ORDER AND JUDGMENT FOR THE APPOINTMENT OF A GUARDIAN - MHL ARTICLE 81

ANNEXED IS A SAMPLE "ORDER AND JUDGMENT" FORM TO BE USED AS A GUIDE IN NASSAU COUNTY SUPREME COURT FOR THE APPOINTMENT OF A GUARDIAN PURSUANT TO ARTICLE 81 OF THE MENTAL HYGIENE LAW.

THE LANGUAGE CONTAINED IN SAID FORM IS **NOT** INTENDED TO BE ALL INCLUSIVE, AS EACH JUDGMENT SHOULD BE ADAPTED TO THE INDIVIDUAL CASE. THEREFORE, YOU SHOULD FAMILIARIZE YOURSELF WITH THE APPROPRIATE SECTIONS OF ARTICLE 81 IN PREPARING SAME. IN REVIEWING THE SAMPLE FORM, ATTENTION SHOULD BE GIVEN TO THE BRACKETED NOTES (INCLUDING ALTERNATIVE PARAGRAPHS) CONTAINED THEREIN, THE USE OF POSSESSIVE PRONOUNS, AND SINGULAR AND PLURAL NOUNS SO AS TO CONFORM YOUR ORDER AND JUDGMENT TO YOUR PARTICULAR CASE.

EACH SUCH BLUE BACKED ORDER AND JUDGMENT SHALL BE SUBMITTED TO THE GUARDIANSHIP DEPT. - ROOM 152, 100 SUPREME COURT DRIVE, MINEOLA, NY 11501, ACCOMPANIED BY THE FOLLOWING:

(1) NOTICE OF SETTLEMENT;
(2) PROOF OF SERVICE ON ALL PARTIES ENTITLED TO NOTICE;
(3) THE DECISION PORTION OF THE TRANSCRIPT; AND
(4) AFFIRMATION OF LEGAL SERVICES, IF APPLICABLE

YOUR ORDER AND JUDGMENT SHOULD CONFORM TO THE COURT'S DECISION AS CONTAINED IN THE TRANSCRIPT OF HEARING. PLEASE NOTE THAT THE CLERKS HAVE BEEN DIRECTED TO REJECT ANY ORDER AND JUDGMENT WHICH IS NOT IN AMBLE COMPLIANCE WITH THE ANNEXED SAMPLE AND THE COURT'S FINDINGS.

At an I.A. Part __ of the Supreme Court of the State of New York, County of Nassau, held at the Courthouse located at 100 Supreme Court Drive, Mineola, New York, on the day of 202__.

P R E S E N T :
HON. , J.S.C.

.....X

In the Matter of the Appointment of

as Guardian for the Personal Needs
and Property Management of

an Incapacitated Person.

.....X

ORDER AND JUDGMENT
APPOINTING GUARDIAN

Index No.:

The Petition in writing, duly verified the _____ day of _____, 20___, by the Petitioner therein named, having been presented to this Court wherein it was alleged that one, _____, is incapacitated as defined under Section 81.02 of the Mental Hygiene Law and requires a Guardian pursuant to Article 81 of said law; and the Court, by Order

to Show Cause granted on_____, 20___, having required notice of the presentation of said Petition to be given to_____, the Alleged Incapacitated Person; ***[list all other parties as contained in Order to Show Cause];*** and to _____, the Court Evaluator appointed herein, and proof of due service upon each of the aforesaid Respondents and the Court appointee(s) having been duly filed, and

[Add following paragraph if Court issued subsequent orders of appointment:

The Court, by Order dated_____, 20_____, having appointed _____as counsel for the Alleged Incapacitated Person; and by Order dated_____, 20__, having appointed_____ _____as Temporary Guardian with certain specified authority therein, and]

The Court having thereupon considered said Petition then and there presented, and a conference having been held on_____, 20__ ***[if applicable***]; and a hearing having been conducted on_____, 20___, and _____ having appeared for the Petitioner, _____; and, having appeared for the Respondent_____, ***[if applicable***]; and _____ having appeared ***pro se [if applicable***]; and on reading and filing the report and recommendations of _____, the Court Evaluator appointed herein,

AND upon evidence presented at the aforesaid hearing,

AND it appearing to the satisfaction of this Court, by clear and convincing evidence, that it is necessary to appoint a Guardian for_____ in that s/he is not able to provide for his/her personal needs and property management as s/he suffers from ***[name applicable condition(s)***, and is incapacitated as defined under Section 81.02(b) of the Mental Hygiene Law, and said Incapacitated Person,_____, having appeared at and meaningfully participated in the hearing ***[OR*** the Court having waived the appearance of the said Incapacitated Person at the hearing based upon the evidence that no meaningful participation would result from his/her presence at same]; and upon all the aforementioned papers heretofore filed herein, the evidence adduced, and the decision of this Court rendered on the

record on _____, 20___; and after due deliberation,

NOW, on motion of _____, attorneys for the Petitioner, it is

ORDERED AND ADJUDGED, that_____,

residing at _____, and with telephone number (___), _____, the _____ of _____ ***[insert relationship to IP],*** be and s/he hereby is appointed Guardian for the Personal Needs and Property Management of _____,an Incapacitated Person, **upon his/her filing a bond in the sum of $ _____, with the Clerk of the Court,** to be first approved by a Judge of this Court ***[OR*** **the filing of a bond having been waived at the present time to be redetermined after the filing of the Guardian's Initial Report],** conditioned that s/he will faithfully discharge the powers granted by this Court, obey all directions in regard to said powers, and make and render a true account of all properties received by him/her in the application thereof, and a true report of his/her acts in the administration of said powers, whenever so required to do so by this Court, and upon his/her further filing with the Clerk of this Court a designation, duly executed and acknowledged, naming the Clerk of this Court or her successor in office as a person on whom service of any process may be made in like manner and with like effect as if it were served personally upon_____ _____, the Guardian herein, whenever s/he cannot with due diligence be served; and it is further

ORDERED AND ADJUDGED, that said Guardian shall file the aforesaid bond (if required), designation, the proposed Commission, and all other necessary papers with the Clerk of the Court within THIRTY (30) DAYS of the date hereof; and it is further

ORDERED AND ADJUDGED, that within FIVE (5) DAYS after_____

_____, the Guardian, has filed the above bond and designation, the Clerk of the Court shall issue a Commission stating the title of this proceeding; the name, address, and telephone number of _____, the Incapacitated Person; the name, address, and telephone number of the Guardian; the specific powers granted to the Guardian; and the date when the appointment of the Guardian was ordered by this Court; and it is further

ORDERED AND ADJUDGED, that the duration of the guardianship is indefinite; and it is further

ORDERED AND ADJUDGED, that the Guardian for the Personal Needs and Property Management of _____, shall afford him/her the greatest amount of independence and self-determination with respect to his/her needs and property in light of his/her functional level, understanding, and appreciation of his/her functional limitations and personal wishes, preferences, and desires with regard to managing the activities of daily living; and it is further

ORDERED AND ADJUDGED, that the Guardian for the Personal Needs and Property Management of the Incapacitated Person shall exercise only those powers that s/he is authorized to exercise by court order, with the utmost care and diligence when acting on behalf of _____, and with the utmost degree of trust, loyalty, and fidelity in relation to him/her; and it is further

ORDERED AND ADJUDGED, that the Guardian who is given authority with respect to property management of the Incapacitated Person shall marshal the assets of _____,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 as is necessary for the comfort, support, maintenance, and well-being of_____; said funds to be held in New York State account(s) titled: "_____, as Guardian of the Property of_____, an Incapacitated Person"; and it is further

ORDERED AND ADJUDGED, that the Guardian shall ensure that the bank account(s) to be established hereunder shall provide banking statements and cancelled checks in either original or imaged formats. In the event the Guardian establishes a brokerage account(s) with the assets of the Incapacitated Person, the Guardian shall retain the original statements of such account(s) for the use and review of the Court Examiner assigned herein; and it is further

ORDERED AND ADJUDGED, that _____ as Guardian shall have the following powers:

PROPERTY MANAGEMENT

[Insert property management powers specifically granted by the Court]

PERSONAL NEEDS

[Insert personal needs powers specifically granted by the Court]

ORDERED AND ADJUDGED, that all persons are hereby directed and commanded to deliver to the Guardian for the Property Management of _____, upon demand and presentation of a certified copy of the Guardian's Commission, all the property and income of _____, that may be in their possession or under their control; and it is further

ORDERED AND ADJUDGED, that all persons are hereby directed and commanded to deliver to the control of the Guardian for the Personal Needs of _____, upon demand and presentation of a certified copy of the Guardian's Commission, all personal property of said Incapacitated Person, including but not limited to, Medicare and Social Security cards, insurance cards, all identification cards, and any other similar documents belonging or issued to _____; and it is further

ORDERED AND ADJUDGED, that the Guardian may establish a luxury account for the Incapacitated Person in the maximum amount allowed by the Nassau County ***[or other applicable county***] Department of Social Services; and it is further

ORDERED AND ADJUDGED, that the Guardian may pay from the funds of the Incapacitated Person the cost of establishing an appropriate funeral trust with a reputable funeral establishment in the State of New York for the Incapacitated Person's future burial and funeral expenses; and it is further

ORDERED AND ADJUDGED, that if _____ now has a Last Will and Testament, or later executes one, the Guardian shall forthwith file same with the Clerk of the Nassau County Surrogate's Court ***[or such other county in which the IP is a resident***], and retain the receipt therefor, and shall file a copy of such receipt with the Court

Examiner, and upon the death of the Incapacitated Person, the Guardian shall forthwith notify the legal representative of his/her estate and the Court; and it is further

ORDERED AND ADJUDGED, that the following individuals shall receive notice of the incapacitated person's death, the intended disposition of the remains of the decedent, funeral arrangements and the final resting place of the incapacitated person when that information is known or can be reasonably ascertained by the guardian: *(e.g. family members notified in the OSC*) _____; and it is further

ORDERED AND ADJUDGED, that within TWENTY (20) DAYS of the date of the death of the Incapacitated Person, the Guardian shall file with the Court, the Court Examiner, and the (nominated) personal representative of the estate of the Incapacitated Person, a copy of both the Certificate of Death and a Statement of Death as defined in Section 81.44 of the Mental Hygiene Law. In the event that the identity of the personal representative is not known or able to be ascertained, the Guardian shall instead serve a Statement of Death upon the Public Administrator of the County of Nassau; and it is further

ORDERED AND ADJUDGED, that within ONE HUNDRED FIFTY (150) DAYS of the death of the Incapacitated Person and in accordance with Section 81.44 of the Mental Hygiene Law, the Guardian shall file a final report and account of his/her actions as such, and s/he shall seek his/her discharge based upon same. Such Guardian shall cause the Final Report and Account to be settled on notice to all necessary and appropriate parties by certified mail or personal service at least THIRTEEN (13) DAYS prior to the return date or shall seek a Decree discharging him/her and his/her surety ***[if applicable***] pursuant to Section 81.34 of the Mental Hygiene Law; and it is further

ORDERED AND ADJUDGED, that if the Guardian learns of any previously executed

appointment, power, delegation, proxy or advance directive made by the Incapacitated Person, s/he shall forthwith notify the Court of same and seek further direction, but any directions contained any validly executed living will, health care proxy or other advance directive shall guide said Guardian with respect to exercising personal needs and medical care decisions in accordance with _____'S wishes; and it is further

ORDERED AND ADJUDGED, that the Guardian is authorized to pay any ordinary bills of_____ that may have accrued prior to his/her appointment; however, Court approval shall be obtained for payment of fees to attorneys, accountants, and other non-medical professionals or for the payment of any extraordinary expenses; and it is further

[Add following paragraph if Court appointed a Temporary Guardian:

ORDERED AND ADJUDGED, that pursuant to Section 81.23(a) (1) of the Mental Hygiene Law, the Temporary Guardian, _____**shall file a final report** and account of his/her actions within FORTY-FIVE (45) DAYS of the qualification of the (permanent) Guardian(s) appointed hereunder and the issuance of a Commission by the Clerk of the Court, and shall seek his/her discharge and the discharge of his/her surety ***[if applicable***]. A copy of the Commission to Guardian(s) shall be included in the final report of the Temporary Guardian to be submitted herein; and it is further]

ORDERED AND ADJUDGED, that within NINETY (90) DAYS after being issued his/her Commission, the Guardian **shall file an initial report** in accordance with the provisions of Section 81.30 of the Mental Hygiene Law, and mail a copy of said report to_____, **with offices at_____, and with telephone number** (___) _____, the **Court Examiner**, who is hereby assigned to review the initial and annual reports to be submitted; and it is further

ORDERED AND ADJUDGED, that the Guardian shall file during the month of May of each year, in the Office of the Clerk of the County of Nassau, an annual report in accordance with Section 81.31 of the Mental Hygiene Law, and shall mail a copy of said report to the Court Examiner assigned herein, to the Administrator of the facility in which the Incapacitated Person resides, if any, and to MENTAL HYGIENE LEGAL SERVICE, if such individual resides in a facility, as aforesaid. Such report shall also detail any assets discovered by the Guardian, including rights of action or civil judicial proceedings for the benefit of the Incapacitated Person which were not contained in the Report of Court Evaluator previously submitted to the Court; and it is further

ORDERED AND ADJUDGED, that if the annual report sets forth any reason for a change in the powers authorized by the Court, the Guardian shall make application by Order to Show Cause for such relief; and it is further

ORDERED AND ADJUDGED, that in addition to the foregoing reporting requirements, the Guardian shall advise the Court Examiner by written communication, regarding any significant changes in the physical or medical condition of the Incapacitated Person, within THIRTY (30) DAYS thereof; and it is further

ORDERED AND ADJUDGED, that the Guardian shall notify the Court and the Court Examiner of any change in his/her address within THIRTY (30) DAYS of the date of such relocation, and shall file a new designation with the Clerk of the Court reflecting such change; and it is further

ORDERED AND ADJUDGED, that the Guardian shall visit with_____, the Incapacitated Person, not less than_____ (__) times per_____; and it is further

ORDERED AND ADJUDGED, that no change of the place of abode of the Incapacitated Person shall take place without prior Court approval; and it is further

ORDERED AND ADJUDGED, that the Guardian shall file the notice required under Section 81.20(a)(6)(vi) of the Mental Hygiene Law if the Incapacitated Person is possessed of any real property; and it is further

ORDERED AND ADJUDGED, that the Guardian shall comply with Article 17 of the Real Property Actions and Proceedings Law for the purpose of selling, purchasing or encumbering any real property in which _____, has or will have an interest; and it is further

ORDERED AND ADJUDGED, that if the Guardian should locate a safe deposit box in the name of_____, the Guardian shall inventory the safe deposit box in the presence of a bank officer ***[if applicable:*** and a representative of his/her surety (unless the surety waives its appearance in writing)], and report the contents thereof to the Court Examiner in the initial NINETY (90) DAY report to be filed herein. Notwithstanding the foregoing, however, the Guardian shall not be authorized to remove the contents thereof without further order of the Court; and it is further

ORDERED AND ADJUDGED, that the **Guardian shall complete a training program** as provided for under Section 81.39 of the Mental Hygiene Law, either in person, by audio or video presentation or by internet broadcast, and shall submit proof of the completion of such program to the Court Examiner in the initial report to be filed herein; and it is further

[OR:

ORDERED AND ADJUDGED, that the requirement of the Guardian to complete a training program as provided for under Section 81.39 of the Mental Hygiene Law is hereby waived; and it is further**]**

ORDERED AND ADJUDGED, that compensation of the Guardian shall be set in the

further orders of the Court from time to time, unless waived; and it is further

[OR:

ORDERED AND ADJUDGED, that as the Guardian is waiving compensation for services to be rendered as such, no provision is made herein for same; and it is further**]**

ORDERED AND ADJUDGED, that based upon the Affirmation of Services dated_____ and submitted herein, the Guardian shall pay from the funds of the Incapacitated Person the total sum of $_____ to Petitioner's Attorney_____, for his legal fee ($_____) and disbursements ($_____), for any and all services rendered in this proceeding, including ASSISTING THE GUARDIAN(S) IN FILING THEIR DESIGANTION AND obtaining the bond AS WELL AS and the preparation of and issuance of the Commission to the Guardian hereunder. Such fee has been determined by the Court based upon the relevant factors as set forth in the Lawyers Rules of Professional Conduct Rule 1.5(a), including the time expended (total allowable time of ____ hours) which is deemed reasonable and beneficial to the subject of the proceeding, an appropriate hourly rate based upon the size of the guardianship estate, and the knowledge and experience of the attorney, ***see also*** Matter of Freeman. 34 N.Y.2d 1 (1974); Matter of Anne M.T., 2009 N.Y. Slip Op 06028 (2nd Dept. July 28, 2009). Pursuant to any fee agreement between said counsel and the Petitioner, such sum when received shall be credited against any sums owed by the said Petitioner to counsel, or refunded to the said Petitioner, if applicable, ***see*** Seth Rubenstein. P.C. v. Ganea, 41 A.D.3d 54, 833 N.Y.S.2d 566 (2nd Dept. 2007); and it is further

[OR:

ORDERED AND ADJUDGED, that the attorney for the Petitioner's private legal fee agreement shall include assisting the person whom the Court has appointed as Guardian in filing

the Guardian's designation and obtaining the commission from the County Clerk, within 30 days of the signing of the Judgment, unless said individual is represented by his / her own separate counsel.**]**

ORDERED AND ADJUDGED, that based upon the Affirmation of Services dated_____ and submitted herein, the Guardian shall pay from the funds of the Incapacitated Person the sum of $_____ to _____ as and for his/her fees and disbursements as Court Evaluator (total allowable time of ____hours); and it is further

ORDERED AND ADJUDGED, that based upon the Affirmation of Services dated and submitted herein, the Guardian shall pay from the funds of the Incapacitated Person the sum of $_____ to _____as and for his/her fees and disbursements as Court-appointed counsel for_____(total allowable time of _____hours); and it is further

ORDERED AND ADJUDGED, that if the guardianship is to be terminated, the Guardian shall apply to the Court for direction regarding a disposition of the property of _____ then remaining and for any other instructions concerning said termination; and it is further

ORDERED AND ADJUDGED, that pursuant to Section 81.16(e) of the Mental Hygiene Law, a copy of this Order and Judgment shall be personally served upon, read, and explained to the Incapacitated Person by the_____ within THIRTY (30) DAYS of the date hereof; and it is further

[OR:

ORDERED AND ADJUDGED, that notwithstanding Section 81.16(e) of the Mental

Hygiene Law, a copy of this Order and Judgment need not be personally served upon, read or explained to the Incapacitated Person; and it is further]

ORDERED AND ADJUDGED, that within **THIRTY-FIVE (35) DAYS** of the date hereof, the Court Examiner assigned herein shall confirm that the Guardian has duly qualified as such and that a Commission to Guardian has been issued by the Clerk of the Court. In the event that the Guardian has failed to qualify by such date, the Court Examiner shall remind the Guardian of their filing obligation and their pending appearance before the Court (see below). The Court Examiner shall also notify the Court of same in writing or by email to **nass-art81@nycourts.gov** and it is further

ORDERED AND ADJUDGED, that the **GUARDIAN SHALL APPEAR BEFORE THE COURT ON _____, AT 2:15 PM,** IN THE GUARDIANSHIP APPEARANCE PART COURTROOM, LOCATED ON THE 1ST FLOOR, OR VIA MICROSOFT TEAMS, UNLESS THE REQUIRED COMMISSION HAS BEEN FILED AND ACCEPTED BY THE CLERK OF THE COURT; **(***Petitioner's counsel is reminded to assist the Guardian(s) with acquiring their commission and filing their designation)* and it is further

ORDERED AND ADJUDGED, that notice of all further proceedings shall be determined is subsequent orders of this Court; and it is further

ORDERED AND ADJUDGED, that any appointee herein shall comply with Section 35-a of the Judiciary Law and Parts 26 and 36 of the Rules of the Chief Judge of the State of New York, and no fee shall be paid to such appointee until said appointee has filed all necessary OCA forms with the Court; and it is further

ORDERED AND ADJUDGED, that a true copy of this Order and Judgment be served forthwith by the Petitioner's attorney(s) upon, _____the Guardian, appointed herein; ***[Court Evaluator; counsel for Respondents); counsel for IP; applicable***

Department of Social Services, Administrator of hospital/skilled nursing facility; Mental Hygiene Legal Service; and any other party who appeared in this proceeding, as may be appropriate]; and the ***Court Examiner assigned herein.***

THE GUARDIAN SHALL NOT BE PERMITTED TO ACCESS FUNDS WITHOUT THE ISSUANCE BY THE CLERK OF THE COURT OF A COMMISSION PERMITTING THE GUARDIAN TO MARSHAL ASSETS OR INCOME.

E N T E R:

_____

_____, J.S.C.