

PART RULES FOR THE WESTCHESTER COUNTY GUARDIANSHIP PART
111 Dr. Martin Luther King Jr. Blvd. (14th Floor)
White Plains, New York 10601

Hon. Robert M. DiBella, JSC
Hon. Janet C. Malone, JSC

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The Guardian Assistance Network offers advice and training for lay guardians under Article 81 of the New York State Mental Hygiene Law at: www.nycourts.gov. Search under topics for Guardian Assistance Network and click on the word “manual” located on the left.

Other forms, including but not limited to the Notice of Article 81 Proceeding-Order to Show Cause and Petition, can be obtained at <http://nycourts.gov/courts/9jd/guardianship.shtml>.

The following are the procedures and rules governing practice in the Westchester County Guardianship Part before the Hon. Robert M. DiBella, JSC and the Hon. Janet C. Malone, JSC.

WESTCHESTER COUNTY GUARDIANSHIP PART

1. Mental Hygiene Law Article 81 Guardianships are commenced by the filing of an Order to Show Cause (OSC), Verified Petition, and supporting papers with a copy of the RJI. A format for the OSC may be obtained from the website above or by e-mail from thugelme@nycourts.gov or sdurham@nycourts.gov). The back of the OSC shall contain the Petitioner or the Petitioner’s Attorney’s TELEPHONE and FAX numbers. Hearings will be held within approximately 28 days of issuance of the OSC, on a date set by the Court.

2. All post-judgment applications shall be filed with the County Clerk and noticed to all interested parties set forth in the Findings of Fact, Conclusions of Law and Judgment.

Note: All post-judgment applications before Judge Malone shall be commenced by Order to Show Cause unless otherwise directed by the Court.

3. Proof of service must be filed with the Court on or before the return date of all motions and petitions.

4. Special Accommodations: If any party needs special accommodations (e.g. assisted listening device(s); accommodations under the Americans with Disabilities Act) counsel or the self-represented party shall notify the Part Clerk so that timely arrangements can be made.

5. Interpreters: In the event a sign or spoken language interpreter is required at any stage of the litigation, counsel or the self-represented party shall notify the Part Clerk so that timely arrangements can be made.

6. All filings and correspondence must contain the assigned Index Number, Judge's name (if known), and, if applicable, the return date.

7. All non-administrative issues requiring action by the Court (Judge Malone) shall be addressed to the Honorable Janet C. Malone by letter faxed to (212) 416-1475 unless otherwise directed. **PLEASE DO NOT EMAIL JUDGE MALONE DIRECTLY.**

8. All proposed Findings and Judgments shall follow the court form, which may be obtained from the court website or the Part Clerks (e-mails: thugelme@nycourts.gov; sdurham@nycourts.gov) and be submitted within seven (7) days from receipt of the transcript, or as otherwise directed by the Court. The proposed Findings and Judgment shall be served on all interested parties and filed with Notice of Settlement.

Note: The proposed judgment, if known, **must** contain the proposed Guardian's name, address and phone number.

Note: All proposed judgments submitted to the Court that reference a Part 36 appointee must include the following fiduciary language:

ORDERED AND ADJUDGED, that pursuant to 22 NYCRR §36.1, all appointees shall be subject to Part 36 of the Rules of the Chief Judge; and it is further

ORDERED AND ADJUDGED, that upon receipt of this Judgment and UCS Form 872 (Notice of Appointment and Certification of Compliance), all appointees shall complete, execute and return the UCS Form 872 to the Fiduciary Clerk; and it is further

ORDERED AND ADJUDGED, that by accepting this appointment any appointee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR 36), including but not limited to, Section 36.2(d) ("Limitations on appointments based on compensation"), and if the appointee is disqualified from receiving an appointment pursuant to the provisions of Part 36, the appointee shall notify the appointing Judge forthwith; and it is further

ORDERED AND ADJUDGED, that by accepting an appointment the appointee certifies he/she is familiar with the duties and responsibilities and has experience in such area, and is fully capable and prepared to assume those duties and responsibilities which are commensurate with his/her abilities; and it is further

ORDERED AND ADJUDGED, that attorneys or support staff in any of the appointee's office may perform tasks under the appointees' direct supervision [unless otherwise directed by the court], but all substantive appearances and reports must be performed and/or created by the appointees; and it is further

9. All decisions, orders and judgments shall be served by the movant on all counsel, Guardian(s), Court Examiner, and interested parties within 10 days of the date of the decision, order and judgment, unless otherwise directed by the Court.

10. No discovery motions shall be allowed without prior permission of the Court. The CPLR is the governing procedure for all motions. Discovery shall not be permitted except under unusual circumstances.

11. All requests for unsealing sealed Guardianship matters (*see*, MHL § 81.14) must be made by way of Order to Show Cause.

12. Cross-Petitions are not to be filed without permission of the Court (Judge Malone).

13. All adjournments require specific permission of the Court, and counsel must first seek the consent of all other counsel before making any such request. Due to statutory dictates, it is the policy of the Part that only one (1) brief adjournment of a scheduled hearing date may be requested. The party who requests the adjournment must submit a letter to the Court, on notice to all counsel, indicating whether the adjournment is on consent of all other counsel and noting the unavailability of any of the attorneys so that the Court may select a new date. Once notified, the requesting party will be responsible to notify all other parties.

Note: Any party, attaching the adjournment letter to an e-mail before Judge Malone shall confirm that such request has been received by Chambers.

14. Upon completion of the hearing, all individuals appointed by the Court shall comply with Part 36 of the Rules of the Chief Judge and file, when appropriate, a Statement of Approval of Compensation (UCS form 875 - with items 1 through 13 completed) along with their detailed Affidavit of Services.

15. Petitioner's counsel shall assist the proposed Guardian in completing their educational requirement and obtaining the Commission to act as Guardian from the County Clerk. The Commission must be obtained within 15 days of the signing of the Judgment.

16. Any request for fees must be accompanied by a detailed affirmation of services with an itemized billing sheet and hourly rate(s) and a copy of the Retainer, if applicable. The request for attorney's fees must be approved by the Court prior to any payment being made.

Note for Fiduciaries: Unless exempt from Part 36 of the Rules of the Chief Judge, all applications for the approval of compensation by Judge Malone must contain a copy of the Order appointing the fiduciary.

17. All applications for fees are to be served on Mental Hygiene Legal Service (or other appointed or retained counsel), the Court Examiner, and the Guardian(s) and any other entity or party entitled to notice pursuant to the Findings of Fact, Conclusions of Law and Judgment.

18. No guardianship commissions or fees for any professional services shall be paid without prior court order.

19. All accountings **must** be filed in the County Clerk's Office with a copy to the appointed Court Examiner.

Note: No compensation will be approved absent compliance with rule #10 above.

20. The filing schedule for accountings by Guardian(s) is as follows:

a. Initial Report - within 90 days of the signing of the Judgment.

b. Annual Accountings - no later than May 15th for the preceding calendar year.

c. Final Accountings - within 45 days of the death of the IP or other termination of the guardianship.

Note: No estate assets may be dispersed or turned over to the Surrogate's Court without prior approval of this Court.