

DUE TO PRIVACY ISSUES IN THIS MATTER, THIS ENTIRE COURT FILE UNDER THIS INDEX NUMBER IS SEALED, UNLESS AND UNTIL FURTHER ORDER OF THE COURT. HOWEVER, APPOINTED GUARDIAN(S) AND THE COURT EXAMINER ARE PERMITTED ACCESS TO SAID FILE.

(01/2019)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
In the Matter of

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND JUDGMENT

INDEX # _____

(Name of Person in Need of Guardian).
-----X

<p>{ } = choice must be made of <u>either</u> selection.</p> <p>[] = choice may be made of <u>either, both, any, all</u> selections.</p> <p>Mark choice with X.</p>
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HAYES, M.G., A.J.S.C.

In a guardianship proceeding, pursuant to article 81 of the Mental Hygiene Law, the Court, having been satisfied that at the commencement of this proceeding the (Name of Person in Need of Guardian {PING}) was a

- [] resident of this State,
- [] present in the State,
- [] not present in the State,
- [] nonresident of this State, present in the State,

and whose date of birth is : _____,

and having been satisfied that (Name of PING) was served with the order to show cause and petition by personal delivery at least 14 days prior to the return date, and that all other persons required to be served under Mental Hygiene Law section 81.07 were timely served with the order to show cause and petition, and having appointed a/an

- [] Court Evaluator: (Specify name.)
- [] Attorney for (Name of PING): (Specify name.),

and having scheduled a return date for this proceeding, at which time:

- A. [] (Name of PING) appeared personally and consented to the petition and the appointment of a guardian.

B. [] **(Name of PING)** did not appear personally, but appeared by counsel, who waived his/her appearance and entered a consent to the petition and the appointment of a guardian.

C. [] **(Name of PING)** appeared personally and a trial was conducted.
(If A, B, or C. is chosen, check 1(a) and skip to 2 of the Findings of Fact.)

D. [] **(Name of PING)** did not appear personally and a trial was conducted.
(Proceed to 1. of the Findings of Fact.)

FINDINGS OF FACT

1. a. [] Does not apply.

b. [] This proceeding was not tried in the presence of **(Name of PING)**, because

i. [] **(Name of PING)** was not present in the State.

ii. [] **(Name of PING)** was completely unable to participate in the trial or no meaningful participation would result from his/her presence at the trial, because **(Specify, e.g., the PING was in a coma, had such cognitive impairments that he/she could not understand the proceeding, was so disoriented that he/she could not communicate any meaningfully relevant information, etc.).**

IT IS DETERMINED that the finding of fact contained in paragraph 1 (b) was established by clear and convincing proof upon the documentary evidence submitted and the testimony adduced.

2. It has been established that **(Name of PING)** is in need of a guardian, because he/she needs a person other than himself/herself to provide for

a. [] personal needs, including **(Specify relevant items, e.g., food, clothing, shelter, health care or safety).**

b. [] financial and property management, including **(Specify relevant items, e.g., collection of income, payment of bills, protection and investment of assets).**

3. It has been established

a. [] that no other available resources exist.

b. [] that other available resources appear to exist, viz., **(Specify, e.g., a Power of Attorney, Health Care Proxy, Volunteer Service from Community Organization)**, but are found to be insufficient or unreliable, because **(Specify, e.g., the Power of Attorney or Health Care Proxy were invalidly given, the Attorney in Fact or Health Care Agent have violated their fiduciary duties, the volunteers are not sufficiently skilled).**

4. It has been established that the powers granted in the within judgment are necessary to provide for the needs of **(Name of PING)** and without the grant of these powers such needs would not be met.

5. It has been established that the:

- a. the guardianship of person is required for
 - an indefinite duration.
 - a period of **(Specify time)**.
- b. the guardianship of property is required for
 - an indefinite duration.
 - a period of **(Specify time)**

IT IS DETERMINED that the findings of fact contained in paragraphs 2, 3, 4, and 5 are established

upon the consent of **(Name of PING)**.
 by a preponderance of proof upon the documentary evidence submitted and the testimony adduced.

6. It has been established that **(Name of PING)** has the following functional limitations: **(Specify, from the record, functional limitations, both physical and mental, cognitive impairments, impairments to judgment, insight, memory, etc.)**.

IT IS DETERMINED that the findings of fact contained in paragraph 6 are established

upon the consent of **(Name of PING)**.
 by clear and convincing proof upon the documentary evidence submitted and the testimony adduced.

(If upon consent, check 7(a) and skip to 8 of the Findings of Fact.)

- 7.a. Does not apply.
- b. It is established
 - i. that **(Name of PING)** lacks understanding and a appreciation of the nature and consequences of these functional limitations;
 - ii. that it is likely that **(Name of PING)** will suffer harm because of these functional limitations and inability to understand adequately and appreciate the nature and consequences of such limitations, because: **(Specify, from the record, e.g., PING will suffer physical harm because of the inability to provide for any or all of the activities of daily living and does not understand or appreciate the necessity of same; likewise the inability to provide for medical care and treatment, including self-administration of medication, and to understand and appreciate its necessity; likewise financial and property management, viz., collection and**

deposit of income, the payment of bills, protection and investment of assets, Medicaid and estate planning, filing of tax returns and payment of taxes; etc.);

IT IS DETERMINED that the findings of fact contained in paragraph 7 (b) are established by clear and convincing proof upon the documentary evidence submitted and the testimony adduced.

8. It is established that **(Name[s] of Guardian[s])** is / are eligible for appointment as a guardian under Mental Hygiene Law section 81.19 and is / are best suited to exercise the powers necessary to assist **(Name of PING)**, because **(Specify, from record, e.g., relationship with PING, nomination by PING, education and experience, best choice among others proposed, no one proposed and the Court had to choose from the Fiduciary List or a non-profit organization not on the list but expert in this field.)**

9. It has been established that the approximate value of **(Name of PING)**'s liquid assets is **(Specify, from record, dollar amount of cash, stocks, bonds, mutuals, etc. Do not include real estate.)**, and monthly income is in the approximate amount of **(Specify, from record, dollar amount.)**

IT IS DETERMINED that the findings of fact contained in paragraphs 8 and 9 are established by a preponderance of proof upon the documentary evidence submitted and the testimony adduced.

CONCLUSIONS OF LAW

10. The Court has jurisdiction in this proceeding as to subject matter and person.

11. **(Name of PING)** is a person in need of the appointment of a guardian.

12. **(Name of PING)** is

a. [] consenting to the appointment of a Guardian.

b. [] an incapacitated person.

13. The powers granted in the within judgment are the least restrictive means of intervention consistent with **(Name of PING)**'s functional limitations.

JUDGMENT

[] **ORDERED AND ADJUDGED** that the report of the Referee dated _____ is confirmed;

ORDERED AND ADJUDGED that the following is / are appointed:

[] Guardian of the Property: **(Name, address, phone number must be stated).**

[] Guardian of the Person: **(Name, address, phone number must be stated).**

[] Co-Guardian of the Property: **(Name, address, phone number).**

[] Co-Guardian of the Person: **(Name, address, phone number).**

The co-Guardians are authorized to act

[] ***individually***

[] ***jointly***

The Guardian(s) were []nominated by petitioner or ward ; []family members ; or []independent Guardian(s) appointed by the Court.

THE GUARDIAN(S) ARE TO NOTIFY THE COURT & COURT EXAMINER WITHIN 30 DAYS OF ANY CHANGE OF ADDRESS.

ORDERED AND ADJUDGED that the Guardian/Co-Guardians of the Person and/or Property shall file with the County Clerk a designation of the Clerk for service of process, in the form attached hereto;

ORDERED AND ADJUDGED that the Guardian/Co-Guardians of the Property shall

[] not be required to file a bond.

[] file a bond for the duration of the Guardianship in the amount of \$_____ **(Specify the amount directed by the Court at the trial or leave blank for the Court to complete. The amount of the bond may be adjusted by the Court throughout the term of the Guardianship);**

ORDERED AND ADJUDGED that upon filing the designation

[] and bond, by the Guardian / Co-Guardians of the Person and/or Property, the County Clerk shall execute and issue a commission, in the form attached hereto.;

ORDERED AND ADJUDGED that within 30 days of the signing of the Judgment, the Guardian shall file the Designation of the Clerk to receive Process and obtain the Commission from the County Clerk. The **Guardian shall serve a copy of the Commission signed by the County Clerk upon this court and the Court Examiner** within 5 days of its issuance and that the Commission issued in accordance herewith shall constitute the Guardian's / Co-Guardian's sole warrant to act;

If 3 (b) of the Findings of Fact was checked, the following should be added:

ORDERED AND ADJUDGED that the following is revoked:

any and all previously executed Powers of Attorney and-----or Health Care Proxies.

the Power of Attorney, executed on **(Date)**, appointing **(Name)** as Attorney-in-Fact.

the Health Care Proxy, executed on **(Date)**, appointing **(Name)** as Health Care Agent.

Otherwise, it

does not apply.

ORDERED AND ADJUDGED that the Guardian/Co-Guardians shall act faithfully in accordance with the general duties imposed upon guardians by Mental Hygiene Law section 81.20:

ORDERED AND ADJUDGED that the Guardian/Co-Guardians of Property shall have the following powers with regard to the property of (Name of PING):

1. Marshal his/her income and assets and establish bank, brokerage and other similar accounts as 'GUARDIANSHIP' accounts titled as follows: "***Guardianship Account for [name of incapacitated person] by Guardian of the Property, [Guardian's name]***", utilizing the incapacitated person's Social Security number, in a bank that shall provide either banking statements, canceled checks, or copies of canceled checks to the Guardian and endorse, collect, negotiate and deposit all negotiable instruments drawn to the order of **(Name of Ping)**, including, but not limited to government entitlement checks; invest funds with the same authority as a trustee, pursuant to New York EPTL section 11-2.2; inventory personal belongings, and store or dispose, as appropriate. ***All guardianship accounts shall be solely for the benefit of the incapacitated person and no 'joint' accounts shall be allowed.***

2. Open the safety deposit box, if any, in the presence of a bank representative and there shall be a certification of the contents by the Guardian and bank representative. The contents of the safety deposit box cannot be removed without prior Court Order.

3. Pay such bills as may be reasonably necessary for his/her maintenance and care;

4. Make gifts, subject to **prior** court approval, pursuant to Mental Hygiene Law section 81.21.(b), except that no **prior** court approval shall be required for any gift or gifts to an individual, if the total of all gifts to that individual in the same year does not exceed \$500, **AND** the total of **all** gifts to **all** individuals in the same year does not exceed the lesser of 5% of all liquid assets in the guardianship estate or \$10,000;

5. Provide support for persons dependent upon him/her **(Specify name and address of dependent, relationship to PING, whether legally obligated to support dependent and amount of support.)**

6. Enter into contracts (including contracts for the sale of real property, provided that **prior to the closing of title** the Court approves the terms of sale, upon submission of a copy of the fully executed contract and a written appraisal of the value of the property ; however, a prior court order is required to mortgage real property (**other contracts for the sale or purchase of assets [e.g., real estate, cars, boats, etc.], including construction contracts, shall require prior court approval, if the contract price is in excess of \$10,000 or 10% of the guardianship estate, whichever is less, provided that no prior court approval shall be required when the contract price is less than \$500**);

7. Establish from resources only and not from income:

an irrevocable prepaid funeral trust and submit proof of such trust to the Court Examiner with the Initial Report.

a luxury account in the amount permitted by statute.

8. Engage in Medicaid and estate planning, subject to **prior** court approval of all proposed transfers, pursuant to Mental Hygiene Law section 81.21(b);

9. Apply for government and private benefits;

10. Legal capacity to sue on behalf of the incapacitated person which includes the authority to hire counsel, to prosecute and to defend civil proceedings, including administrative proceedings, and to settle and compromise all matters related to such proceedings. All such legal actions are subject to prior court approval. ***The Guardian is put on notice that NO attorneys fees are to be paid from the assets of the incapacitated person without a prior written court order. Guardian(s) are NOT required to be personally responsible for legal fees for the benefit of the incapacitated person nor is the Guardian required to sign any retainer agreements that would require them to be personally responsible for legal fees for services to the Guardianship;***

11. Sign and file income tax returns and all other tax documents for any and all tax obligations and appear before federal, state and local taxing authorities on all claims, litigation, settlements and other matters related thereto;

12. Authorize access to or release of confidential records;

13. Retain an attorney solely for necessary **legal** work, or an accountant, if the Guardian determines that such professional assistance is necessary, subject to court approval of fees upon a **detailed** affidavit of services submitted to the court. **Legal fees may NOT be paid by the Guardian prior to court approval (see page 8, paragraph 10);**

14. Pay the funeral expenses out of any funds remaining in the guardianship estate at death, to the extent that a prepaid funeral trust, if any, is insufficient to pay for same; and pay estimated estate and income tax charges, as well as other charges of an emergent nature, if there is no duly appointed personal representative of the estate;

15. Pay such bills after death if incurred prior thereto and if authority to pay same would have otherwise existed;

16. Upon the death of the incapacitated person, the Guardian shall comply with all of the terms of Mental Hygiene Law §81.44, including the specific directions as to turn over of guardianship property;

17. Lease a primary residence for up to 3 years.

18. Exercise or release powers held by the incapacitated person as trustee, personal representative, including Executor, beneficiary, guardian for a minor, guardian, or donee of a power of appointment.

19. Collect and open all of the incapacitated person's mail; to have full authority to direct, forward or stop the delivery of mail and to take all lawful actions with regard to the incapacitated person's mail, including the establishment of a post office box in the Guardian's name for the incapacitated person for the delivery of all mail, if necessary.

20. Pursuant to Mental Hygiene Law §81.20 (6)(vi), if the incapacitated person owns real property, the Guardian of the Property, within 30 days of Judgment, is to file and have recorded and indexed under the name of the incapacitated person, a notarized statement with the County Clerk where the property is located (send a copy to the Court Examiner), **identifying**, including the tax map numbers, the real property owned by the incapacitated person and also stating the date of the Guardianship Judgment finding that the person now has a Guardian of the Property; and **listing** the Guardian of the Property's and Surety's (if any) name, address and telephone number on this statement.

ORDERED AND ADJUDGED that the guardianship of the property shall be for

an indefinite duration.

a period of _____ ***(Specify time)***.

ORDERED AND ADJUDGED that the Guardian/Co-Guardians of the Person shall have the following powers with regard to the personal needs of **(Name of PING)**:

- [] 1. Determine who shall provide personal care or assistance for him/her;
- [] 2. Make decisions regarding social environment and other social aspects of his/her life;
- [] 3. Determine whether he/she should travel;
- [] 4. Determine whether he/she should possess a license to drive;
- [] 5. Authorize access to or release of confidential records, including any and all medical/dental/mental health providers' records governed by the Federal Health Insurance Portability and Accountability Act (HIPAA); and which shall include the authority to discuss and consult with all medical/dental/mental health providers for the incapacitated person regarding condition, treatment and care.
- [] 6. Make decisions regarding education;
- [] 7. Apply for government and private benefits;
- [] 8. Choose the place of abode,
 - [] provided that **(Name of PING)** shall not be placed in a skilled nursing facility or residential care facility, as defined by Public Health Law section 2801, without his / her consent or further order of the court.
 - [] including placement or continued placement in a skilled nursing facility or residential care facility, as defined by Public Health Law section 2801 and including the authority to effectuate all necessary documentation for such placement; provided that no consent shall be given to the voluntary formal or informal admission of **(Name of PING)** to a mental hygiene facility under article 9 or 15 of the Mental Hygiene Law or to an alcoholism facility under article 21 of the Mental Hygiene Law.
- [] 9. Consent to or refuse generally accepted routine or major medical or dental treatment, provided that treatment decisions are made consistent with the findings of Mental Hygiene Law section 81.15 and in accordance with the standards in Mental Hygiene Law section 81.22 (a)(8), and provided further that no consent shall be given to the administration of psychotropic medication or electroconvulsive therapy without the consent of **(Name of PING)** or further order of this court or a court of competent jurisdiction.
- [] 10. Execute a Do Not Resuscitate Order in accordance with the provisions of Article 29-B of the Public Health Law.

[] 11. (Other).

ORDERED AND ADJUDGED that the guardianship of the person shall be for

[] an indefinite duration.

[] a period of _____ (Specify time).

ORDERED AND ADJUDGED that the Guardian / Co-Guardians of the Property shall be compensated pursuant to

[] Surrogate's Court Procedure Act section 2307, or

[] Surrogate's Court Procedure Act section 2309, or

[] a plan to be submitted to the court within 30 days and approved by court order.

[] that the Guardian / Co-Guardian of the Person shall be compensated pursuant to a plan to be submitted to the Court within 30 days and approved by court order.

[] the Guardian is waiving commissions.

ORDERED AND ADJUDGED that the **Guardian/Co-Guardians shall file all accountings [Initial Report within 90 days of receiving commission, Annual Accountings every year before May 15 and Final Report within 150 days of death]** with the County Clerk's Office and a copy to the Court Examiner appointed as required by Mental Hygiene Law sections 81.30, 81.31, 81.33 and 81.44. The Court Examiner shall examine all accountings, including Initial Report, Annual Accounting and Final Accounting within 30 days of receipt. The Guardians are put on notice that upon any breach of fiduciary duty, including the failure to include all assets in the accountings, the failure to immediately notify the Court Examiner of any settlements or personal injury

awards and the failure to properly file reports and accountings, the Guardian may be ordered to appear before the court which may result in the Guardian being removed, surcharged and or commissions due the Guardian being reduced. **The Guardian shall not take any annual commissions / 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 in addition to filing the Initial Report with the County Clerk's office, the Guardian shall send a copy of the Initial Report to the following: the incapacitated person, the counsel for the incapacitated person, the Mental Hygiene Legal Service if the incapacitated person resides in a mental hygiene facility, the chief executive officer of a facility if the incapacitated person resides in a facility and the Court Evaluator, if any.

ORDERED AND ADJUDGED that compensation (to be paid by the Guardian from the incapacitated person's assets unless otherwise stated) which is deemed reasonable for the services provided is approved for the following in the following amounts:

Court Evaluator: \$_____.

Court-Appointed Attorney: \$_____ (checks to Mental Hygiene Legal Service shall be made payable to "NYS Unified Court System")

Petitioner's Attorney: \$_____

Expert Witnesses **(Specify)**: \$_____

(Other): \$_____.

Compensation shall be approved in a separate order, upon submission of affidavits of services.

ORDERED AND ADJUDGED that Guardian/Co-Guardians

shall

shall not

be required to complete a training program, as required by Mental Hygiene Law section 81.39, within a reasonable period after issuance of the commission.

ORDERED AND ADJUDGED that the following is appointed Court Examiner:

ORDERED AND ADJUDGED that the Final Accounting in this matter is hereby referred to the Court Examiner to hear and report to the Court pursuant to Mental Hygiene Law 81.33.

ORDERED AND ADJUDGED that the following shall be served with notice of all further proceedings in this matter:

(Name of PING.)

Guardian/Co-Guardians.

Mental Hygiene Legal Service.

Court Examiner.

Bonding Company.

Veterans Administration.

[] Other. (***Specify***)

ORDERED AND ADJUDGED that the following individual(s) shall be served with notice of the incapacitated person's death, the intended disposition of the remains of the decedent, funeral arrangements and final resting place when that information is known or can be reasonably ascertained by the guardian:

ORDERED AND ADJUDGED that the following individual(s) shall be served with notice of the incapacitated person's transfer to a medical facility:

ORDERED AND ADJUDGED that the following individual(s) shall be entitled to visit the incapacitated person, if they so choose. However, the identification of such person(s) in the order shall in no way limit the persons entitled to visit the incapacitated person:

ORDERED AND ADJUDGED that the court shall maintain jurisdiction over this matter and that the Rules of the 9th Judicial District's Guardianship Accounting Part (111 Dr. Martin Luther King Jr. Boulevard, 14th Floor, White Plains, NY 10601) shall govern all procedures for the examination and settlement of said reports and accountings.

The person in need of guardianship may not be permanently removed from the geographical jurisdiction of this court without a prior written court order.

ORDERED AND ADJUDGED that the Guardian shall file the Designation of the Clerk to Receive Process and obtain the bond and Commission within 30 days of the signing of the Judgment and that **Petitioner's counsel** shall be responsible for assisting the person whom the Court has appointed as Guardian in filing the Guardian's designation with the County Clerk and obtaining the commission from the County Clerk, unless said individual is represented by his / her own separate counsel.

ORDERED AND ADJUDGED that a copy of the "Findings of Fact, Conclusions of Law and Judgment" shall be personally served upon and read to **(Name of PING)** by the Court Evaluator, by counsel for **(Name of PING)** or by the Guardian in accordance with Mental Hygiene Law section 81.16 (e).

ORDERED AND ADJUDGED that a copy of the Findings of Fact, Conclusions of Law and Judgment and Order To Show Cause and Petition shall be served by petitioner's counsel, by regular mail, upon the Guardian /Co-Guardians and the Court Examiner only. A copy of the Findings of Fact, Conclusions of Law and Judgment (**NOT** the Order To Show Cause and Petition) shall be served upon all counsel, and all persons entitled to notice of further proceedings within 20 days of the date of the Judgment. An affidavit of service that such service was timely done shall be filed with the Guardianship Part. Failure to comply may result in sanctions.

ORDERED AND ADJUDGED that any appointee herein shall comply with Part 36 of the Rules of the Chief Judge by filing the proper forms with this Court when applicable.

Any subsequent affidavit or affirmation of service submitted to this Court must contain a statement indicating such compliance and be accompanied by a properly completed Approval of Compensation.

ORDERED AND ADJUDGED *that the Guardian is to report to the Court Examiner, in writing within 30 days, of a change in the incapacitated person's place of residence and of any significant change in the incapacitated person's assets, physical and/or mental condition. Additionally, the Guardian is to immediately notify this Court, the Surrogate's Court and the Court Examiner of the death of the incapacitated person and within 20 days of the death, file an original death certificate with this Court and a copy of the death certificate with the Court Examiner, duly appointed personal representative of the estate or, if none, with the personal representative named in the will or a trust document, and the Public Administrator.*

ORDERED AND ADJUDGED that the Guardian is not authorized to act, including marshaling of assets and collecting income, until the Guardian receives the official Commission issued by the County Clerk. The Guardian shall file a copy of the Commission with the Court Examiner and the Court within 5 days of its issuance.

**Dated: Poughkeepsie, New York
_____, 20_____**

ENTER:

HON. MICHAEL G. HAYES, A.J.S.C.

**The Petitioner's Name, Address and Telephone Number are:
(Specify)**

**The Attorney for the Petitioner's Name, Address and Telephone Number are:
(Specify)**