changes in the physical or mental condition of the Incapacitated Person, and any substantial change in medication.
6. State the date and place the Incapacitated Person was last seen by a physician and the purpose of that visit.
7. 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.
8. State whether the current residential setting is suitable to the current needs of the Incapacitated Person and why.
9. Attach a list of any professional medical treatment given to the Incapacitated Person during the previous year.

10. State the plan for medical, dental and mental health treatment and related services for the coming year

11. State any other information concerning the social condition of the Incapacitated Person, including the social and personal services currently utilized by the Incapacitated Person, the social skills of the Incapacitated Person and the social needs of the Incapacitated Person. List the number of times that you have visited the Incapacitated Person during the past year.

12. Attach a list of any other pertinent facts relative to the care and maintenance of the Incapacitated Person, including the frequency of your visits; whether the Incapacitated Person has made a Will or executed a Power of Attorney; and any other information necessary for the proper administration of this matter.

STATE OF _____)
ss:

COUNTY OF _____)

I/We, _____ and _____, being duly sworn say:
I am/We are the Guardian(s) for the above-named Incapacitated Person. The foregoing report is to the best of my knowledge a true and complete statement of the information presented therein. I/We do not know of any error or omission in this Report to the prejudice of said Incapacitated Person.

Guardian

Guardian

Sworn to before me this
_____ day of _____, 20__.

Sworn to before me this
_____ day of _____, 20__.

Notary Public

Notary Public

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 NASSAU

INDEX # _____ - I - _____

ANNUAL REPORT FOR YEAR _____

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

_____, Guardian for
Property Management and Personal Needs of

ANNUAL REPORT
OF GUARDIAN

_____, an Incapacitated Person

-----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 Nassau 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.

<u>SOURCE</u>	<u>AMOUNT</u>
<u>(for Securities use Inventory Value)</u>	

SCHEDULE B-1 - ADDITIONAL PRINCIPAL

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

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

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>
-------------	----------------	---------------	---

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.)

<u>AMOUNT OF BOND</u>	<u>BOND NUMBER</u>
\$	

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.

SCHEDULE O - Resume of any other pertinent facts relative to the care and maintenance of the Incapacitated Person, including the frequency of the visits; whether the Incapacitated Person has made a will or executed a Power of Attorney; and any other information necessary for the proper administration of this matter.

STATE OF NEW YORK)
 : ss.:
COUNTY OF)

I, _____, being duly sworn, say that I am the Guardian for the above-named Incapacitated Person, the forgoing Annual Report of Guardian contains, to the best of my knowledge and belief, a full and true statement of all my receipts and disbursements on account of said Incapacitated Person; and all money and other personal property of said Incapacitated Person which have come into my hands or have been received by any other person in my order or authority or for my use since my appointment or since filing my last Annual Report, and of the value of all such property; together with a full and true statement and account of the manner in which I have disposed of the same and all property remaining in my hands at the time of the filing of this Annual Report; also a full and true description of the amount and nature of each investment made by me since my appointment or since the filing of my last Annual Report. I do not know of any error or omission in this Annual Report to the prejudice of said Incapacitated person.

Guardian

Sworn to before me this _____
day of _____, 20____

Notary Public

At IA Part of the Supreme Court of the State of New York, held in and for the County of Nassau, at 100 Supreme Court Drive, Mineola, New York, on the day of

PRESENT:

Hon.

Justice

In the Matter of the Application of

JOHN DOE,

as (Committee or Conservator or Guardian) of the (Person or Property or Person and Property) of

MARY DOE,

an (Incompetent Person or Conservatee or Incapacitated Person), for leave to sell (his/her) interest in certain real property.

ORDER TO SHOW CAUSE

Index No.

Upon the annexed Petition of John Doe, duly verified the day of , 19 (together with the exhibit(s) thereto annexed), and upon all of the pleadings and proceedings heretofore had herein, and due deliberation having been had, it is

On motion of , attorney for the petitioner.

ORDERED, that (insert all parties entitled to notice including Surety, and Attorney General if in State Hospital - see, RPAPL 1721, MHL 81.07(d))

SHOW CAUSE before this Court at IA Part thereof, to be held in the Supreme Court Building, Supreme Court Drive, Mineola, New York, on the day of , 199 at a.m./p.m., or as soon thereafter as Counsel can be heard, why a judgment should not be rendered:

1. Granting the relief prayed for in the Petition;
2. Authorizing and directing the sale of the interest of the above named (Incompetent Person or Conservatee or Incapacitated Person) in the real property described in the Petition, in accordance with the statutes and rules of this Court;
3. Granting permission to the petitioner, as (Committee or Conservator or Guardian) of the within named (Incompetent Person or Conservatee or Incapacitated Person) to make the conveyance and carry out these proceedings; and
4. Granting such other and further relief as the Court may deem just and proper.

Now, on the Court's own motion, it is

ORDERED, that

of

, a licensed real estate broker and appraiser, is hereby appointed to go upon the subject premises and to make an appraisal thereof, and to report same under oath in writing and orally to the Court at a hearing to be held on the return date hereinbefore fixed, for the purpose of taking testimony and inquiring into the merits of this application, and it is further

ORDERED, that service of a copy of this Order, and the supporting papers upon which it is granted, upon all persons herein named, either personally or by certified mail, at least days prior to said return date, be deemed good and sufficient service, and it is further

ORDERED, that the decision on this application be held in abeyance pending the aforesaid hearing.

E N T E R :

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

In the matter of the application of
as (Committee) (Conservator) (Guardian) of the (Person
and Property) (Property) of

VERIFIED
PETITION

Index No.

an (Incompetent Person) (Conservator) (Incapacitated Person)
for leave to sell her/his interest in certain real property.

TO THE SUPREME COURT OF THE STATE OF NEW YORK: COUNTY OF NASSAU
The petition of respectfully states and alleges:

FIRST: That he/she is the (Committee) (Conservator) (Guardian) of the person and
property/property of , an (Incompetent Person)
(Conservatee) (Incapacitated Person) , having been appointed as such by Order of
this Court made the day of , 20 ,

SECOND: That the (Incompetent Person)(Conservatee)(Incapacitated Person) is the
owner of certain real property situated in the (Village of, Town of, etc.) as same is more
particularly described under Contract of Sale annexed hereto,

THIRD: That on the day of , 20 , a Contract of Sale, a copy of
which is annexed hereto and made a part hereof, was entered into between
as Seller, and as Purchaser, for the sum of \$

FOURTH: That the said property consists of
(Insert short description of property; number of lots, approximate measurements, nature of
improvements, etc..Also set forth the reason(s) why it would appear to be in the best interests
of the (Incompetent), (Conservatee) (Incapacitated Person) to have property sold),

FIFTH: That the (Incompetent) (Conservatee) (Incapacitated Person) presently
resides at

SIXTH: That the only assets other than the subject real property owned by the
(Incompetent)(Conservatee)(Incapacitated Person) are (list same)

SEVENTH: That in view of the foregoing, it is respectfully submitted that it
would be in the best interests of the (Incompetent)(Conservatee)(Incapacitated Person) to sell the
real property in accordance with the terms of the annexed Contract of Sale.

EIGHTH: That the interested parties to this proceeding are (list same)

NINTH: That posting and publishing be waived (set forth facts - see * NOTICE)

WHEREFORE, Petitioner respectfully requests an Order of this Court directing
the interested parties to show cause why an Order should not be made confirming the annexed
Contract of Sale and to execute the necessary deeds and conveyances, and that the Court
appoint an appraiser and direct a hearing before this Court to inquire into the merits of this
application; and further, direct service upon the interested parties in such manner as the Court
may deem proper; and for such other and further relief as the Court may deem just and proper.

Dated:

(VERIFICATION)

the State of New York, held in and for the
County of Nassau, at 100 Supreme Court
Drive/Matrimonial Center, 400 County Seat
Drive, Mineola, New York, on the day
of , 20 .

PRESENT:

Hon.

Justice

In the Matter of the application of
as (Committee/Conservator/Guardian of the
(Property or Person and Property) of

ORDER APPROVING
CONTRACT OF SALE

Index No.

an (Incompetent Person/Conservatee/
Incapacitated Person), for leave to
sell (his/her) interest in certain real property

An application having been made by .(Committee, Conservator;
Guardian of the (Property or Person and Property) of . (an incompetent
person/Conservatee/Incapacitated person) for leave to sell his/her interest in certain real property
and a hearing having been held on said application before this Court on the day of
 , 20 , it is

Upon reading and filing the Petition of . verified the
day of , 20 , the Order of this Court granted on the day of
 , 20 , the affidavit of service of , sworn to on the
 day of , 20 , the appraisal of
and upon all the other pleadings and proceedings had herein, and after the hearing held before
this Court on the day of , 20 from which it appears that the interests of
the said (Incompetent/Conservatee/Incapacitated person) will be substantially promoted by the
sale of his/her interest in the real property described in the Contract of Sale heretofore submitted.

and it further appearing that the bonds heretofore filed by the (Committee/Conservator/Guardian) are insufficient to protect the interest of the said (Incompetent/Conservatee/Incapacitated person)

it is

On motion of

ORDERED, that the said _____, as (Committee/Conservator/Guardian) of _____ be and he hereby is authorized to convey the interest of _____ in and to the subject real property upon the terms and conditions set forth in the aforesaid Contract to _____, and it is further

ORDERED, that the said _____ be and he/she hereby is authorized in the name of and on behalf of the said (Incompetent/Conservatee/Incapacitated person) to execute, acknowledge and deliver to the said _____, the purchaser named in the said Contract of Sale, a good and sufficient deed of the estate, title and interest of said (Incompetent/Conservatee/Incapacitated Person) in and to the subject premises together with any other instrument necessary to effect such transfer of his/her interest, and it is further

ORDERED, that before the delivery of the deed as herein provided and receipt of the consideration, the (Committee/Conservator/Guardian) shall file a real property bond in this proceeding in the sum of \$ _____ to be first approved by a Justice of this Court, and it is further

ORDERED, that the (Committee/Conservator/Guardian) pay to appraiser, the sum of \$ _____ for his services rendered in this proceeding, and it is further

ORDERED, that as soon as practicable after delivery of the deed and receipt of the consideration, the said (Committee/Conservator/Guardian) shall report back to this Court for further instructions as to the disposition of the proceeds.

ENTER

At LA Part of the Supreme Court of
the State of New York, held in and for
the County of Nassau, at 100 Supreme
Court Drive/Matrimonial Center, 400
County Seat Drive, Mineola, New York,
on the day of 20

P R E S E N T:

Hon.

Justice

In the Matter of the Application of

ORDER CONFIRMING SALE

as (Committee/Conservator/Guardian)
of the (Property or Person and Property) of

Index No.

an (Incompetent Person/Conservatee/
Incapacitated Person), for leave to sell
his/her interest in certain real property.

Upon reading and filing the Closing Statement annexed hereto, the affidavit of

, sworn to the day of , 20 , and upon

all of the other pleadings and proceedings had herein, it is

On motion of

ORDERED, that the sale of the interest in the real property owned by the above
named (Incompetent/Conservatee/Incapacitated person) as described in the contract of sale
heretofore approved be and the same hereby is in all respects confirmed; and it is further

ORDERED, that the said , as (Committee/Conservator/
Guardian) of the above named (Incompetent/Conservatee/Incapacitated Person) be and he/she is
directed to make the following disposition of the proceeds of the sale amounting to \$

To _____, Esq., the sum of \$ _____ for legal
services rendered by him on behalf of the (incompetent/conservatee/incapacitated person)
relative to the within sale; to _____, appraiser, the sum of \$ _____;
(Provide for payment of any other fees)
and it is further

ORDERED, that the balance of the proceeds of the sale remaining in the hands of
the (Committee/Conservator/Guardian), to wit, the sum of \$ _____ be deposited in the
(Committee/Conservator/Guardian) account, and it is further

ORDERED, that the real property bond filed in the within proceeding in the sum of
\$ _____ be and the same hereby is cancelled and the surety is discharged from all
other and further liability as to all matters embraced in this proceeding upon the approval
and filing of an additional (Committee/Conservator/Guardian) bond in the sum of \$ _____

ENTER

J.S.C.

**"GUIDELINES" PERTAINING TO AN ATTORNEY'S APPLICATION
FOR COMPENSATION TO BE PAID FROM THE FUNDS OF AN
INCAPACITATED PERSON FOR THE SALE OR PURCHASE OF
REAL PROPERTY - (Mental Hygiene Law, article 81)**

It is not this Court's intention to set forth a "hard and fast"
rule concerning compensation due an attorney representing a Guardian
in the sale or purchase of realty. However, as a matter of policy,
an attorney should not expect to be paid an hourly rate for services
rendered in connection with the preparation, contract and closing of
such transaction. As is customary in the private sector, absent
extraordinary circumstances, a "flat" fee should be the basis for
said application. (See, Matter of Schwartz, NYLJ, 8/31/94, at 25,
Col 1.) As to the required judicial proceeding for Court approval
thereof, under RPAPL article 17, petitioner's attorney may seek
"reasonable" compensation based upon an itemization of the time
consumed therefor.
(Supreme Court, Nassau County - 4/30/02)

At an I.A. Part of the Supreme Court of
the State of New York, County of Nassau,
held at the Courthouse located at 100
Supreme Court Drive, Mineola, New York on
the ____ day of

P R E S E N T :
HON. .

Justice of the Supreme Court.

-----X
In the Matter of the Application of

as Guardian for the Personal Needs and
and Property Management of

**ORDER EXPANDING
AUTHORITY OF GUARDIAN**

an Incapacitated Person,

Index No.: 27986-L-05

-----X
A proceeding having been commenced pursuant to Article 81 of the Mental Hygiene Law
for the appointment of a Guardian for _____, an Alleged Incapacitated Person; and
following a hearing conducted herein, the Court having found _____ to be an
Incapacitated Person, and having appointed _____ as the Guardian for his
Personal Needs and Property Management by Order and Judgment dated _____

By "So Ordered" letters dated May, 201, October, 201, and December, 201, the
Court having authorized payment for certain necessary repairs and renovations to the community
residence of _____ located at _____ New York (the "subject
real property") in order to ensure his continued safety and comfort in such living environment; and

having temporarily relocated to a rehabilitative facility(ies) to address certain physical and mobility issues while such construction/repair work is being performed, and

Numerous post-adjudicatory conferences/hearings having been conducted in this matter, the most recent of which having been held on December 19, 2011, and attended by the Guardian

THE ATTORNEY GENERAL by
NEW YORK STATE OFFICE OF
Assistant Attorney General;
counsel for the NASSAU COUNTY DEPARTMENT OF SOCIAL
SERVICES;

and the Incapacitated Person, and following such conference/hearing, the Court having determined that it is in the best interest of that a reverse mortgage be obtained against the premises located at New York, to ensure that sufficient assets are available to complete such repairs, to satisfy the continuing costs of maintaining such residence, and to provide household assistance to the extent required upon the return of the Incapacitated Person to the community; and no one having any objection thereto; and after due deliberation,

NOW, on the Court's own motion, it is

ORDERED, that the Guardian is authorized to apply for a reverse mortgage as against the premises located at , New York in which resides and has an ownership interest, with the closing of same and the collection of proceeds subject to the prior approval of the Court and the setting of an appropriate bond; and it is further

ORDERED, that the Guardian shall execute and/or secure such documentation necessary to effectuate the foregoing, and shall satisfy

such counseling criteria as may be required to qualify for a reverse mortgage product; and it is further

ORDERED, that any application submitted for the approval of a reverse mortgage may be in letter format on notice to all necessary and interested parties, shall indicate the specific home equity conversion mortgage (H.E.C.M.) product selected by the Guardian, and shall include a written schedule of anticipated principal limit(s) and maximum claim amount(s) of such loan based upon the prevailing interest rates and the value and location of the subject real property.

ENTER:

At an IA Part of the Supreme Court of the State of New York, held in and for the County of Nassau at the Courthouse, located at 100 Supreme Court Drive, Mineola, New York, on the ____ day of _____, 2014.

PRESENT:
HON.

JUSTICE.

In the Matter of the Application of

As Successor Guardian for the Personal Needs

and

as Second Successor Guardian for
the Property Management of

An Incapacitated Person.

**ORDER AUTHORIZING
SUMMER RENTAL**

Index No.

A proceeding having been commenced pursuant to Article 81 of the Mental Hygiene Law for the appointment of a Guardian for _____, an Alleged Incapacitated Person; and by Order dated _____ the Court (_____) having, *inter alia*, appointed _____ and _____ as Successor Co-Guardians for the Personal Needs of _____, an Incapacitated Person; and by Order and Judgment dated _____ this Court having appointed _____ as the Second Successor Guardian for the Property Management of _____, an Incapacitated Person, and by Order dated _____, this Court having permitted _____ to continue as sole Successor Guardian for the Personal Needs of _____, following the passing of _____ and _____

By Order dated _____, the Court having authorized the Second
Successor Guardian for the Property Management to expend the maximum sum of
_____ Dollars from the funds of _____ as
and for a family vacation during the calendar year _____ and the Court having
authorized the same expenditure from the funds of the Incapacitated Person for a
family vacation in calendar years thereafter;

NOW, on the Court's own motion, it is

ORDERED, that the Second Successor Guardian for the Property
Management, _____, shall be authorized to expend the sum
of _____ Dollars with an additional
_____ Dollars for security deposit to be returned less any fees deducted for Gas,
Electric, Cablevision TV, Telephone, and Internet Service for a summer home rental
for the calendar year _____

ORDERED, that any further vacation expenditures from the assets of
_____ shall be subject to the prior approval of the Court.

ENTER:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

In the Matter of the Application of

As Successor Guardian for the Personal Needs and

as Second Successor Guardian for
the Property Management of

An Incapacitated Person.

**AFFIRMATION
IN SUPPORT**

Index No.

I, _____, an attorney admitted to the practice of law before
the Courts of the State of New York, affirm the following to be true under the penalties
of perjury:

1. That pursuant to the Order dated _____ (hereto as Exhibit "A"), the
Court authorized the Second Successor Guardian for the Property Management to
expend the maximum sum of _____ Dollars for a family
vacation during calendar year _____, which expenses included the cost of lodging,
food, and entertainment for _____ and a companion.
2. That pursuant to the "so ordered" letters dated _____ (hereto as Exhibit
"B"), the Court authorized the Second Successor Guardian for the Property
Management to expend up to _____ Dollars from the
funds of _____ for a family vacation during the month of _____
3. That pursuant to the "so ordered" letter dated _____ (hereto as Exhibit
"C"), the Court authorized the Second Successor Guardian for the Property
Management to expend _____ Dollars with an additional

Dollars security deposit from the funds
of _____
for a summer home rental for the months of _____

4. That pursuant to the "so ordered" letter dated _____ (hereto as
Exhibit "D"), the Court authorized the Second Successor Guardian for the
Property Management to expend _____ Dollars with an
additional _____ Dollars security deposit
from the funds of _____ for a summer home rental for the
months of _____

5. That pursuant to the "so ordered" letter dated _____ (hereto as Exhibit
"E"), the Court authorized the Second Successor Guardian for the property
management to expend _____ Dollars with an
additional _____ Dollars security deposit from the funds of
_____ for a summer home rental for the months of _____

6. That I respectfully request that the Court authorize
_____ as Second Successor Guardian for the Property Management of
_____ to expend _____ Dollars, with an
additional _____ Dollars security deposit from the funds of
_____ for a summer home rental for the months of _____
(hereto as Exhibit "F").

7. That any further vacation expenditures from the assets of
shall be subject to the prior approval of the Court.

Dated:

, New York

(Mark "X" in appropriate boxes and provide all requested information.)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY

EX PARTE APPLICATION

for

APPROVAL OF SECONDARY APPOINTMENT
(Pursuant to 22 NYCRR § 36.1(a)(10))

Title of Action

INDEX NO.

No.

Yr.

APPROVAL of the following SECONDARY APPOINTEE is respectfully requested (attach one page resume):

Name:

Address:

Phone/FAX/Email

The secondary appointee will serve as: ☐ COUNSEL ☐ ACCOUNTANT ☐ APPRAISER
☐ AUCTIONEER ☐ REAL ESTATE BROKER ☐ PROPERTY MANAGER.

The secondary appointee

☐ is on the list established by the Chief Administrator of the Courts for the category of appointment requested.

☐ is NOT on the list established by the Chief Administrator of the Courts for the category of appointment requested, but is otherwise qualified for appointment pursuant to Part 36 of the Rules of the Chief Judge.

The reasons for the request are as follows (If a NON-LIST appointment is requested, include explanation of good cause for the appointment; if the Guardian or Receiver requests that he/she, or a person associated with his/her law firm, be appointed counsel, include an explanation of the compelling reason for the appointment.):

DATED: _____

Signature:

Print Name:

Sworn to before me this _____ day
of _____, 200__.

☐ GUARDIAN

☐ RECEIVER

Address:

Notary Public

Phone

FAX

Email

Faculty Biographies

Albany



JULIE B. FRIEDMAN, Principal Attorney
Mental Hygiene Legal Service
Appellate Division Third Department

Julie earned her Bachelor of Science at Cornell University's School of Industrial and Labor Relations and her Juris Doctor at Cornell Law School.

Since 1999 Ms. Friedman has been an attorney with the Albany regional office of Mental Hygiene Legal Service (MHLS), a division of the New York State Appellate Division, Third Judicial Department. MHLS provides legal representation for individuals who receive or are in need of services for mental illness or developmental disabilities, including individuals in psychiatric hospitals, community residences and other facilities serving the disabled. MHLS also frequently serves as appointed counsel or court evaluator in guardianship matters pursuant to MHL §81, regardless of they type of impairment and serves as counsel or guardian ad litem in guardianships pursuant to SCPA §17a.

Prior to joining MHLS, Ms. Friedman was a staff attorney at the Albany Law School Disabilities Law Clinic, focusing on special education law. Ms. Friedman also represented adults and children with mental and physical disabilities in a variety of civil matters as an attorney with Legal Aid in Binghamton, New York from 1993 - 1997.

Lisa M. Buccini, Esq., is Principal Court Attorney to the Honorable Paul V. Morgan, Jr., Surrogate's Court Judge of Rensselaer County, Acting Rensselaer County Court Judge and Family Court Judge and Acting New York State Supreme Court Justice, having jurisdiction over all Mental Hygiene Law Article 81 Proceedings in the counties of Albany, Rensselaer, Greene, Schoharie and Columbia. Lisa previously served as Principal Court Attorney, Albany County Surrogate's Court and Principal Appellate Court Attorney, Supreme Court, Appellate Division, Third Judicial Department.



Aaron F. Carbone, Esq.
Vella, Carbone & Associates, LLP
Delmar, NY

Aaron is a founding partner of Vella, Carbone and Associates, LLP. He graduated *Cum Laude* from Albany Law School and has earned numerous honors both in school and in practice. He has been a litigator his entire career with specialties in medical professional defense, estate litigation and guardianship/special needs practice. Clients seek Aaron's counsel not only for his litigation expertise, but also for his in- depth understanding of estate planning and guardianship/special needs law.

Typical matters Aaron assists his clients with include asset protection, estate planning, Medicaid planning and applications, estate administration, and defending against objections to probate and accounting. He has also worked with families to help establish special needs trusts, guardianships for people and property and assisting those with special needs from infirmity or disability receive the necessary protections under law.

Aaron is sought out not only for his experience and expertise, but also his empathy in these sensitive areas of law. Coupled with his strong determination and ability Aaron has established a successful client-centric practice. Outside of practicing law, Aaron is an avid runner and cook and he loves spending time with his wife Erica, and their two young children.

JENNIFER J. CORCORAN

As a Partner at Tully Rinckey, with over twenty years of experience, Jennifer's practice focuses primarily on trusts and estates/elder law, real estate and matrimonial/family law. Jennifer is the former Deputy Chief Clerk of the Albany County Surrogate's Court. She is a frequent speaker at various bar associations conferences and seminars on topics such as Article 81 guardianships, estate and trust administration and advance directives. She has conducted training sessions required by the Office of Court Administration for Guardians, Court Evaluators and Court Appointed Counsel through the Albany County Bar Association. Jennifer is a member of the New York State Bar Association (Elder Law, Family Law and Trusts and Estate Sections), Capital District Women's Bar Association and Albany County Bar Association.

Jennifer has provided pro bono legal services through the Legal Project and Pro Se Divorce Clinic in Schenectady. She was recognized as Empire State Counsel by the New York State Bar Association for providing in excess of 50 hours of pro bono legal services in a year.

Jennifer is currently a member of the Board of the Capital District chapter of the American Heart Association and parent leader of the Cardiac Kids support group. She was a member of the Board of Trustees for the Make-A-Wish Foundation of Northeast New York for 12 years, and served as both a "Wish Granter" and as a member of the Corporates Documents Committee for the Make-A-Wish Foundation of America.

She lives in Delmar with her husband Tim, son Aedan and dogs Bailey and Vallie.



Hon. Paul V. Morgan
Rensselaer County Surrogates Court
Troy, NY

Honorable Paul V. Morgan Jr. is the Surrogate's Court Judge of Rensselaer County and previously served as Chief Clerk of that Court for more than 17 years. He also serves as an Acting Rensselaer County Court Judge and Family Court Judge and an Acting New York State Supreme Court Justice, having exclusive jurisdiction over all Mental Hygiene Law Article 81 Proceedings in the counties of Albany, Rensselaer, Greene, Schoharie and Columbia, the northern counties of the Third Judicial District. He is an adjunct professor at Albany Law School where he conducts courses in Surrogate's Court Procedure. He is a frequent lecturer at meetings of various organizations including the New York State and local bar associations.

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SALLY M. DONAHUE

Sally M. Donahue is a partner at Jaspan Schlesinger LLP in the Trusts and Estates practice group. Ms. Donahue concentrates in Surrogate's Court litigation, including trials and appeals. She also handles estate planning and administration, and guardianships.

Ms. Donahue was a Court Attorney-Referee at the Nassau County Surrogate's Court from 2006 to 2011. She practiced for many years at two prestigious law firms on Long Island in the areas of trusts and estates, guardianships and commercial litigation. After graduating from law school, Ms. Donahue was a Law Clerk for a Federal District Judge and for a Federal Magistrate Judge in the Eastern District of New York. Ms. Donahue taught Legal Ethics for six years at Adelphi University's Lawyers' Assistant Program.

In 1990, Ms. Donahue received her Juris Doctorate, *magna cum laude*, from Touro Law Center, where she was a Dean's Fellow, entitling her to a full academic scholarship. Ms. Donahue was a member of the Law Review and served as a Notes and Comments Editor. Her article, "Copyrightability of Useful Articles: The Second Circuit's Resistance to Conceptual Separability," was published in the Law Review. While in law school, Ms. Donahue won the American Society of Composers, Authors and Publishers' Nathan Burkan Memorial Competition, as well as five American Jurisprudence Awards. She received her Bachelor of Arts degree, *summa cum laude*, from Adelphi University in 1986.

Ms. Donahue is a member of and former Co-Chair of the Nassau County Bar Association Surrogate's Court Estates and Trusts Committee and a member of the Nassau County Bar Association Nominating Committee. Ms. Donahue is a member of the Touro Law Center Alumni Executive Board and the Touro Law Center Dean's Advisory Board.

Ms. Donahue has lectured at, moderated and co-chaired Continuing Education Programs for the New York State Bar Association and the Nassau County Bar Association. She was a Co-Chair of the 2014 New York State Bar Association Trusts and Estates Section Annual Meeting entitled, "Til' Death Do us Part: Updates on Marriage, Domestic Relationships and Estate Law." She also was planner of and a moderator at the "Evening with the Surrogates" programs and the "Evening with the Chief Clerks" program presented by the Nassau County Bar Association.

MICHELE GARTNER

Michele Gartner is the Office of Court Administrator Special Counsel for Surrogate and Fiduciary Matters. She is responsible for the review and certification of training programs for Part 36 fiduciaries, for developing and presenting training programs regarding the Part 36 rules for judicial and nonjudicial court personnel, and for answering questions from the public and the courts regarding Part 36 interpretation and implementation. She serves as Counsel to the OCA Guardianship Advisory Committee, the OCA Surrogate's Court Advisory Committee, and the Administrative Board for the Offices of Public Administrators. She previously served as the Public Administrator of Nassau County. She received her JD from the University of Buffalo School of Law.



Joan Lensky Robert, Esq.
Kassoff Robert & Lerner, LLP
Rockville Center, NY

JOAN LENSKEY ROBERT is a member of KASSOFF, ROBERT & LERNER LLP, a law firm in Rockville Centre, New York practicing exclusively in the areas of elder law, special needs planning and disability law. Ms. Robert is a graduate of Skidmore College, where she was a member of Periclean, the University of Pennsylvania, where she studied pursuant to a Ford Foundation Fellowship, and Touro College School of Law, summa cum laude, where she was valedictorian of the part time division. Prior to entering the practice of law, Ms. Robert taught French with the Valley Stream Central High School District.

Ms. Robert served as Chair of the New York State Bar Association Elder Law & Special Needs Section from 2003-2004 and serves as Co-Chair of its Special Needs Planning Committee. She founded and served as Chair of its Mentorship Committee. She received a Lifetime Achievement Award from the New York State Elder Law and Special Needs Section in January, 2014. She is a Fellow of the New York State Bar Association. She co-wrote the chapter on Special Needs Planning in the book Guardianship Practice in New York State and wrote the chapters on Medicaid liens and planning in Personal Injury Actions in New York published by the New York State Bar Association. She is an attorney member of the Guardianship Advisory Committee formed by the Office of Court Administration.

Ms. Robert has been named a Super Lawyer since 2013 and was chosen as a Top Lawyer in North America. Ms. Robert has been Board Certified as a Certified Elder Law Attorney (CELA) by the National Elder Law Foundation, as accredited by the ABA. In March, 2016, she was honored as one of the 50 Outstanding Women in the Law on Long Island.

Ms. Robert served as a member of the Board of Directors of the Nassau County Bar Association for 6 years, and is a past chair of its Elder Law/Social Services/Health Advocacy Committee. Ms. Robert served as Dean of the Nassau Academy of Law, and now is co-chair of the Senior Lawyers committee.



Michael P. Ryan, Esq.
Jaspan Schlesinger, LLP
Garden City, NY
mpryan@jaspanllp.com

Of Counsel, Trusts and Estates Department, 2015 - Present. Responsibilities include all phases of the practice of Trusts and Estates, emphasizing litigation, planning, administration, and mediation.

CULLEN AND DYKMAN, LLP

Partner and Chair of the Trusts and Estates Department. 2009-2014. Responsibilities include all phases of the practice of Trusts and Estates, including planning, administration, but emphasizing litigation. Responsible for the budget and supervision of a Department that employs a dozen attorneys and several paralegals, fiduciary accountants, secretaries. Also, liaison to firm's Banking Department and thereby advise them and firm's banking clients on issues related to trusts and estates.

UNIFIED COURT SYSTEM, STATE OF NEW YORK

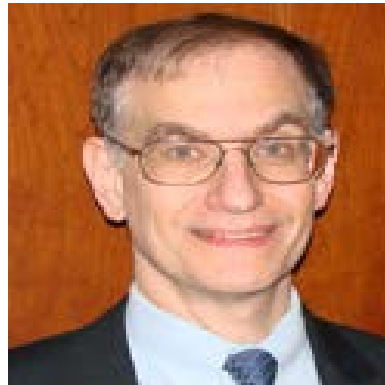
Chief Clerk./Referee. 2006-2009; Court Attorney-Referee. 1981-2006, Nassau Surrogate's Court, Kings County Supreme Court. As Chief Clerk, responsibilities included all phases of the administrative, budgetary, and personnel operations of the Surrogate's Court. Responsibilities also include reporting requirements as the Court's Fiduciary Clerk. Also, as court attorney, responsible for an active case load of contested matters for research, drafting, negotiating, and hearings in Trusts and Estates, Medical Malpractice, et al.. Miscellaneous: President, New York State Surrogate's Law Association; Co-author of New York Office of Court Administration's Guardian ad Litem Manual.

NEW YORK LAW SCHOOL

Adjunct Professor of Law, LL.M. Program in Taxation. 2007-Present, Adjunct Professor of Law. 1990-2000. Responsibilities include teaching courses in Federal Estate and Gift Taxation, Trusts and Estates Litigation, and supervising independent research projects. Before that, courses in legal writing and appellate advocacy.

Ira Salzman, Esq.

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Ira Salzman is a partner in the law firm of Goldfarb Abrandt Salzman & Kutzin LLP. Ira is the former Chair of the Elder Law Committee of the New York County Lawyers' Association. He is currently a member of the Executive Committee of the Elder Law Section of the New York State Bar Association and the co-chair of its Guardianship Committee. He is the former co-chair of its Medicaid Committee and former co-chair of its Legislation committee.

Ira is a Fellow of the Brookdale Center on Aging. He is a member of the National Academy of Elder Law Attorneys and a former editor of its quarterly journal. He has written articles for the quarterly journal of the National Academy of Elder Law Attorneys, the Elder Law News (a publication of Little, Brown & Company), and for the Elder Law Attorney (published by the Elder Law Section of the New York State Bar Association). He is the co-author of the Guardianship Section of the New York Lawyer's Form Book (published by the New York State Bar Association). He is the author of the chapter on the responsibilities of the attorney for an alleged incapacitated person in Guardianship Practice In New York (published by the New York State Bar Association).

Ira has lectured at numerous Office of Court Administration certified training programs for Court Evaluators and Guardians in New York County and Bronx County. In 1999 he received the Leonard Lerner Award for pro bono service from the New York County Lawyers' Association. In 2012 he received an award from the Elder Law Section of the New York State Bar Association in recognition of his work drafting a New York version of the Uniform Adult Guardianship and Protective proceedings Jurisdiction Act.

David A. Smith, Esq.

David A. Smith, PLLC
500 Old Country Road | Suite 109
Garden City, NY 11530
(516) 294-3701

David A. Smith is an attorney with more than thirty-five years' experience in civil litigation. From 1979 to 1981, Mr. Smith was the Attorney In Charge of the New York State Attorney General's Plattsburgh Regional Office. In 1981, he opened the New York State Attorney General's first Nassau County Office, which he ran until 1987, when he entered private practice at Meyer, Suozzi, English & Klein.

In early 1996 Mr. Smith founded The Law Office of David A. Smith, PLLC which is located at 500 Old Country Road, Suite 109, Garden City, New York 11530, phone number (516) 294-3701.

Mr. Smith and his associates have a civil litigation, elder law and disabilities law practice in which they focus on representing individual clients in guardianship proceedings, contested guardianship litigation, estate planning, estate administration, contested estate and trust litigation, Medicaid planning, application and fair hearings, Mental Hygiene Law retention and outpatient treatment cases, "right to die" cases, and general civil litigation. Mr. Smith also serves as counsel to prominent members of the medical malpractice and personal injury bar in connection with the resolution of Medicaid liens and other claims against plaintiffs' settlement or judgment proceeds and, where necessary, coordinating proceedings for appointment of a guardian with the settlement proceedings .

Mr. Smith also has lectured often at Bar associations and law schools on these subjects, as well as the subject of contested Mental Hygiene Law Article 81 guardianship proceedings. He authored the "Contested Guardianship Proceedings" chapter in the New York State Bar Association treatise Guardianship Practice in New York State.

Mr. Smith has also litigated many "right to die" cases including New York's "Baby Jane Doe" case. For more than twenty-five years, he has lectured to professional and lay groups throughout the country concerning medical treatment decision-making for patients unable to make their own decisions. He also has appeared on numerous television programs, including the "Today Show", "NBC Dateline", CNN programs and Court TV programs to discuss these issues.



Lori A. Sullivan, Esq.
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Lori A. Sullivan is a senior associate in the Trusts & Estates Group at Seward & Kissel. Ms. Sullivan practices in the areas of estate planning, estate administration and estate litigation, including contested probate proceedings, contested accounting proceedings, discovery proceedings, *inter vivos* trust litigation and will construction proceedings.

Prior to joining Seward & Kissel, Ms. Sullivan served as the Principal Law Clerk to the Honorable Edward W. McCarty III, Surrogate of Nassau County. Ms. Sullivan also served as a Court Attorney-Referee in the Nassau County Surrogate's Court under the Honorable John B. Riordan. As the Principal Law Clerk and a Court-Attorney Referee, Ms. Sullivan presided over non-jury hearings, rendered rulings at depositions, conferenced cases, mediated cases to settlement, assisted the Surrogate at trial and prepared decisions, orders, stipulations, trial memoranda and jury instructions. Ms. Sullivan also practiced at a number of well-respected trusts and estates firms, including Paul Weiss Rifkind Wharton & Garrison, where she was responsible for the administration of estates and trusts of high-net worth individuals.

Ms. Sullivan received her B.A., *summa cum laude*, from Adelphi University, where she received the Presidential Scholarship, and her J.D. from Hofstra University School of Law, where she was the recipient of the Fortunoff Scholarship and was named salutatorian of her law school class. While in law school, Ms. Sullivan was a member of the Law Review and served as a Notes and Comments Editor.

Ms. Sullivan is a member of the New York State Bar Association Trusts and Estates Section and served as a Vice-Chair of the Estate Planning Committee. Ms. Sullivan is a member of the Surrogate's Court Committee of the Nassau County Bar Association and served as a Co-Vice-Chair and Co-Chair of the Committee.

Danielle M. Visvader, Esq.
Abrams Fensterman, LLP
Lake Success, NY



Danielle M. Visvader has been with Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP for over fourteen (14) years. When she first joined the firm, Ms. Visvader predominantly practiced Elder Law and specifically concentrated on Article 81 guardianship proceedings for both individuals and institutional clients, including nursing homes and hospitals. She subsequently expanded her practice to include Mental Health Law, dealing with the retention and treatment of patients in psychiatric facilities. Ms. Visvader also made it a point to familiarize herself with the regulations governing institutional and community Medicaid and Medicaid planning in an effort to more effectively represent her Elder Law clients.

Additionally, Ms. Visvader handles residential real estate purchases and sales, which compliments her Guardianship Practice. She is well-versed in proceedings under Article 17 of the RPAPL and she routinely represents Court-appointed Guardians in order to obtain Court approval for the sale of property by the Guardian. Ms. Visvader is eligible for court appointments in various counties, including Nassau, Suffolk, and Westchester, and within New York City, as Guardian, Court Evaluator and Counsel for alleged incapacitated persons, pursuant to Part 36 of the Rules of the Chief Judge of the New York State Unified Court System. Ms. Visvader was selected to the 2013 - 2017 New York Rising Stars list. Each year, no more than 2.5% of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor. Ms. Visvader also received Long Island Business News' Leadership in Law award in 2013.

Ms. Visvader received her B.A. from Fordham University and her J.D. from Hofstra University School of Law, where she served on the Journal of International Business and Law and the Moot Court Association. She is an active member in various professional and civic organizations such as the New York State Bar Association, where she is a member of the Elder Law section, and the Nassau County Bar Association, where she is the current Co-Chair of the Elder Law section.



Felice Wechsler, Esq.
Mental Hygiene Legal Service
New York, NY

FELICE WECHSLER is a Principal Attorney with the Mental Hygiene Legal Service, First Judicial Department, a New York state agency that advocates for persons with psychiatric, developmental and intellectual disabilities. A native New Yorker, she is a 1983 graduate of Colgate University, and a 1988 graduate of the University of Arizona College of Law, where she earned an Ares Fellowship and was a writer and editor on the Arizona Law Review. Her article, *Goldman v. Weinberger: Circumscribing the First Amendment Rights of Military Personnel*, was published in 1988.

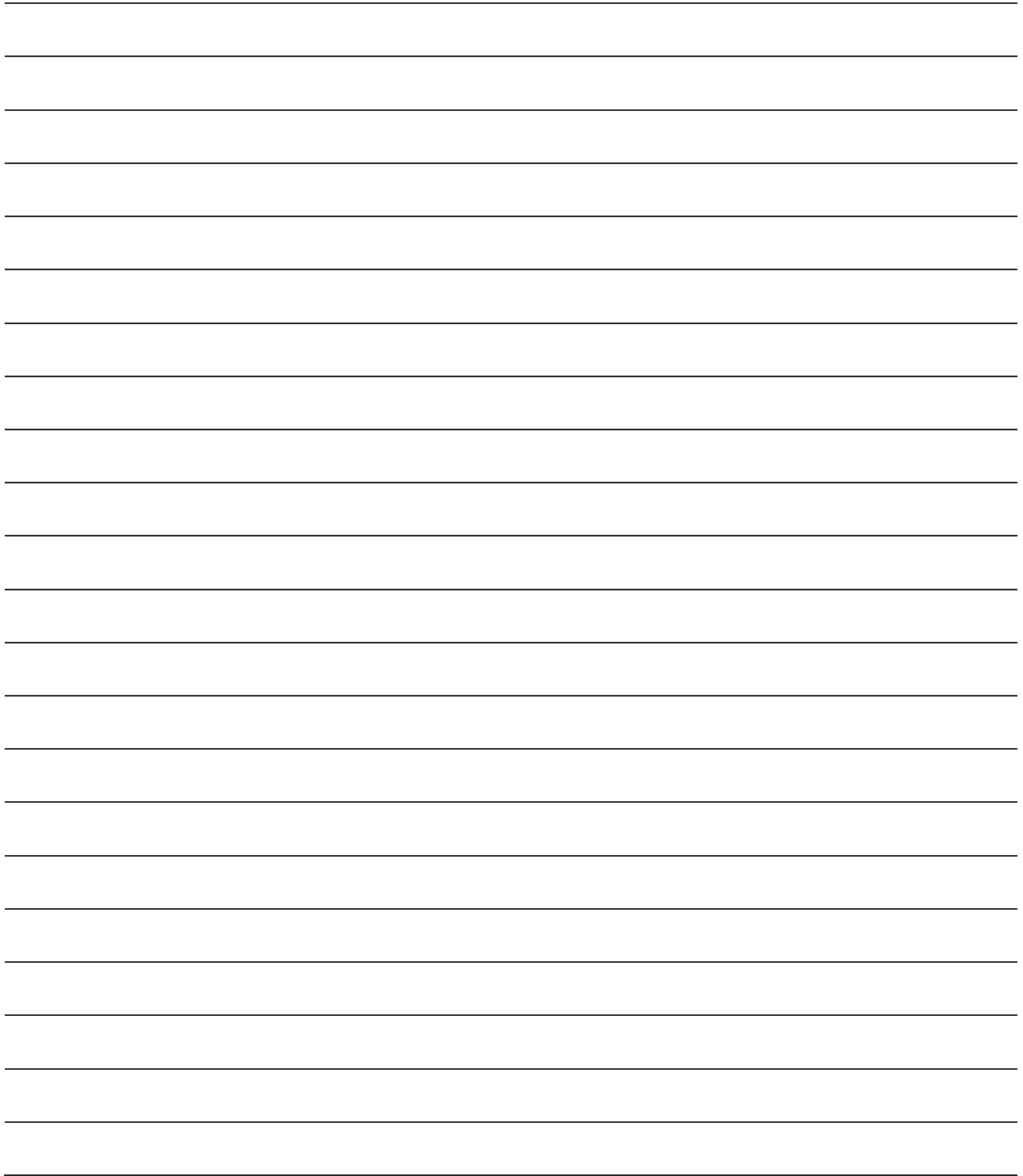
Ms. Wechsler has been an attorney with MHLS since 1989, having worked in the field, where she served as an on-the-premises advocate for patients in several psychiatric facilities, and the departmental office, where she engaged in appellate practice, as well as research, writing and impact litigation. She is the primary author of the *Mental Health Legal Advocacy Handbook* published in 1999 by the Appellate Division, First Department. Since 1999, Ms. Wechsler has been charged with administering and supervising all aspects of MHLS's involvement in Article 81 guardianship proceedings in New York and Bronx Counties. In 2014 she assumed responsibility for overseeing the agency's representation of clients who live in residences licensed by the Office for People with Developmental Disability in New York County. In addition to her administrative duties, she maintains an active and ever-changing caseload.

Ms. Wechsler was a member of Justice Sheri Klein Heitler's Guardianship Advisory Committee and served on the Education Subcommittee; when the GAC was under the stewardship of Justice Jacqueline W. Silbermann, Ms. Wechsler was a member of the Model Guardianship and Judicial Training Subcommittees, serving as co-chairperson of the latter. She is also a member of the Nursing Home Task Force, a multidisciplinary group that meets to discuss and address issues surrounding nursing home residency. Since the creation of the Disability and Civil Rights Clinic at Brooklyn Law School, Ms. Wechsler has been invited to participate in its roundtable conferences.

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