

O & J CHECKLIST

IP:		Index #	
	Last Name First Name	Justice	
		Decision date:	

REQUIRED PAPERS:

The following **highlighted** papers are missing and/or incomplete:

- | | |
|---|---|
| <input type="checkbox"/> Notice of Settlement with affidavit of service on required parties | <input type="checkbox"/> Minutes Transcript of hearing/findings |
| <input type="checkbox"/> Proposed O&J | <input type="checkbox"/> Notice of Pendency (MHL §81.24) <input type="checkbox"/> N/A |
| <input type="checkbox"/> List of Assets and Income <input type="checkbox"/> N/A | <input type="checkbox"/> Court evaluator's report |
| <input type="checkbox"/> O.S.C. with petition | |

Required Affirmation(s)/Affidavits(s) of Service for:

- | | |
|---|---|
| <input type="checkbox"/> Petitioner/Attorney | <input type="checkbox"/> Cross Petitioner / Respondent / Attorney |
| <input type="checkbox"/> Other (specify) | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Court Evaluator | <input type="checkbox"/> UCS 875 form |
| <input type="checkbox"/> Counsel for AIP <input type="checkbox"/> court appointed | <input type="checkbox"/> UCS 875 form |

*****The following **highlighted** paragraphs are missing and MAY be required by the judge:

COURT'S FINDINGS - PART 1

- Recitation of facts / proceedings & corresponding dates
 AIP's appearance at hearing AIP's appearance waived AIP consents to guardianship

APPOINTMENTS - PART 2

Appointment of Guardian

- AIP is determined to need a guardian
 Appointment of guardian - Name and address
 Property Person

Appointment of Trustee

- Appointment of Trustee
 Filing an executed copy of trust

Court examiner

- Appoint a court examiner
 Guardian cooperate with examiner
 Court examiner shall notify the Court if Guardian has not filed accountings

CAPTION - PART 3

- Amend caption

BONDING REQUIREMENTS - PART 4

- Bond \$ _____ Waived

Surety

- Trustee pay premiums within 60 days after commission and annually
 Surety may bring motion to collect unpaid premiums
 Bond Amount + Titling of trust account

QUALIFICATION OF GUARDIAN- PART 5

Part 36 paragraphs:

- Part 36 applicable - 22 NYCRR §36.1
- Non-profit/ Family/ Family-nominated guardian (not Part 36)
- County Clerk to issue Commission MHL §81.27
- Gd training requirement MHL §81.39
- Duration of guardianship _____
- Guardian - legal services **without** court approval:
 - may not act as own counsel w/o ct app(Pt 36)
 - may act as own counsel w/o ct app(not Pt 36)
 - Guardian shall not pay counsel fees w/o court approval
 - may not retain counsel w/o ct app(Pt 36)
 - may retain counsel w/o ct app (not Pt 36)

REPORTING REQUIREMENTS - Part 6

- Gd to file initial report
- Gd to file annual report (in MAY)
- (Temp Guardian- 60 days) (Temp Guardian- detailed report)

GENERAL DUTIES- Part 7

- MHL §81.20 fiduciary duty generally and prop - 5 paragraphs + a-g
- Gd to visit 4x per year

POWERS - GUARDIAN OF THE PERSON - Part 8

Personal Powers

- MHL §81.22 list of personal powers (depends on minutes/hearing)
 - Determine provider of care
 - Determine social environment
 - Determine whether should travel
 - Determine whether possess license to drive
 - Access/release confidential records
 - Education decisions
 - Apply for gov't/private benefits
 - Hospital decisions
 - Choose place of abode / key access

AUTHORITY - GUARDIAN OF THE PROPERTY - Part 9

- Hold funds of IP- title
- Gd has authority granted by laws of US and NYS
- List of Income and Assets (Schedule A)
- Application to fix bond for additional property
- Gd to access safe deposit box w/ bank rep. and surety
- Gd may make reasonable expenditures for IP's necessities
- Gd may not spend more than \$5,000 per transaction
- Gd to purchase prepaid irrevocable funeral contract
- Gd to establish luxury fund
- Gd may invest surplus funds (prudent investor language)
- Real Property** (if applicable)
 - Gd may not alienate, mortgage, lease or dispose of property (RPAPL Art 17)
 - File with recording officer of county + notice of pendency
- Gd may maintain civil judicial proceedings Specific case _____
- Gd to pay reimburse Medicaid with excess resources
- Gd to support IP and legal dependents

POWERS - GUARDIAN OF THE PROPERTY - PART 10

- MHL §81.21 list of property powers (depends on minutes/hearing)
 - Marshal assets
 - Estate planning & gifting
 - Enter into contracts
 - Access/release confidential records
 - Apply for gov't benefits
 - Retain accountant

GENERAL DIRECTIVES- PART 11

- O&J to be served and read to IP or Waived
- Guardian cooperate with Examiner
- Banking Law section 9-l
- All persons to deliver to guardian upon presentation of Commission

TERMINATION OTHER THAN DEATH - PART 12

- Termination other than death of IP

TERMINATION BY DEATH - PART 13

- Termination for death of IP, MHL §81.44 paragraphs - 5 paragraphs
- Gd to pay bills incurred prior to IP's death
- Gd to pay reasonable funeral expenses

COMPENSATION - PART 14

- Judiciary Law 35A - file UCS 875 and/or 872 forms
 - Gd compensation fixed by court pursuant to MHL §81.28 (usually SCPA 2307)
 - If guardian receives monthly fee - "reduction of NAMI language"
 - Gd takes no commissions and compensation until approved by the court
- Fees

NOTICE - PART 15

- Petitioner serve CE / mail
- Nursing home shall notify the Court /in 30 days of placement
- Notice of all further proceedings (list of interested parties)
- O&J to be served with Notice of Entry w/in 10 days

INFANT COMPROMISE - PART 16

- O&J supersede conflicting terms

SAVINGS CLAUSE - PART 17

- Failure to include not a waiver

COMPLIANCE CONFERENCE - PART 18

- Comp Conf

FOR JUDGE'S USE ONLY

Phone call to settling attorney:

- The order has been signed. You must follow up in person with the County Clerk's record room 122A for a copy.

 - The submission is rejected due to the following (check all that apply):
 - Missing papers as noted above
 - Missing decretal paragraphs as noted above.
 - Notice of Settlement not submitted within the 60 day time frame as per NYCRR §202.48(a)
 - Other (explain below)
-
-

Dated: _____

J.S.C

YOU MUST PICK UP THE REJECTED PAPERS IN THE GUARDIANSHIP OFFICE (ROOM 285) AND RE-SETTLE THE PROPOSED ORDER ON NOTICE AS PER NYCRR §202.48.