

# OUTLINE OF FILING AND OTHER COURT PROCEDURES IN GUARDIANSHIP CASES

## 1. APPLICATION FOR APPOINTMENT OF GUARDIAN(S)

### A. INITIAL APPLICATION

- Verified petition should be filed in the County Clerk's Office (Room 141B, 60 Centre Street) and an Index Number obtained (fee \$ 210). Order to Show Cause and verified petition then filed in the Ex-Parte Office (Room 315, 60 Centre Street).
  - If papers are approved for form, the petitioner must file a Request for Judicial Intervention with the County Clerk's Office (Room 160)(fee \$ 95).
  - Ex-Parte Clerk will record case in court's case management system and a Guardianship Justice will be randomly assigned
  - OSC and petition brought to Justice assigned by applying attorney
- Order to Show Cause signed by Justice
  - Justice appoints a Court Evaluator and/or attorney for Alleged Incapacitated Person (AIP); sets date of hearing ("return date")(which will be no later than 28 days from signing of the OSC) and date by which service (transmission of papers to interested persons) is to be made, method of service and who is to be served.
  - Attorney for petitioner will "conform" a copy of OSC as signed or make a photocopy thereof, or Justice's staff may phone attorney and provide information.
  - Fiduciary clerk sends "Notice of Appointment/Certification of Compliance" (UCS 872) to appointees.

### B. HEARING

- Court Evaluator will submit report prior to hearing.
- Evidence will be presented at hearing as to incapacity of AIP, needs, assets, etc.
- In event court makes a finding of incapacity, the Justice may state findings orally and the court reporter will record them ("on the record") and/or the Justice will issue a brief written order ("short form order"). Typically, the Justice will direct the petitioner to "settle" an Order and Judgment ([click here for form](#)) setting forth particulars in full on notice to interested parties.

### C. ORDER AND JUDGMENT - REVIEW AND APPROVAL

- Proposed Order and Judgment must be submitted to Guardianship & Fiduciary Support Office (Room 148) by petitioner together with proof of service thereof on all interested parties.
- Guardianship & Fiduciary Support Office reviews proposed Order and Judgment as to form and content (proposal must conform to the Justice's findings and directives in the short form order and on the record); reviews any fee requests and makes a recommendation as to the amount of the bond; prepares a summary with recommendations for the Justice's review.
- Justice reviews and signs Order and Judgment (as modified, if necessary).

Order and Judgment will be recorded in court's computer. Case file sent to Motion Support for entry into computer and then file is forwarded to the County Clerk for entry of judgment into County Clerk's minutes and file.

Guardianship and Fiduciary Support sends copy of Order and Judgment to petitioner and assigned court examiner; the UCS 872's are sent to appointees (Guardian(s), court examiner).

## **2. INITIAL STEPS AFTER APPOINTMENT OF GUARDIAN**

### **A. INVOLVEMENT OF COURT EXAMINER**

Shortly after the Guardian's appointment, the Court Examiner will contact the Guardian to review the Guardian's duties and obligations.

The Examiner, if not served by the petitioner's attorney, will typically request a copy of the order of appointment, commission, the Court Evaluator's report, the OSC and petition and other documentation relevant to the Guardianship.

### **B. INITIAL ACTIONS BY GUARDIAN(S)**

Qualification - The Guardian must obtain a bond if directed by the court and file proof that that has been done, and file oath and designation of clerk and a commission with the County Clerk. The latter forms are posted on this site ([click here](#)). The County Clerk will then issue the Guardian's commission.

Initial Report - Within 90 days of the issuance of the commission the Guardian is required to file an "Initial Report" (90-day report). A form of Initial Report is posted on this site ([click here](#)). The original is filed with Guardianship and Fiduciary Support Office and a copy is sent to the Court Examiner assigned, who reviews same and reports to the court.

The Court Examiner files a summary with recommendations and a proposed order confirming Report and approving the Examiner's fee. The Justice reviews the Report and the Examiner's review and signs the order if found proper.

### **C. SUBSEQUENT ACTIONS AND REPORTING THEREON BY GUARDIAN**

Annual Report - The Guardian must carry out the duties set out in the Order and Judgment of the court. The Guardian must file an Annual Report by May 31<sup>st</sup> of each year covering the period ending December 31<sup>st</sup> of the previous year; original filed with the Guardianship Office and a copy is sent to the Court Examiner, the Incapacitated Person, the surety (the company that provided the bond (if one was directed)), and, if the IP is in a nursing home or other rehabilitative facility, to the director of the facility and Mental Hygiene Legal Services. A form of the Annual Report is posted on this site ([click here](#)).

Examination of the Annual Report - The Examiner's report on the Annual Report is submitted to the Guardianship and Fiduciary Support Office. The report will include the

following: 1) a proposed order confirming the report; 2) information on the medical and social condition of the IP; 3) a summary of events leading to the Guardian's appointment; 4) a financial summary of the accounting period; 5) any recommendations for actions to be taken by the Guardian; 6) a verified transcript of the Guardian's testimony; 7) a copy of the order and judgment appointing the Guardian and any order approving fees and commissions; 8) the Guardian's Annual Report; and 9) a recent medical evaluation. The Guardianship and Fiduciary Support Office reviews the Examiner's report, prepares a summary with recommendations, endorses fiduciary compensation forms, if any, and sends the order and papers to the Justice.

If satisfied, the Justice will sign an order confirming the Examiner's report and providing for the approval of commissions and fees as found appropriate by the Justice and any change to the bond determined to be needed. The Examiner is sent a copy of the order and the original is filed with the County Clerk after all databases are updated.

Final Report - A Guardian must render a Final Report when the Incapacitated Person dies and in other circumstances. A form of Final Report is posted on this site ([click here](#)).

If the Incapacitated Person is alive, a Guardian can only move the court for discharge by an ex-parte application seeking permission to file a Final Report. A short form order is issued directing the filing of the Final Report within 45 days from the order date.

When seeking to settle a Final Report upon death of the incapacitated person, the Guardian is required to file an Order to Show Cause or Notice of Motion (the latter should be returnable in the Motion Support Office Courtroom (Room 130) on any business day of the week at 9:30 AM). The motion and all papers are forwarded to the Justice. If the Justice approves the application, a short form order will be issued. The Final Report should be sent to the Guardianship Office for review. All interested parties specified in the Order and Judgment must be served with a copy and proof of such service must accompany the original filed with the Office.

The Guardianship and Fiduciary Support Office will review the Report and prepare a summary with recommendations for the Justice. If it is found to be proper, the Justice will sign an order settling (approving) the Final Report and forward the file to Motion Support (Room 119), which will make a notation of such action in the court's computer. Then, the file will be forwarded to the County Clerk. Upon filing proof of compliance with the court's final order, the Guardian must seek an ex-parte order discharging the surety (the company that provided the bond) and the Guardian. Upon the submission of proof of compliance with the final order, the court will issue an order of discharge.