

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

Revised 6/1/2021

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, at the Courthouse located at 100 Supreme Court Drive, Mineola, New York on the ___ day of ,201 _ .

P R E S E N T :
H O N

Justice of the Supreme Court.

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In the Matter of the Appointment of

as Successor Guardian for the Personal Needs and Property Management of

ORDER AND JUDGMENT
APPOINTING SUCCESSOR
GUARDIAN AND DIRECTING
FINAL REPORT AND ACCOUNT

Index No.:

an Incapacitated Person.

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By Order to Show Cause granted on [INSERT DATE OF ORIGINAL ORDER TO SHOW CAUSE TO APPOINT GUARDIAN], an application was made for the appointment of a Guardian for, _____ an Alleged Incapacitated Person. By Order and Judgment dated, [INSERT NAME OF GUARDIAN] was appointed Guardian for the Personal Needs and Property Management of _____, an Incapacitated Person, and thereafter duly qualified as such.

By Order to Show Cause granted on [INSERT DATE OF CURRENT ORDER TO SHOW CAUSE FOR LEAVE TO RESIGN], [INSERT NAME OF GUARDIAN], sought leave to resign as Guardian, to have a Successor Guardian appointed in his/her place and stead [or to have the Standby Guardian confirmed as Successor Guardian in his/her place and stead] and permission to file a Final Account. A hearing was conducted on _____, and attended by [INSERT PEOPLE IN ATTENDANCE AT HEARING]; and no one appearing in opposition to the relief sought herein; after due deliberation,

NOW, on motion of _____, ESQ., attorney for the Petitioner, it is ORDERED AND ADJUDGED, that [INSERT NAME OF GUARDIAN] _____ be and s/he hereby is permitted to resign as Guardian for the Personal Needs and Property Management of _____, an Incapacitated Person, effective upon the qualification of the Successor Guardian appointed hereunder and the issuance of his/her Commission; and it is further

ORDERED AND ADJUDGED, that within SIXTY (60) DAYS of the date hereof, [INSERT NAME OF GUARDIAN] , as (former) Guardian of the Property, is directed to and shall file a final report and account of his/her actions as Guardian of _____, the Incapacitated Person, and shall seek his/her discharge, the discharge of his/her surety, and the awarding of compensation, if any; and shall cause said final account to be settled and that a Notice of Motion for the settlement thereof, together with a copy of this Order, shall be served either personally or by certified mail by said former Guardian at least THIRTEEN (13) DAYS prior to the return date of said motion upon _____

_____, the Court Examiner assigned herein, who is hereby appointed Referee to review said final account and to report his/her findings and recommendations to the Court, and upon all other persons entitled to notice pursuant to Mental Hygiene Law Section 81.33(c), including [LIST PARTIES ENTITLED TO NOTICE OR WHO HAVE APPEARED HEREIN]: and it is further

ORDERED AND ADJUDGED, that _____, residing at _____, and with telephone number () _____, be and s/he hereby is appointed the Successor Guardian for the Personal Needs and Property Management of _____, an Incapacitated Person (the “Successor Guardian”), 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 present] conditioned that s/he will faithfully discharge the powers granted by this Court, obey all directions of the Court 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 the said powers, whenever so required to do so by the Court, and upon his/her further filing with the Clerk of the Court a designation, duly executed and acknowledged, naming the Clerk of the 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 personally served upon _____, the Successor Guardian herein, whenever s/he cannot with due diligence be served; and s/he shall have all the powers as authorized in the Order and Judgment Appointing Guardian, dated _____, together with any additional powers authorized hereunder; and it is further

ORDERED AND ADJUDGED, that said Successor Guardian shall file the aforesaid bond, 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 Successor Guardian has filed the above 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 Successor Guardian; the specific powers granted to such Successor Guardian; and the date when the Successor Guardian's appointment 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 Successor Guardian shall have the following powers which shall be in addition to the powers specifically granted in the aforesaid Order and Judgment Appointing Guardian, dated _____:

[INSERT ADDITIONAL AUTHORITY GRANTED HEREIN, IF ANY]

ORDERED AND ADJUDGED, that all persons and institutions are hereby directed and commanded to immediately deliver to the Successor Guardian for the Property Management, [INSERT NAME OF SUCCESSOR GUARDIAN], upon demand and presentation of a certified copy of said Successor Guardian's Commission, all the property and income of the Incapacitated Person which 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 Successor Guardian for the Personal Needs, [INSERT NAME OF SUCCESSOR GUARDIAN] ,

upon demand and presentation of a certified copy of the Successor 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 documents belonging or issued to; and it is further

ORDERED AND ADJUDGED, that the Successor Guardian shall ensure that any bank account(s) to be established hereunder shall be in the State of New York and shall provide banking statements and cancelled checks in either original or imaged formats. In the event that the Successor Guardian establishes a brokerage account(s) with the assets of the Incapacitated Person, the Successor 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 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 Successor Guardian: (e.g. family members notified in the OSC)_____; it is further

ORDERED AND ADJUDGED, that within TWENTY (20) DAYS of the date of the death of the Incapacitated Person, the Successor 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 Successor 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 Successor 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 Successor 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 in addition to the statutory reporting requirements, the Successor 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 Successor Guardian shall notify the Court and the Court Examiner of any change in his/her domicile 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 in abode; and it is further

ORDERED AND ADJUDGED, that the Successor Guardian shall be required to complete a training program as provided for under Section 81.39 of the Mental Hygiene Law, either in person or by audio or video tape 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 Successor 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 the compensation of the Successor Guardian shall be set in subsequent orders of the Court from time to time, unless waived; and it is further

ORDERED AND ADJUDGED, that the Successor Guardian **shall file an initial report** within **NINETY (90) DAYS** after issuance of the Commission to said Successor Guardian in accordance with the provisions of Section 81.30 of the Mental Hygiene Law, and shall mail a copy of said report to **Court Examiner** _____, **with offices at** _____, **and with telephone number** (____) _____; 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, that [INSERT PETITIONER'S COUNSEL] shall provide to the Successor Guardian, [INSERT NAME OF SUCCESSOR GUARDIAN], a copy of the Order and Judgment Appointing Guardian, dated _____, if same is not already in his/her possession; and it is further

ORDERED, that [INSERT PETITIONER'S COUNSEL] shall assist the Successor Guardian with **timely** obtaining his/her bond and Commission to Successor Guardian; 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 Successor Guardian has duly qualified as such and that a Commission to Successor Guardian has been issued by the Clerk of the Court. In the event the Successor Guardian has failed to qualify by such date, the COURT EXAMINER AND SUCCESSOR GUARDIAN shall notify the Court 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, on or before 60 days from the entry date of this Order, the **former Guardian** of the Property must file their final accounting and report with the COURT and the COURT EXAMINER. **Failure to timely comply shall result in a MANDATORY APPEARANCE BEFORE THE COURT, BY THE FORMER GUARDIAN(S) AND COURT EXAMINER ON _____, at 2:15 PM IN THE GUARDIANSHIP APPEARANCE PART**

COURTROOM, LOCATED ON THE 1ST FLOOR OR VIA MICROSOFT TEAMS.

ORDERED AND ADJUDGED, that except as modified herein, the Order and Judgment Appointing Guardian, dated _____, shall remain in full force and effect, with the duties and authority granted to the Guardian continuing for the Successor Guardian; 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 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 Successor Guardian 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 [INSERT PETITIONER'S COUNSEL] shall mail copies of this Order and Judgment to the former Guardian and Successor Guardian _____; [INSERT ALL NECESSARY AND APPEARING PARTIES]; and, the Court Examiner previously appointed herein.

E N T E R :

, J.S.C.

