

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 wfreyhag@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 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 as 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 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; wfreyhag@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 **must** contain the proposed Guardian's name, address and phone number.

8. 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.

9. 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.

10. 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 requesting an adjournment before Judge Malone by e-mail, shall confirm that such request has been received by Chambers.

11. 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.

12. 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.

13. Any request for attorney's 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.

14. All applications for counsel 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.

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

16. 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.

17. 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.