

Self-Help Center

Procedures for 17-A Guardianship Forms

The following procedures are intended to be used as a guideline for completing and filing for 17-A Guardianship. If you have any questions or concerns regarding your petition, you may want to seek the advice of an attorney.

The person filling out the forms and asking to become Guardian is the **Petitioner**. If a second person is asking to become Guardian also, such as a spouse, then that person would be the **Co-Petitioner**. The person that you are asking the court to give you guardianship over is the **Ward**. This is the person that is mentally retarded or developmentally disabled.

Before you file your Petition for Appointment of Guardian with the Surrogate's Court, make sure you have completed the following:

- Petition.** Make sure your petition is completely filled out and that you have signed it in *three* places before a Notary Public. This would include pgs. 9 and 10 and either the Individual or Corporate Combined Oath/Consent & Designation (pg. 11 or 12). Please note that there is a \$20 filing fee.
- Affidavit of Proposed Guardian (For Non-Parent).** Please note that if the person applying to be Guardian is not a parent, then this form *must* be completed. If the person applying is a parent, you can skip this form.
- Affirmation of Examining Physician (two).**
-OR-
- Affirmation of Examining Physician and Affidavit of Examining Licensed Psychologist.**

You can either file two physician affirmations or one physician affirmation and one licensed psychologist affidavit with the petition. An affirmation does not require that the signature be notarized while the affidavit does. Either way, the physician or licensed psychologist completing the form must have seen the Ward within one year of you filing the petition. Please note that if you are having a psychologist complete an affidavit that the psychologist *must be licensed*, not certified. Finally, if you are claiming in the petition that the Ward should not have to appear at a hearing due to a medical issue or because the hearing might cause the Ward harm, then the physician affirmation *must* back up this claim.

- Waiver of Process, Renunciation and Consent form.** This form should be completed by anyone that is eligible to become a Guardian but wishes to give up that right. For example, this would be necessary when only one parent is petitioning for appointment and the other is living; or if someone other than the parents are petitioning the court; or if a spouse, brother or sister are not named as a standby guardian, alternate guardian, etc. If such person doesn't want to sign a Waiver, then they must be served a Citation form.
- Consent, Oath and Designation form.** This must be completed by each Standby Guardian, Alternate Standby Guardian, etc. named in the petition. This tells the court that they are consenting to the appointment. This form must be signed before a notary public. Please note that even if a Consent form is signed by a Standby or Alternate Guardian, if the Guardian cannot act, the Standby or Alternate *must* petition the court and be officially appointed before they can act as Guardian.
- Citation (GMD-7).** This form is to advise certain people of your petition and give them an opportunity to object to your petition. The following persons *must* receive a Citation:
 - ✓ Any parent who has not signed a Waiver of Process, Renunciation and Consent form;
 - ✓ The Ward *if* over age 14.
 - ✓ If the Ward resides in a facility, then the Director of that facility.

- ✓ The court may direct further notice as it deems proper.

The Citation must be personally served at least ten (10) days before the return date by a competent adult (over age 18). The person applying to be Guardian, Alternate Guardian, Standby Guardian, etc. can serve the Citation, although it would be better to have a disinterested party complete service in order to avoid any potential issues later on. You can bring a blank copy to the Surrogate's Court at the time you file your petition so that they can complete, sign and seal the Citation before it is served.

If an interested party lives out of state, they must be served with the Citation by certified, return receipt mail twenty (20) days prior to the court return date. The "green return receipt card" must be submitted to the Court no later than three (3) days before the court return date.

- **Affidavit of Service (GMD-7A).** This form must be completed by the person who personally served the Citation(s) and must be 18 years of age or older. Sunday service is not acceptable. This should be filed with the Surrogate's Court as proof of service at least three (3) days prior to the court return date on the Citation. Please remember that the person who served the Citation(s) must sign his/her name before a notary public.
- **Notice of Petition and Affidavit of Mailing (GMD-8).** If the Ward is residing in a developmental center or any other home or residence operated or certified by the Office of Mental Retardation and Developmental Disabilities (OMRDD), then Mental Hygiene Legal Services (MHLS) must receive notice. This state agency participates in court proceedings to protect the rights of persons in institutions and other state certified residential programs. The MHLS attorney/representative assigned to represent the institutionalized individual will usually submit a report to the Surrogate's Court that will either agree with the proposed guardianship or object to it. The MHLS attorney/representative may be present at a hearing if one is held, although that is not a requirement.

A Notice of Petition along with a copy of the Petition *must* be sent by certified mail, return receipt requested to the following:

- ✓ Adult siblings and/or adult children of the Ward if the Petitioner(s) is a parent.
- ✓ Mental Hygiene Legal Services (MHLS) in the judicial department where the facility is located, if the Ward resides in such a facility. See addresses below.

Mental Hygiene Legal Service ~ Covers Broome, Chenango, Cortland,
State Office Building, 16th Floor Madison and Tioga
44 Hawley Street - Room 1602
Binghamton, NY 13901-4435
Phone (607) 721-8440
Fax (607) 721-8447

Mental Hygiene Legal Service ~ Covers Delaware and Otsego
c/o Homer Folks Facility
28 Hill Street, Suite 314
Oneonta, NY 13820
Phone (607) 432-2980
Fax (607) 432-3371

Mental Hygiene Legal Service ~ Covers Chemung, Schuyler and Tompkins
c/o Elmira Psychiatric Center
100 Washington Street, Bldg. 4
Elmira, NY 14901
Phone (607) 271-9262
Fax (607) 271-9038

- ✓ Director of the developmental center or any other home or residence operated by New York State OMRDD where the Ward resides.
- ✓ One other person if designated by the Ward in writing.

- ✓ Such other person(s) the court may deem proper.

You may want to send a cover letter with the papers explaining that you are petitioning for guardianship. You can include a copy of the letter with the papers to be filed with the court.

- **OCFS-3909.** This form is used to inquire of the New York State Central Register of Child Abuse and Maltreatment whether the proposed Guardian or any other individual 18 years of age or older who resides in the home of the proposed Guardian is the subject of a child abuse or maltreatment report. Please make sure that the proposed Guardian and anyone 18 and older who reside in the home has the required information completed in the top section of the form entitled "Information Concerning Proposed Guardian(s) and members of the Household". Each person should complete their own form making sure that the first section has everyone's required information. Some counties may require a fingerprint card for the proposed Guardian. Please contact the Surrogate's Court where you will be filing the petition to see if this is necessary.
- The above completed forms should be brought to the Clerk of the Surrogate's Court in the county where the mentally retarded/developmentally disabled person resides for filing. The permanent residence of the parents, however, is usually considered the domicile of the Ward. A \$20 fee must be paid at the time of filing. The Clerk will review the papers for accuracy, completeness and compliance with the law and court rules. The Clerk will assign a number to the papers. This will remain the file number and should appear on all court papers and correspondence.
- Some questions you might want to ask the Clerk are: Who must get a citation or notice? How should the Affidavit of Service forms be returned to the court? (By mail or personally delivered) Do green receipt cards from certified mail need to be returned to court with the Affidavit of Service forms? How will I be notified of the hearing date? Who should come to the hearing? And any additional personal questions you might have.
- Please feel free to ask the Court Clerk any procedural questions you may have regarding your guardianship proceeding. They are available to help applicants who are not using the services of an attorney and will gladly assist you, however, they cannot provide legal advice. Please note that these are general procedures. You may want to contact the Court Clerk for the Surrogate's Court where the papers will be filed to see if they may have additional requirements.

(Disclaimer)

The information provided in this handout is designed to help the court user gain a better understanding of court policy and procedures, and for general informational purposes only. The information in this handout should not be relied upon as a substitute for professional legal help. As always, if you have any questions or concerns about filing papers in New York State, we urge you to seek the help of a qualified attorney.