

INSTRUCTION SHEET

ORDER AND JUDGMENT FOR THE APPOINTMENT OF A GUARDIAN (Mental Hygiene Law ARTICLE 81 [hereinafter MHL §81])

Annexed is a sample form exclusively developed for use in preparing an “Order and Judgment” in Kings County Supreme Court for the appointment of a Guardian, pursuant to MHL §81.

The use of any other form may result in undue delay and/or rejection of your order due to omissions, errors, and the like.

The language contained in said form, however, is not intended to be all inclusive but is meant to provide guidance only. Each judgment must be adapted to the individual case and conform to the applicable sections of MHL Article 81 in preparing the same. In reviewing the sample form, pay close attention to the directions contained in this instruction sheet. The use of pronouns, singular and plural nouns, and the like, is to be adapted to your particular Order and Judgment. Also, pay attention to the form of the papers to be submitted as required by CPLR §2101 and §202.5(a) of the Uniform Rules of Court (e.g. double spaced, one side only, one (1) inch margins, etc.).

The order & judgment must adhere to the court’s decision in accordance with the portion(s) of the transcript of the hearing which sets forth the court’s findings and conclusions.

The proposed order and judgment is to be submitted to the Guardianship Clerk’s Office (Room 285), accompanied by:

1. A Notice of Settlement pursuant to §202.48 of the Uniform Rules of Court;
2. An affidavit / affirmation of service on all interested parties entitled to notice as per MHL §81.16(c)(3) and the court’s order (i.e. the court evaluator, the attorney for the incapacitated person, etc.);
3. A copy of the portion(s) of the transcript which reflects the court’s decision (obtained from the court reporter at your hearing);
4. Where applicable, the order and judgment should be accompanied by a copy of the Notice of Pendency (Lis Pendens) required by MHL §81.24 **to be filed prior to judgment** by the petitioner and proof of filing with the County Clerk’s Office.

The Order & Judgment is divided into the following parts, and requires insertions as described below.

Part I
Court's Findings

1. List name(s) of all respondents, etc., on whom the Order to Show Cause directed that service be made, including Court appointees.
2. List all parties who testified at the hearing.

Part II
Appointments

Insert the name, address, and telephone number of the appointees (i.e. guardian, co-guardians, trustee, and Court Examiner, etc.), as per court's findings. The wording in this decretal paragraph should track the Court's decision in respect to the appointment (e.g. Guardian, Co-Guardian, Guardian for the personal needs, Guardian for the property management, Special Guardian, etc.). In the event that the court is to appoint someone not yet known, leave blank.

Part III
Caption of proceeding

Amends the caption after a guardianship is granted by the court. Insert the incapacitated person's name. Note: If the alleged incapacitated person consented to the guardianship and there is no judicial finding of incapacity, then the reference to "A Person Alleged to be Incapacitated" should be replaced with "A Person In Need of a Guardian".

Part IV
Bonding requirements

If different individuals are appointed as Guardian for the personal needs and Guardian for the property, **only the property management Guardian is required to file a bond, the amount of which shall be fixed by the Court.** Insert the amount of the bond set by the court.

Part V
Qualification of Guardian

Guardians who are: (a) nominated by the subject of the proceeding (i.e., the incapacitated person), (b) proposed by a **party** to the proceeding, (c) not-for-profit organizations, or (d) family members shall **not** be subject to Part 36 of the Rules of the Chief Judge [§36.1(b)]. In all other instances the proposed order must read that the guardian will be subject to the Part 36 Rules.

Part VI
Reporting requirements

Note that the guardians are required to file an initial report, annual reports, and, prior to

termination of the guardianship, a final report. Special Guardians are to file a report within the time specified by the Court after the completion of their specific duties.

Part VII
General Duties-Guardian

All the general duties of the guardian **mandated** by MHL §81.20 are specified in this section.

Part VIII
Powers - Guardian of the Person

All the powers of the guardian of the **person** are set forth. The powers listed in the sample form are powers that **MAY** be granted by the court, but they are not all-inclusive. Any additional or special powers which were **granted by the court after the hearing** should be incorporated into the body of the order and judgment or listed in the “Special Powers” addendum.

Part IX
Authority - Guardian of the Property

All the authority of the guardian of the **property** is set forth, including limits on spending. Make note of requirements to open fiduciary accounts (i.e., guardianship account, or trustee account, and to name accounts as indicated). Any additional authority needed should be directed to the court’s attention.

List all income, bank accounts, and real estate holdings of the Incapacitated person. Income should include Monthly Social Security, SSI / SSD, Pension, Rental, Interest, and Dividends. List all Banks and account balances with partial account numbers (i.e., “account ending in”) and any other assets owned by the Incapacitated Person. If there is a lengthy list of securities, etc., they should be added to a separate page and annexed to the order as “SCHEDULE A”

Provisions dealing with luxury and burial accounts are included in instances where the Incapacitated Person is either in or will be placed in a nursing home.

Part X
Powers - Guardian of the Property

All the powers of the guardian of the **property** are set forth. Any additional or special powers which were **granted by the court after the hearing** should be incorporated into the order and judgment or listed in the “Special Powers” addendum.

Part XI
General Directives

Insert the name and title of the person who is to read provisions of the Order & Judgment to the Incapacitated person (i.e., Guardian, Court Evaluator, or attorney for the incapacitated person).

Part XII
Termination by reason other than death

Requirements to end guardianship for reasons other than death.

Part XIII
Termination by death

Requirements to end guardianship upon the death of the Incapacitated person.

Part XIV
Compensation

Amount of compensation awarded by the court is to be inserted. Note the prerequisites for receiving payment. If the IP is indigent, please adjust the compensation paragraphs accordingly.

Part XV
Notice

Sets forth all persons who are required to receive and / or make notifications as per the O&J and the method of such service.

Part XVI
Infant's Compromise

Specifies that the O&J supersedes any prior Infant Compromise order.

Part XVII
Savings Clause

Specifies that the provisions of Article 81 apply unless the Court specifically deems otherwise in the order.

Part XVIII
Compliance Conference

Sets forth when the guardian and / or counsel is to first appear in court for an update on the qualification and training requirements of the guardian.

Addenda

“SCHEDULE A”

To be utilized for an extensive list of income and assets (e.g. bank accounts, securities, etc.).

“SPECIAL POWERS”

To be utilized in instances where the court grants powers not enumerated in standard form, including but not limited, to payment of stipends, budgeted expenses, modified homes, cars, etc.

At an I.A.S. Part 76 _____ of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street Brooklyn, New York on the _____ day of _____ 20_____.

PRESENT:
HONORABLE _____,
Justice

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

Petitioner,

**ORDER AND JUDGMENT
APPOINTING GUARDIAN OF
THE PERSON AND / OR PROPERTY**

For the Appointment of a Guardian of the Personal Needs and / or Property Management of

INDEX NO. _____

A Person Alleged to be Incapacitated,

Respondent,

-----X

Part I / Court's Findings

An Order having been duly made herein an I.A.S. Part 76 _____ of this Court on the _____ day of _____, 20_____, directing that _____ and _____ show cause why a Guardian of the Person and / or Property (hereinafter "Guardian") should not be appointed for _____ and granting other relief, and _____ having been appointed and appeared as Court Evaluator for the alleged incapacitated person, and _____ having appeared for the petitioner herein, and _____ having appeared as counsel for the alleged incapacitated person, and a hearing on the matter having been held on the _____ day of _____, 20____ and _____ having appeared, and _____ having testified and the parties having adduced their proof and it appearing therefrom to the satisfaction of this Court that the alleged incapacitated person is unable to provide for personal needs and / or property management and cannot adequately understand and appreciate the nature and consequences of such inability, and the Court having made the findings required by §81.15 of the Mental Hygiene Law (hereinafter MHL) in a decision made on the record, on the _____ day of _____, 20____, and upon all the pleadings and

proceedings had herein, and due deliberation having been had, on motion of _____, Esq., attorney for the petitioner; it is

ORDERED AND ADJUDGED, that _____ be and hereby is determined to be a person requiring the appointment of a Guardian as the Court has found that said incapacitated person is likely to suffer harm because of an inability to provide for personal needs and / or property management and is unable to adequately understand and appreciate the nature of and consequences of such inability; and it is further

Part II / Appointments

Guardian

ORDERED AND ADJUDGED, that _____ of

_____, telephone number _____ is hereby appointed

Guardian of the Person and Property of _____; and it is further

Trustee

ORDERED AND ADJUDGED, that _____

of _____, () _____ is hereby appointed the Trustee of the _____ Supplemental Needs Trust annexed hereto, and is directed to file with the Clerk of the Court, Kings County, a "Consent to Act" as Trustee, an Oath & Designation duly acknowledged by the Trustee, and a Trustee bond as required by the court; and it is further

ORDERED AND ADJUDGED, that upon filing of the bond required by the Trustee, _____ of the _____ Supplemental Needs Trust, the Trustee is given the authority with respect to the property management and shall marshal the assets of the incapacitated person for the purpose of investing such assets as would a prudent person of discretion and intelligence in such matters seeking reasonable income, and to apply so much of the income and principal of the incapacitated personal as is necessary for the comfort, support, maintenance and well-being of said incapacitated person; and said funds shall be held in accounts

titled, “ _____ as Trustee of the _____ Supplemental Needs Trust on behalf of _____ , an incapacitated person”; and it is further

ORDERED AND ADJUDGED, that the Trustee shall file with the Clerk of the Court, within twenty (20) days of the signing of this Order, an executed copy of the Supplemental Needs Trust Agreement authorized hereunder and the letter of approval from the N.Y.C. Department of Social Services Human Resources Administration; and it is further

Court Examiner

ORDERED AND ADJUDGED that , _____ of _____ , () _____ , having been designated by the Appellate Division, is appointed as Court Examiner in the within matter to examine the condition, care, and finances of the incapacitated person; and it is further

ORDERED AND ADJUDGED that the Guardian is hereby directed to fully cooperate with the appointed Court Examiner in the examination of the incapacitated person’s condition, care, and finances; and it is further

ORDERED AND ADJUDGED, that in addition to the requirements of MHL §81.32, the Court Examiner named herein shall inform the Court in writing in the event that the initial report and / or any annual account has not been examined; and it is further

Part III / Caption

ORDERED AND ADJUDGED, that the caption of this proceeding shall be amended as follows:

-----x

In the Matter of

_____ ,

An Incapacitated Person;

-----x

;and it is further

Part IV / Bonding Requirements

Guardian or Guardian / Trustee

ORDERED AND ADJUDGED, that the property Guardian or Guardian / Trustee appointed herein shall, pursuant to MHL §81.25, file a bond in the sum of \$ _____, with sufficient sureties, conditioned that said Guardian / Trustee will in all things faithfully discharge the trust imposed herein, obey all the directions of the Court in respect to the trust, make and render a true and just account of all monies and other properties received pursuant to the authority granted herein and the application thereof, and of all acts performed in the administration of the trust imposed herein whenever required to do so by the Court, and shall file the designation required by MHL §81.26; and it is further

ORDERED AND ADJUDGED, that the Guardian / Trustee shall pay the premium on said bond from the funds of the incapacitated person to the surety or its agent within sixty (60) days after receipt of the commission, and shall continue to pay the renewal premium, not to exceed three (3) years of premiums, from those funds within sixty (60) days after the bond renews until such time as a final accounting of the proceedings has been judicially approved and the bond discharged by Order of this Court; and it is further

ORDERED AND ADJUDGED, that the surety and its agent may bring a motion before this Court to collect unpaid premiums if such payments are not timely made; and it is further

Trustee

ORDERED AND ADJUDGED, that the Supplemental Needs Trustee appointed herein shall file a Trustee bond in the sum of \$ _____, with sufficient sureties, conditioned that said Trustee will in all things faithfully discharge the trust imposed herein, obey all the directions of the Court in respect to the trust, make and render a true and just account of all monies and other properties received pursuant to the authority granted herein and the application thereof, and of all acts performed in the administration of the trust imposed herein whenever required to do so by this Court; and it is further

Part V / Qualification of Guardian

ORDERED AND ADJUDGED, that pursuant to 22 N.Y.C.R.R. §36.1 the Guardian appointed herein shall / shall not be subject to Part 36 of the Rules of the Chief Judge; and it is further

ORDERED AND ADJUDGED, that pursuant to MHL §81.27, upon the filing of an Oath & Designation, and a bond, if required by the court, a commission in the due form of law shall be issued by the Clerk of the Court; and it is further

ORDERED AND ADJUDGED, that pursuant to MHL §81.39, no later than ninety (90) days after the issuance of a commission, the Guardian shall complete a training program approved by the Chief Administrator of the Courts and obtain proof that the training was completed; and it is further

ORDERED AND ADJUDGED, that the Guardian shall serve for an indefinite period of time; and it is further

ORDERED AND ADJUDGED, that a guardian appointed pursuant to Part 36 of the Rules of the Chief Judge may not act as his / her own attorney or retain counsel without prior court approval; and it is further

ORDERED AND ADJUDGED, that the Guardian shall not have the authority to pay counsel fees without prior court approval; and it is further

Part VI / Reporting requirements

Initial report

ORDERED AND ADJUDGED, that pursuant to MHL §81.30, **no later than ninety (90) days after the issuance of the commission** to the Guardian, the Guardian shall file with the clerk of court an initial report in a form prescribed by the Court and proof of completion of the Guardian education requirements under MHL §81.39; and it is further

Annual report

ORDERED AND ADJUDGED, that the Guardian shall file, no later than the month of May in the Office of the Clerk of the County of Kings Room 122A, an Annual report for the preceding calendar year in the form required by MHL §81.31; and it is further

Final report (see Parts XII & XIII)

Temporary Guardian

ORDERED AND ADJUDGED, that any previously appointed Temporary Guardian, if someone other than the permanently appointed Guardian, shall file with the court within sixty (60) days of service of a copy of this Order and Judgment with notice of entry, a detailed report of all acts performed and a true and just account of all monies and other properties received and disbursed; and it is further

ORDERED AND ADJUDGED, that any previously appointed Temporary guardian who is subsequently appointed permanent Guardian pursuant to this order shall include a detailed report of all acts performed and a true and just account of all monies and other properties received as Temporary Guardian in the required Initial and Annual Reports; and it is further

Part VII / General Duties-Guardian

ORDERED AND ADJUDGED, that pursuant to MHL §81.20, the Guardian shall:

1. Exercise only those powers that the Guardian is authorized to exercise by order of this court;
2. Exercise the utmost care and diligence when acting on behalf of the incapacitated person;
3. Exhibit the utmost degree of trust, loyalty, and fidelity in relation to the incapacitated person;
4. Visit the incapacitated person **not less than four (4) times a year** or more frequently as ordered by this court;
5. When given authority with respect to **property management** for the incapacitated person:
 - a. Afford the incapacitated person the greatest amount of independence and self-determination with

respect to property management in light of that person's functional level, understanding and appreciation of his or her functional limitations, and personal wishes, preferences and desires with regard to managing the activities of daily living;

- b. Preserve, protect, and account for the incapacitated person's property and financial resources faithfully;
- c. Determine whether the incapacitated person has executed a will, determine the location of any will, and the appropriate persons to be notified in the event of the death of the incapacitated person and, in the event of the death of the incapacitated person, notify those persons.
- d. File with the recording officer of the county wherein the incapacitated person is possessed of real property, an acknowledged statement to be recorded and indexed under the name of the incapacitated person identifying the real property possessed by the incapacitated person, and the tax map numbers of the property, and stating the date of adjudication of incapacity of the person regarding property management, and the name, address, and telephone number of the Guardian and the Guardian's surety and submit proof of filing to this court with the initial report;;
- e. File a notice of pendency against the incapacitated person's real property with the county clerk, and renew the same every three (3) years prior to expiration of same;
- f. At the termination of the appointment, deliver the property of the incapacitated person to the person legally entitled to it; and
- g. Perform all other duties required by law; and it is further

Part VIII / Powers - Guardian of the Person:

ORDERED AND ADJUDGED, that pursuant to MHL §81.22, the Guardian shall have, concerning the **personal needs** of the incapacitated person, the authority to:

- 1. Determine who shall provide personal care or assistance;
- 2. Make decisions regarding social environment and other social aspects of the life of the incapacitated person;
- 3. Determine whether the incapacitated person should travel;

4. Determine whether the incapacitated person should possess a license to drive;
5. Authorize access to or release of confidential records;
6. Make decisions regarding education;
7. Apply for government and private benefits;
8. (I) for decisions in hospitals, Act as the patient’s surrogate pursuant to and subject to the **FAMILY HEALTH CARE DECISIONS ACT** (NYS Public Health Law Article 29-CC), and (ii) in all other circumstances, Consent to or refuse generally accepted routine or major medical or dental treatment, subject to the decision-making standard contained in the **FAMILY HEALTH CARE DECISIONS ACT** (NYS Public Health Law §2994-d);
9. Choose the place of abode for the incapacitated person consistent with:
 - a. This court’s findings under MHL §81.15;
 - b. The existence of and availability of family, friends, and social services in the community;
 - c. The care, comfort and maintenance, and where appropriate, rehabilitation of the incapacitated person;
 - d. The needs of those with whom the incapacitated person resides;

Provided, however, that **any placement in excess of ninety (90) days in a more restrictive environment shall be subject to prior court approval**; and it is further

Part IX / Authority-Guardian of the Property

ORDERED AND ADJUDGED, that the Guardian shall hold the funds of the incapacitated person in an account titled, “_____ as Guardian of the Property Management Needs of _____, an incapacitated person”; and it is further

ORDERED AND ADJUDGED, that the Guardian shall have such authority as may be granted by any statute of the United States of America or the State of New York unless such statute or the Order of this court specifically requires the permission of the Court before the exercise of the power granted therein; and it is further

ORDERED AND ADJUDGED, that the authority of the Guardian of the Property shall extend to all of the property of the incapacitated person, both real and personal, including but not limited to the following:

A. **INCOME:**

B. **BANK ACCOUNTS:**

C. **SECURITIES (STOCKS, BONDS, ETC.):**

D. **REAL ESTATE:**

E. **OTHER:**

; and it is further

ORDERED AND ADJUDGED, that said Guardian of the Property, before taking possession of any personal property, including, but not limited to, any litigation proceeds, **other than the above mentioned**, shall file an application with the court to file an additional bond in an amount to be determined by a Justice of this Court pursuant to MHL §81.25(e); and it is further

ORDERED AND ADJUDGED, that any safe deposit box owned by the Incapacitated person shall be opened by the Guardian in the presence of a representative of the bank and a representative of the surety on the Guardian's bond, unless the surety waives being present in writing, and the Guardian shall, within thirty (30) days of said opening, file an inventory of the contents of the safe deposit box with the Court, subscribed by all present; and it is further

ORDERED AND ADJUDGED, that the Guardian of the Property may, without prior authorization of the Court, make reasonable expenditures for the purpose of providing the incapacitated person with necessities or preserving the property of the Incapacitated person; and it is further

ORDERED AND ADJUDGED, that with the exception of authorized nursing home expenses, home care services, and Medicaid reimbursement, the Guardian must seek Court approval to expend, transfer, or withdraw funds in excess of five thousand dollars (\$5,000.00) for any single transaction or cumulative transactions to the same person or entity. **THIS PROVISION SHALL NOT APPLY TO BUDGETED ITEMS OR EXPENSES EXPRESSLY AUTHORIZED BY THIS COURT**; and it is further

ORDERED AND ADJUDGED, that the Guardian is hereby directed to purchase a **pre-paid irrevocable funeral contract** within one hundred eighty (180) days from the issuance of the commission and file proof thereof with the court and / or establish a separate burial account for the incapacitated person in amounts not to exceed the applicable Medicaid allowances; and it is further

ORDERED AND ADJUDGED, that the Guardian shall establish a separate luxury account for the benefit of the incapacitated person in amounts not to exceed the applicable Medicaid allowances; and it is further

ORDERED AND ADJUDGED, that the Guardian of the Property may, without prior authorization of the Court, invest surplus funds in investments eligible by law for the investment of trust funds and may dispose of investments so made and reinvest the proceeds as so authorized. Except as herein provided, no investment shall be made by the Guardian other than pursuant to an order of the Court authorizing such investment. Nothing in this order shall be deemed to limit the power of the Court to approve any investment made without its authorization, or to control the disposition of the property of the incapacitated person's funds, or to make a new order respecting investments at any time; and it is further

ORDERED AND ADJUDGED, that the Guardian of the property may not alienate, mortgage, lease, purchase, or otherwise invest in or dispose of real property without the special direction of the Court obtained upon proceedings taken for that purpose as prescribed in **Article 17 of the Real Property Actions and Proceedings Law**, provided, however, that without instituting such proceedings, the Guardian may, with the authorization of the Court, lease real property for a term **not to exceed five (5) years** and may, without further authorization of the Court, lease a primary residence for the incapacitated person for a term **not to exceed three (3) years**; and it is further

ORDERED AND ADJUDGED, that the Guardian may, without prior authorization of the Court, maintain in his / her own name and official title any civil judicial proceeding which the incapacitated person might have maintained were he / she competent, including but not limited to Personal Injury and Landlord-Tenant court proceedings, provided however, that any settlement thereupon be subject to this guardianship court's approval; and it is further

ORDERED AND ADJUDGED that in the event the incapacitated person received financial assistance from the City of New York, then in that event the guardian shall reimburse the New York City Human Resources Administration Program ("Medicaid") for any and all medical expenses paid on behalf of the incapacitated person out of the excess resources of the incapacitated person, as may be legally required or negotiated; and it is further

ORDERED AND ADJUDGED, that to the extent of the net estate available therefor, the Guardian shall provide for the maintenance and personal well being of the incapacitated person and then may, without further order of the Court, provide for the maintenance and support of persons legally dependent upon the incapacitated person; and it is further

Part X / Powers - Guardian of the Property

ORDERED AND ADJUDGED, that pursuant to MHL §81.21, the Guardian shall have, concerning the **property management** needs of the incapacitated person, the authority to:

1. Marshall assets, provided however, that the Guardian must keep any existing totten trust beneficiary designation made by the incapacitated person when opening or re-titling accounts;
2. Make gifts, subject to prior court approval
3. Convey or release contingent and expectant interests in property, including marital property rights and any right of survivorship incidental to joint tenancy or tenancy by the entirety, subject to prior court approval;
4. Exercise or release powers held by the incapacitated person as trustee, personal representative, guardian for minor, guardian, or donee of a power of appointment, subject to prior court approval;
5. Enter into contracts, subject to prior court approval;
6. Create revocable or irrevocable trusts of property of the estate which may extend beyond the incapacity or life of the incapacitated person, subject to prior court approval;
7. Exercise options of the incapacitated person to purchase securities or other property, subject to prior court approval;
8. Exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, subject to prior court approval;
9. Exercise any right to an elective share in the estate of the incapacitated person's deceased spouse, subject to prior court approval;

10. Renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer consistent with paragraph (d) of §2-1.11 of the Estates, Powers, and Trusts Law (EPTL), subject to prior court approval;
11. Authorize access to or release of confidential records, subject to prior court approval;
12. Apply for government and private benefits;
13. Retain an accountant, provided, however, the Guardian **may not** pay such accountant out of the funds of the incapacitated person without prior approval of this Court;
14. Comply with any other directives and / or powers granted by this Court as listed in the attached rider, labeled “**SPECIAL POWERS**”; and it is further

Part XI / General Directives

ORDERED AND ADJUDGED, that pursuant to MHL §81.16 (e), a copy of this Order and Judgment shall be personally served upon and read to the incapacitated person by _____, the _____; and it is further

ORDERED AND ADJUDGED, that the Guardian shall fully cooperate with the Court Examiner designated by the Appellate Division and appointed by this court to examine the condition, care, and finances of the incapacitated person; and it is further

ORDERED AND ADJUDGED, that for the purpose of §9-I (post) of the Banking Law, this order shall be deemed a declaration of incompetence and no banking institution or savings bank shall impose any penalty for the repayment of a time deposit prior to maturity; and it is further

ORDERED AND ADJUDGED, that all persons are hereby directed and commanded to deliver to the Guardian of the Property, upon demand and presentation of a **certified copy of the commission**, all property of the incapacitated person, of every kind and nature which may be in their possession or under their control; and it is further

Part XII / Termination by reason other than death

ORDERED AND ADJUDGED, that in the event the Guardianship is to be terminated for reasons other than the death of the incapacitated person, the Guardian shall apply to the Court Ex Parte for permission to bring a Final Account of the proceedings, or for direction as to the disposition of the incapacitated person's property then remaining and for any other instructions concerning said termination within sixty (60) days; and it is further

Part XIII / Termination by death

ORDERED and ADJUDGED, that pursuant to MHL §81.44(c)(1), **within twenty (20) days of the incapacitated person's death**, the guardian shall serve a copy of the statement of death, upon

1. the court examiner;
2. the duly appointed representative of the deceased incapacitated person's estate or, if no personal representative has been appointed, the personal representative named in the deceased incapacitated person's will or any trust instrument, if known,
3. the local department of social services;
4. the public administrator or the chief fiscal officer of the county, and;
5. all interested parties in this proceeding pursuant to MHL §81.16(c)(3); and it is further

ORDERED AND ADJUDGED, that pursuant to MHL §81.44(c)(2), the guardian shall file the original statement of death together with proof of service with the court which issued the letters of guardianship; and it is further

ORDERED AND ADJUDGED, that pursuant to MHL §81.44(d), **within one hundred fifty (150) days of the incapacitated person's death**, the guardian shall serve a statement of assets and notice of claim upon the duly appointed representative of the deceased incapacitated person's estate or, where there is no personal representative, upon the public administrator or chief fiscal officer of the county; and it is further

ORDERED AND ADJUDGED, that pursuant MHL §81.44(d), except for property retained to secure any known claim, lien, or administrative cost of the guardianship pending settlement of the Guardian's Final Account

pursuant to MHL §81.44(e), the Guardian shall deliver all guardianship property to

1. the duly appointed representative of the deceased incapacitated person's estate, or
2. where there is no personal representative, the public administrator or chief fiscal officer of the county given notice of the filing of the statement of death; and it is further

ORDERED AND ADJUDGED, that pursuant to MHL §81.44(d)(3), any dispute as to the size of property retained by the Guardian for administrative costs of the guardianship shall be determined by the Surrogate Court having jurisdiction of the estate; and it is further

ORDERED AND ADJUDGED, that pursuant to MHL §81.44(f), **within one hundred fifty (150) days of the incapacitated person's death**, the guardian shall file his or her final report with the clerk of the court and proceed to judicially settle the final report upon such notice as required by MHL §81.33(c) and shall serve:

1. the court examiner;
2. the duly appointed representative of the deceased incapacitated person's estate or the personal representative named in the deceased incapacitated person's will or any trust instrument if no personal representative has been appointed;
3. the public administrator or the chief fiscal officer of the county;
4. all interested parties in this proceeding; and
5. the referee appointed by this Court to review the proceeding; and it is further

ORDERED AND ADJUDGED, that upon the death of the incapacitated person the Guardian shall have the authority to pay the bills of the incapacitated person which were incurred prior to the death of the incapacitated person provided the Guardian would otherwise have had the right to pay such bills; and it is further

ORDERED AND ADJUDGED, that pursuant to MHL §81.36(e), **upon the death of the incapacitated person**, the Guardian of the Property shall have the authority to pay for the reasonable funeral expenses of the

incapacitated person; and it is further

Part XIV / Compensation

ORDERED AND ADJUDGED, that any appointee herein shall comply with Judiciary Law Section 35-a and Part 36 of the Rules of the Chief Judge and no fee shall be paid to such appointee until such appointee has filed the Notice of Appointment and Certification of Compliance form UCS 872 with the Court; and it is further

ORDERED AND ADJUDGED, that the compensation to be paid to the Guardian from the estate of the incapacitated person shall be fixed by the Court not to exceed that allowed as the compensation provided for a Guardian pursuant to MHL §81.28, **subject to approval of the Court, for services actually rendered**; and it is further

ORDERED AND ADJUDGED, that the Guardian shall take no annual commissions and compensation for any year until that year's annual account is filed, reviewed by the Court Examiner, and approved by the Court; and it is further

ORDERED AND ADJUDGED, that the Guardian shall make the following disbursement(s) from the funds of the incapacitated person:

- a) to _____ the sum of \$ _____ for services rendered as Court Evaluator;
- b) to _____ the sum of \$ _____ for services rendered and the sum of \$ _____ for costs and disbursements as attorney for the petitioner;
- c) to _____ the sum of \$ _____ for services rendered as counsel to the alleged incapacitated person; and it is further

Part XV / Notice

ORDERED AND ADJUDGED, that the petitioner shall serve upon the Court Examiner and, unless the Guardian is a party to the proceeding, upon the appointed Guardian, by regular mail, a copy of the petition, the report

of the Court Evaluator and all other papers submitted to the Court in relation to this proceeding to date; and it is further

ORDERED AND ADJUDGED, that should the incapacitated person reside in a nursing home or residential facility at the time of their death, the director of the facility shall notify the Court **within thirty (30) days of the incapacitated person's death**; and it is further

ORDERED AND ADJUDGED, that pursuant to MHL §81.16(c)(3), notice of all further proceedings with regard to this matter shall be given to:

; and it is further

ORDERED AND ADJUDGED, that a copy of this Order and Judgment **with notice of entry** shall be served on all parties as directed in this Judgment pursuant to 81.16(e) within ten (10) days of the entry of this Order; and it is further

Part XVI / Infant Compromise

ORDERED AND ADJUDGED, that the terms of this Order and Judgment shall supersede any conflicting terms set forth in any prior Infant's Compromise order of this or any other court and any subsequent modifications to such prior order; and it is further

Part XVII / Savings Clause

ORDERED AND ADJUDGED, THAT THE FAILURE TO HAVE INCLUDED AND / OR REFERENCED ANY SECTION OF ARTICLE 81 OF THE MENTAL HYGIENE LAW SHALL NOT BE DEEMED A WAIVER THEREOF UNLESS SPECIFICALLY REVOKED, CANCELED, OR DEEMED INAPPLICABLE BY AN EXPRESS PROVISION OF THIS ORDER; and it is further

Part XVIII / Compliance Conference

ORDERED AND ADJUDGED, that the Guardian and / or Counsel are hereby directed to appear before this Court for a compliance conference to be held at:

Part _____

360 Adams Street

Room _____

on the _____ day of _____, 20_____ at _____ AM / PM,

at which time, the Guardian shall inform the Court as to the status of the posting of the bond, commission, and education requirement. In the event that the Guardian has obtained the bond and the commission prior to the scheduled conference date, the Guardian and / or Counsel shall notify the guardianship referee at (347) 401-9442, prior to the conference so that the same may be waived.

ENTER,

J. S. C.

“SPECIAL POWERS”

“SCHEDULE A”