

# **MOTION PRACTICE**

AS A COURT EXAMINER, WHY ENGAGE IN MOTION PRACTICE?

- MHL §81.32(c) - FAILURE OF GUARDIAN TO REPORT
- MHL §81.32(d) - FAILURE OF GUARDIAN TO PROVIDE COMPLETE REPORT AND/OR SUFFICIENT DOCUMENTATION
- MHL §81.35 - FAILURE OF GUARDIAN TO COMPLY WITH COURT ORDER or SUSPICION OF MISCONDUCT
- MHL §81.36 - NEED FOR CHANGE OF POWERS OF GUARDIAN DUE TO:
  - Increased capacity of incapacitated person
  - Relocation of incapacitated person
  - Dissipation of assets of incapacitated person
  - Accomplishment of special purpose of guardianship
  - Death, resignation, or illness of guardian
- MHL §81.37 - RESIGNATION OF GUARDIAN OR SUSPENSION
- MHL §81.38 - VACANCY IN OFFICE - DEATH, REMOVAL, DISCHARGE, RESIGNATION, OR SUSPENSION OF GUARDIAN
- MHL §81.44 - DEATH OF INCAPACITATED PERSON

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## **I. FAILURE TO REPORT - MHL §81.32(c)**

### **A. Prerequisite to Motion Practice:**

Prior to motion practice, written demand must be served via certified mail on the guardian or his/her resident agent to file outstanding reports within fifteen (15) days of service of demand ("resident agent" is defined as a statutory agent or a registered agent such as the County Clerk).

Serve the demand via regular mail and certified mail, return receipt requested. People dodging creditors, responsibilities and/or duties do not sign for or pick up certified mail from the United States Post Office. If certified mail cannot be delivered, if demand is sent by regular mail and not "Returned to Sender", some proof of compliance with the statute is available.

If the designation of the clerk as agent of service of process is on file pursuant to MHL §81.26, the County Clerk can also be served via certified mail and hand delivery to obtain compliance with the statute.

Also, if the guardian was the petitioner in the guardianship proceeding, serve the legal counsel for the guardian. S/he may intervene to obtain compliance from the client.

### **B. If the Initial Report is Outstanding:**

If the Initial Report is outstanding, beware of technicality pursuant to MHL §81.30(a):

The due date of the Initial Report is within ninety (90) days after issuance of the commission to the guardian. Before serving the demand, check with the County Clerk's Office to verify the commission has been issued. If the commission has not been issued, find out if a bond has been obtained, if required by Court Order. Find out if designation of clerk to receive process as required by MHL §81.26 has been filed.

If a bond is required and has not been obtained, find out why.

If designation has not been filed, find out why.

Court Examiner may need to enlist the assistance of Trial Court Judge if the guardian is unable to accomplish these task(s) and/or is uncooperative.

### **C. If the Annual Report is Outstanding:**

The motion will seek Order requiring:

- a. Compliance with demand;
- b. Denial or reduction of compensation; and/or
- c. Removal of guardian

MHL §81.32(c) does not state who is to be served with the motion. The safe practice is to serve all parties listed in the Order of appointment entitled to notice of all further proceedings pursuant to MHL §81.16(c)(3). MHL §81.32(c) does not state who pays for the motion practice. The Forty-five Dollar (\$45.00) motion filing fee should be waived by the County Clerk as the Court Examiner is a Court-appointed fiduciary.

## **II. INCOMPLETE REPORT - MHL §81.32(d)**

### **A. Prerequisite to Motion Practice:**

If the Court Examiner believes a more complete or satisfactory report should be filed, or further documentation is necessary, written demand is to be served on the guardian or his/her resident agent by certified mail requesting the filing of the revised report and/or the missing documentation.

Again, serve the written demand via certified mail, return receipt requested, and first class mail. If the guardian does not sign for the certified mail, send the certified letter to the County Clerk as designated agent if designation is on file pursuant to MHL §81.26(c). Serve guardian's legal counsel with the demand as well. No time frame is set forth in the statute - use fifteen (15) days.

### **B. Relief Sought:**

The motion will seek Order requiring:

- a. Compliance with demand;
- b. Denial or reduction of compensation; and/or
- c. Removal of guardian

Again, the statute does not state who pays for the motion practice. The Forty-five Dollar (\$45.00) filing fee should be waived as a Court Examiner is a Court-appointed fiduciary.

It is not suggested that a proposed Order be submitted with the motion for compliance pursuant to MHL §81.32(c) or (d). If there is a failure of compliance and the Court must order the removal of the guardian, there must be an appointment of a replacement guardian. A hearing will be necessary for such appointment. The Order must be tailored to the situation once the remedy is determined.

### **III. REMOVAL OF GUARDIAN - MHL §81.35**

MHL §81.35 authorizes the Court Examiner to seek removal of the guardian due to:

- Failure to comply with Court Order;
- Alleged misconduct; or
- For cause

#### **A. Failure to Comply with Court Order:**

A prior motion by the Court Examiner pursuant to MHL §81.32(c) or (d) may result in an Order requiring the filing of a report, or the filing of a revised report and provision of appropriate documentation by a certain date. If there is lack of compliance with the Court Order, the Court Examiner may be compelled to engage in a "second round" of motion practice pursuant to MHL §81.35 now seeking the removal of the guardian.

#### **B. Alleged Misconduct:**

Misconduct may include mishandling of funds, neglect and/or abandonment of duties, self-dealing, embezzlement, etc.

#### **C. Any Other Cause:**

This is a "catch all" clause to allow the Court Examiner to seek removal of the guardian on grounds which do not easily fit into the first two (2) categories.

No advance written demand is required by this statute. However, it is good practice to serve demand(s) via certified mail, return receipt requested, and first class mail to the guardian and his legal counsel stating with specificity the failure to comply with the Court Order, the method of requested compliance, the alleged misconduct and method of absolving or explaining himself, and/or any other basis which is perceived as a serious enough violation of guardianship duties to warrant seeking his removal.

Service of the motion is on the guardian and all persons cited in the Order of appointment to receive notice of all further proceedings pursuant to MHL §81.16.

The Court may fix the compensation of the movant.

The Court may compel the guardian to personally pay the cost of motion practice.

#### **IV. DISCHARGE OR MODIFICATION OF POWERS OF GUARDIAN - MHL §81.36**

The Court Examiner may seek the discharge of the guardian pursuant to MHL §81.36 due to:

- Increased capacity of incapacitated person (MHL §81.36(a)(1))
- Guardianship no longer necessary due to relocation of the incapacitated person and transfer of guardianship (MHL §81.36(a)(4))
- Dissipation of assets (MHL §81.36(a)(4))
- Accomplishment of special purpose (MHL §81.36(a)(4))
- Death of incapacitated person (MHL §81.36(a)(3))

Pursuant to MHL §81.36(b), the Court Examiner may seek relief under this Article on notice to all persons set forth in the Order of appointment pursuant to MHL §81.16. A hearing may be scheduled by the Court.

If the guardianship is to be terminated and the guardian discharged, a Final Report should be filed by the guardian. The Court Examiner may request to be appointed as a Referee to review and report on the Final Report.

#### **V. SUSPENSION OR REMOVAL OF GUARDIAN - MHL §81.44**

##### **A. Death of Incapacitated Person:**

Upon the death of an incapacitated person, MHL §81.44 sets forth four (4) requirements:

##### **1. Notice - Statement of Death - MHL §81.44(c)**

Within twenty (20) days from the death of the incapacitated person, a Statement of Death is to be served by regular mail and certified mail, return receipt requested, upon the Court Examiner, the Court-appointed representative of the incapacitated person, the representative named in the incapacitated person's will or trust, or, if none, upon the administrator of the county in which the guardianship is pending. The Statement of Death with proof of service is to be filed with the Court.

2. Delivery of Assets - Statement of Assets and Notice of Claim - MHL §81.44(d)

Within one hundred and fifty (150) days from the death of the incapacitated person, a Statement of Assets with Notice of Claim is to be served upon the decedent's personal representative or, if none, upon the public administrator in the county in which the guardianship is pending.

The guardianship assets are to be turned over to the personal representative of the decedent, or, if none, to the public administrator in the county in which the guardianship is pending, one hundred and fifty (150) days from the date of death.

3. Final Report - MHL §81.44(f)

Within one hundred and fifty (150) days from the death of the incapacitated person, the guardian is to file a Final Report.

4. Petition for Termination of Guardianship Proceeding and Discharge of Guardian - MHL §81.44(f)

Within one hundred and fifty (150) days from the death of the incapacitated person, the guardian is to seek judicial settlement of the Final Report.

If the guardian fails to comply with any of the above requirements of MHL §81.44, the Court Examiner may petition the Court to compel compliance. Specifically, such a petition would compel the filing of a Final Report and seek termination of the guardianship proceeding.

**VI. PROCEDURAL CHOICES -**  
**NOTICE OF MOTION - CPLR §2214(a); OR**  
**ORDER TO SHOW CAUSE - CPLR §2214(d); OR**  
**COMPLIANCE CONFERENCE; OR**  
**EX PARTE AFFIDAVIT**

A. Notice of Motion - CPLR §2214(a) Timetable:

Time for service of notice of motion and affidavit:

- 8 days + 5 days for mailing = 13 days
- Answering affidavits are due 2 days before the return date
- + 5 days for mailing

OR

- 16 days + 5 days for mailing = 21 days  
Answering affidavits are then due 7 days before the return date + 5 days for mailing

Why proceed by notice of motion? You control the return date and you choose the persons to be served with the notice of motion. Depending on the relief sought in the motion, a proposed Order can be submitted with the notice of motion to provide the Court and interested parties with a guideline as to the relief sought. This will facilitate an expedited decision from the Court.

B. Order to Show Cause - CPLR §2214(d):

1. Procedure

- Call the Supreme Court Clerk for the name of the Duty Judge
- Find out if the Duty Judge is available for hand delivery of the Order to Show Cause
- If not, submit the Order to Show Cause to the Supreme Court Clerk for delivery to the Duty Judge
- Duty Judge will:
  - a. Decide whether a hearing is necessary and, if so, schedule a hearing
  - b. Decide who is to be served with the Order to Show Cause and set a date by which service is to be completed
  - c. Appoint the Court Examiner as a Referee to review and report on the Final Report and set a date by which the Referee's Report on Final Report is due
  - d. Return to you a signed, completed Order to Show Cause for service

2. Temporary Injunctive Relief - NYCRR §202.7(f)

If a stay or temporary restraining order is sought, the moving affirmation must explain the significant prejudice which will occur to petitioner if advance notice of the Order to Show Cause were given to the party to be effected by the requested injunctive relief.

If significant prejudice cannot be shown, the petitioner must demonstrate a good effort to provide advance notice to

the party against whom the application is made of the time, date, and place the application is to be made.

An Order to Show Cause is appropriate in the following circumstances:

- if the guardian is suspected of misconduct
- if the guardian is neglecting duties and the incapacitated person is suffering
- if there is a need for the Court to determine a reasonable return date
- if there is a need for the Court to determine whether a hearing is to be scheduled or if submission on the papers is sufficient
- if there is a need for the Court to determine which persons should be served with the application
- if there is a need for the Court to appoint the Court Examiner as a Referee to review the Final Report and report thereon
- (hopefully) to expedite the process (this will not necessarily expedite the process as some duty judges will provide longer return dates than the Court Examiner may have chosen with a notice of motion in compliance with CPLR §2214(a))

The Order to Show Cause is returnable before the Trial Court Judge assigned to the guardianship proceeding, not the Duty Judge.

#### C. Compliance Conference:

Depending on the Trial Court Judge's interest in the guardianship proceeding, the Court Examiner may be able to avoid motion practice altogether with a simple letter request for a compliance conference.

However, after attendance at a compliance conference, if the guardian needs to be removed and/or replaced or discharged, most judges will expect the Court Examiner to engage in the appropriate motion practice (rather than "ruling from the bench" or creating the Court Order).

#### D. Ex Parte Affidavit with Proposed Order:

If an incapacitated person dies, all reports have been timely filed and there are little or no guardianship assets of value remaining in the guardianship estate, some judges will allow an expedited process



of submission of a letter and/or affidavit explaining the circumstances accompanied by a death certificate, with a proposed Order Discharging the Guardian and Terminating the Guardianship Proceeding. The letter or affidavit and proposed Order should be copied on the guardian and his/her legal counsel.

E. "Wrapping It Up":

1. Notice of Settlement of Order - CPLR §2219

Be proactive - diary the return date of the motion/Order to Show Cause. If it is uncontested or the solution is obvious, submit to the Court a proposed Order on notice to all interested parties on ten (10) days notice. Provide affidavits of mailing of the Notice of Settlement with the proposed Order to the Trial Court Judge. Provide a self-addressed, stamped envelope for the return of a conformed copy of the Order.

CPLR §2219 requires an Order to be submitted to the Trial Court Judge within twenty (20) days of the return date if a provisional remedy is sought. On all other motions, the proposed Order is to be submitted within sixty (60) days of the return date.

2. Notice of Entry of Order - CPLR 2220

Once you are in receipt of a conformed copy of the Order, check with the County Clerk for the date of entry of the Order. Serve the Notice of Entry of Order with the Order on all interested parties. File the Notice of Entry of Order with the Order and a mailing affirmation with the County Clerk. The party being served with a Notice of Entry of Order has thirty (30) days from the date of the receipt of the Notice of Entry to file an appeal.

## ATTACHED STATUTES

### A. Mental Hygiene Law Article 81 - Relevant Statutes

- MHL §81.26: Designation of clerk to receive process - (Sample Oath and Designation)
- MHL §81.27: Commission to guardian
- MHL §81.30: Initial report
- MHL §81.32: Examination of initial and annual reports
- MHL §81.35: Removal of guardian
- MHL §81.36: Discharge or modification of powers of guardian
- MHL §81.37: Resignation or suspension of powers of guardian
- MHL §81.38: Vacancy in office
- MHL §81.44: Proceedings upon the death of an incapacitated person

### B. Civil Procedure Law and Rules

- CPLR 2214: Motion papers; service; time
- 22 NYCRR 202.7(f): Calendaring of motions; uniform notice of motion form; affirmation of good faith
- CPLR 2219: Time and form of order
- CPLR 2220: Entry and filing of order; service

## **MHL §81.26 - Designation of clerk to receive process**

No commission shall issue nor shall any order which in itself constitutes a commission become effective until an instrument executed and acknowledged by the guardian has been filed with the clerk of the court designating the clerk and the clerk's 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 whenever the guardian cannot, with due diligence, be served within the state.

## **MHL §81.27 - Commission to guardian**

Within five days after the guardian has filed a designation under section 81.26 of this article, and has filed a bond in accordance with the provisions of section 81.25 of this article unless the court has waived the filing of the bond or unless the guardian's appointment is pursuant to section 81.23 of this article, the clerk of the court shall issue a commission which shall state:

1. the title of the proceeding and the name, address, and telephone number of the incapacitated person; and
2. the name, address, and telephone number of the guardian and the specific powers of such guardian; and
3. the date when the appointment of the guardian was ordered by the court; and
4. the date on which the appointment terminates if one has been ordered by the court.

## **MHL §81.30 - Initial report**

(a) No later than ninety days after the issuance of the commission to the guardian, the guardian shall file with the court that appointed the guardian a report in a form prescribed by the court stating what steps the guardian has taken to fulfill his or her responsibilities. Proof of completion of the guardian education requirements under section 81.39 of this article must be filed with the initial report.

(b) To the extent that the guardian has been granted powers with respect to property management, the initial report shall contain a verified and complete inventory of the property and financial resources over which the guardian has control, the location of any will executed by the incapacitated person, the guardian's plan, consistent with the court's order of appointment, for the management of such property and financial resources, and any need for any change in the powers authorized by the court.

(c) To the extent that the guardian has been granted powers regarding personal needs, the initial report shall contain a report of the guardian's personal visits with the incapacitated person, and the steps the guardian has taken, consistent with the court's order, to provide for the personal needs of that person, the guardian's plan, consistent with the court's order of appointment, for providing for the personal needs of the incapacitated person, a copy of any directives in accordance with sections two thousand nine hundred sixty-five and two thousand nine hundred eighty-one of the public health law, any living will, and any other advance directive, and any necessary change in the powers authorized by the court. The plan for providing for the personal needs of the incapacitated person shall include the following information:

1. the medical, dental, mental health, or related services that are to be provided for the welfare of the incapacitated person;
2. the social and personal services that are to be provided for the welfare of the incapacitated person;
3. any physical, dental, and mental health examinations necessary to determine the medical, dental, and mental health treatment needs; and
4. the application of health and accident insurance and any other private or government benefits to which the incapacitated person may be entitled to meet any part of the costs of medical, dental, mental health, or related services provided to the incapacitated person.

(d) If the initial report sets forth any reasons for a change in the powers authorized by the court, the guardian shall make an application within ten days of the filing of the report on notice to the persons entitled to such notice in accordance with paragraph one of subdivision (d) of section 81.07 of this article for such relief. If

the initial report sets forth any reasons for a change in the powers authorized by the court and the guardian fails to act under this subdivision, any person entitled to commence a proceeding under this article may petition the court for a change in such powers on notice to the guardian and the persons entitled to such notice in accordance with paragraph one of subdivision (d) of section 81.07 of this article for such relief.

(e) The guardian shall send a copy of the initial report to the incapacitated person by mail unless the court orders otherwise pursuant to paragraph seven of subdivision (b) and paragraph nine of subdivision (c) of section 81.15 of this article.

(f) The guardian shall send a copy of the initial report to the court evaluator and counsel for the incapacitated person at the time of the guardianship proceeding unless the court orders otherwise pursuant to paragraph seven of subdivision (b) and paragraph nine of subdivision (c) of section 81.15 of this article.

(g) The guardian shall send a copy of the initial report to the court examiner.

(h) If the incapacitated person resides in a facility, the guardian shall send a duplicate of such report to the chief executive officer of that facility.

(i) If the incapacitated person resides in a mental hygiene facility, the guardian shall send a duplicate of such report to the mental hygiene legal service of the judicial department in which the residence is located.

## **MHL §81.32 – Examination of initial and annual reports**

(a) **Examination of reports generally.** 1. Initial report. Within thirty days of the filing of the initial report, the initial report filed by a guardian under this article shall be examined. 2. Annual examination. Within thirty days after the filing of the annual report of the preceding year, the annual reports filed by guardians under this article shall be examined to determine the condition and care of the incapacitated person, the finances of the incapacitated person, and the manner in which the guardian has carried out his or her duties and exercised his or her powers.

(b) **Examiners.** The presiding justice of the appellate division in each department, or a justice of the supreme court or a special referee designated by a majority of the justices of the appellate division in each department at the request of the presiding justice, shall examine, or cause to be examined by persons designated by the presiding justice or the justices as examiners, all such reports.

(c) **Failure to report.** 1. If a guardian fails to file his or her initial or annual report, the person authorized to examine the report shall demand that the guardian file the report within fifteen days after the service of the demand upon him or her. A copy of the demand shall be served upon the guardian or his or her resident agent by certified mail. 2. Upon failure to comply with such demand, the court, may upon the motion of the court examiner, enter an order requiring compliance with the demand and may deny or reduce the amount of the compensation of the guardian, or remove the guardian pursuant to section 81.35 of this article absent a showing that the guardian has acted in good faith.

(d) **Incomplete report.** 1. If the person authorized to examine the report is of the opinion that a more complete or satisfactory report

should be filed, the person authorized to examine the report shall demand that the guardian file a revised report or proof of any item in the report. A copy of the demand shall be served upon the guardian or his or her resident agent by certified mail. 2. Upon failure to comply with such demand, the court, may upon the motion of the court examiner, enter an order requiring compliance with the demand and may deny or reduce the amount of the compensation of the guardian, or remove the guardian pursuant to section 81.35 of this article absent a showing that the guardian has acted in good faith.

(e) **Duty of examiners.** The person examining the report may examine the guardian and other witnesses under oath and reduce their testimony to writing. The person examining the report, on five days notice to the guardian, shall file a report in the form and manner prescribed by the order appointing the examiner.

(f) **Expenses of examination.** The expenses of the examination shall be payable out of the estate of the incapacitated person examined if the estate amounts to five thousand dollars or more, or, if the estate amounts to less than this sum, by the county treasurer of the county or, within the city of New York by the comptroller of the city of New York, out of any court funds in his or her hands.



## **MHL §81.35 - Removal of guardian**

Upon motion, the court appointing a guardian may remove such guardian when the guardian fails to comply with an order, is guilty of misconduct, or for any other cause which to the court shall appear just. Notice of motion shall be served on the guardian and persons entitled to receive notice pursuant to paragraph three of subdivision (c) of section 81.16 of this article. The motion may be made by the person examining initial and annual reports pursuant to section 81.32 of this article, or by any person entitled to commence a proceeding under this article, including the incapacitated person. The court may fix the compensation of any attorney or person prosecuting the motion. It may compel the guardian to pay personally the costs of the motion if granted.

## **MHL §81.36 - Discharge or modification of powers of guardian**

(a) The court appointing the guardian shall discharge such guardian, or modify the powers of the guardian where appropriate, if it appears to the satisfaction of the court that:

1. the incapacitated person has become able to exercise some or all of the powers necessary to provide for personal needs or property management which the guardian is authorized to exercise;
2. the incapacitated person has become unable to exercise powers necessary to provide for personal needs or property management which the guardian is not authorized to exercise;
3. the incapacitated person has died; or
4. for some other reason, the appointment of the guardian is no longer necessary for the incapacitated person, or the powers of the guardian should be modified based upon changes in the circumstances of the incapacitated person.

(b) The application for relief under this section may be made by the guardian, the incapacitated person, or any person entitled to commence a proceeding under this article.

(c) There shall be a hearing on notice to the persons entitled to notice pursuant to paragraph three of subdivision (c) of section 81.16 of this article. The court may for good cause shown dispense with the hearing provided that an order of modification increasing the powers of the guardian shall set forth the factual basis for dispensing with the hearing. If the incapacitated person or his or her counsel raises an issue of fact as to the ability of the incapacitated person to provide for his or her personal needs or property management and demands a jury trial of such issue, the court shall order a trial by jury thereof.

(d) To the extent that relief sought under this section would terminate the guardianship or restore certain powers to the incapacitated person, the burden of proof shall be on the person objecting to such relief. To the extent that relief sought under this section would further limit the powers of the incapacitated person, the burden shall be on the person seeking such relief.

(e) If the guardian is discharged because the incapacitated person becomes fully able to care for his or her property, the court shall order that there be restored to such person the property remaining in the hands of the guardian. If the incapacitated person dies, the guardian shall provide for such person's burial or other disposition the cost of which shall be borne by the estate of the incapacitated person.

## **MHL §81.37 - Resignation or suspension of powers of guardian**

(a) The court appointing a guardian may allow the guardian to resign or may suspend the powers of the guardian.

(b) Where a guardian is engaged in war service as defined in section seven hundred seventeen of the surrogate's court procedure act, the court, upon motion by the guardian or any other person and upon such notice as the court may direct, may suspend the powers of the guardian until further order of the court. If the suspension will leave no other person acting as guardian, the motion shall seek the appointment of a successor. When the suspended guardian becomes able to serve, he or she may be reinstated by the court upon motion and such notice as the court may direct. If the suspended guardian is reinstated, the court shall thereupon discharge his or her successor, who may be required to account, and make any other order as justice requires.

## **MHL §81.38 - Vacancy in office**

(a) **Interim guardian.** A vacancy created by the death, removal, discharge, resignation, or suspension of a guardian shall be filled by the court. Upon the application of any person entitled to commence a proceeding under this article, the court shall appoint an interim guardian who shall serve for a period of ninety days or until a final accounting is filed and a successor guardian is appointed by the court. The powers and duties of the interim guardian shall be specifically enumerated in the order of appointment. The court may require service of the order to show cause seeking the appointment of an interim guardian on any persons it deems appropriate.

(b) **Standby guardian.** At the time of the appointment of the guardian, the court may in its discretion appoint a standby guardian to act in the event that the guardian shall resign, die, be removed, discharged, suspended, or become incapacitated. The court may also appoint an alternate and/or successive alternates to the standby guardian, to act if the standby guardian shall resign, die, be removed, discharged, suspended, or become incapacitated. Such standby guardian, or the alternate in the event of the standby guardian's resignation, death, removal, discharge, suspension or adjudication of incapacity, shall without further proceedings be empowered to immediately assume the duties of office immediately upon resignation, death, removal, discharge, suspension or adjudication of incapacity, of the guardian or the standby guardian as set forth in the order of appointment, subject only to the confirmation of appointment by the court sixty days following the assumption of the duties of the office. Before confirming the appointment of a standby guardian, the court may conduct a hearing in accordance with the provisions set forth in section 81.11 of this article upon petition of any person entitled to commence a proceeding under this article.

## **MHL §81.44 – Proceedings upon the death of an incapacitated person**

(a) When used in this section:

1. "Statement of death" means a statement, in writing and acknowledged, containing the caption and index number of the guardianship proceeding, and the name and address of the last residence of the deceased incapacitated person, the date and place of death, and the names and last known addresses of all persons entitled to notice of further guardianship proceedings pursuant to paragraph three of subdivision (c) of section 81.16 of this article including the nominated and/or appointed personal representative, if any, of the deceased incapacitated person's estate.

2. "Personal representative" means a fiduciary as defined by subdivision twenty-one of section 103 of the surrogate's court procedure act to whom letters have been issued and who is authorized to marshal the assets of the decedent's estate.

3. "Public administrator" means a public administrator within or without the city of New York, as established by articles eleven and twelve of the surrogate's court procedure act, or the chief fiscal officer of a county eligible to be appointed an administrator, pursuant to section twelve hundred nineteen of the surrogate's court procedure act. The role of the public administrator under this section is that of a stake holder or escrowee only, and the public administrator shall not, by virtue of this section, have a substantive role in administering the estate.

4. "Statement of assets and notice of claim" means a written statement under oath containing the caption and index number of the guardianship proceeding, the name and address of the incapacitated person at the time of death, a description of the nature and approximate value of guardianship property at the time of the incapacitated person's death; with the approximate amount of any claims, debts or liens against the guardianship property, including but not limited to medicaid liens, tax liens and administrative costs, with an itemization and approximate amount of such costs and claims or liens.

(b) Unless otherwise directed by the court, all papers required to be served by this section shall be served by regular mail and by certified mail return receipt requested.

(c) Within twenty days of the death of an incapacitated person, the guardian shall:

1. serve a copy of the statement of death upon the court examiner, the duly appointed personal representative of the decedent's estate, or, if no personal representative has been appointed, then upon the personal representative named in the decedent's will or any trust instrument, if known, upon the local department of social services and upon the public administrator or the chief fiscal officer of the county in which the guardian was appointed, and

2. file the original statement of death together with proof of service upon the personal representative and/or public administrator or chief fiscal officer, as the case may be, with the court which issued letters of guardianship.

(d) Within one hundred fifty days of the death of the incapacitated person, the guardian shall serve upon the personal representative of the decedent's estate or where there is no personal representative, upon the public administrator or chief fiscal officer, a statement of assets and notice of claim, and, except for property retained to secure any known claim, lien or administrative costs of the guardianship pursuant to subdivision (e) of this section, shall deliver all guardianship property to:

1. the duly appointed personal representative of the deceased incapacitated person's estate, or

2. the public administrator or chief fiscal officer given notice of the filing of the statement of death, where there is no personal representative.

3. any dispute as to the size of the property retained shall be determined by the surrogate court having jurisdiction of the estate.

(e) Unless otherwise ordered by the court upon motion by the guardian on notice to the person or entity to whom guardianship property is deliverable, and the court examiner, the guardian may retain, pending the settlement of the guardian's final account, guardianship property equal in value to the claim for administrative costs, liens and debts.

(f) Within one hundred fifty days of the incapacitated person's death, the guardian shall file his or her final report with the clerk of the court of the county in which annual reports are filed, and thereupon proceed to judicially settle the final report upon such notice as required by subdivision (c) of section 81.33 of this article, including notice to the person or entity to whom the guardianship property was delivered. There shall be no extension of the time to file a final report except by order of the court.

(g) Upon failure of the guardian to comply with subdivisions (d) or (f) of this section, any person entitled to notice of this proceeding may file a petition to compel the guardian to account, to suspend and/or remove the guardian, and to take and state the guardian's account.



## **CPLR §2214 – Motion papers; service; time**

(a) **Notice of motion**. A notice of motion shall specify the time and place of the hearing on the motion, the supporting papers upon which the motion is based, the relief demanded and the grounds therefor. Relief in the alternative or of several different types may be demanded.

(b) **Time for service of notice and affidavits**. A notice of motion and supporting affidavits shall be served at least eight days before the time at which the motion is noticed to be heard. Answering affidavits shall be served at least two days before such time. Answering affidavits and any notice of cross-motion, with supporting papers, if any, shall be served at least seven days before such time if a notice of motion served at least sixteen days before such time so demands; whereupon any reply or responding affidavits shall be served at least one day before such time.

(c) **Furnishing papers to the court**. Each party shall furnish to the court all papers served by him. The moving party shall furnish at the hearing all other papers not already in the possession of the court necessary to the consideration of the questions involved. Where such papers are in the possession of an adverse party, they shall be produced by him at the hearing on notice served with the motion papers. Only papers served in accordance with the provisions of this rule shall be read in support of, or in opposition to, the motion, unless the court for good cause shall otherwise direct.

(d) **Order to show cause**. The court in a proper case may grant an order to show cause, to be served in lieu of a notice of motion, at a time and in a manner specified therein. An order to show cause against a state body or officers must be served in addition to service upon the defendant or respondent state body or officers upon the attorney general by delivery to an assistant attorney general at an office of the attorney general in the county in which venue of the action is

designated or if there is no office of the attorney general in such county, at the office of the attorney general nearest such county.

**22 NYCRR §202.7(f) - Calendaring of motions; uniform notice of motion form; affirmation of good faith**

(f) Any application for temporary injunctive relief, including but not limited to a motion for a stay or a temporary restraining order, shall contain, in addition to the other information required by this section, an affirmation demonstrating there will be significant prejudice to the party seeking the restraining order by giving of notice. In the absence of a showing of significant prejudice, the affirmation must demonstrate that a good faith effort has been made to notify the party against whom the temporary restraining order is sought of the time, date and place that the application will be made in a manner sufficient to permit the party an opportunity to appear in response to the application. This subdivision shall not be applicable to orders to show cause or motions in special proceedings brought under Article 7 of the Real Property Actions and Proceedings Law, nor to orders to show cause or motions requesting an order of protection under section 240 of the Domestic Relations Law, unless otherwise ordered by the court.

## **CPLR §2219 - Time and form of order**

(a) **Time and form of order determining motion, generally.** An order determining a motion relating to a provisional remedy shall be made within twenty days, and an order determining any other motion shall be made within sixty days, after the motion is submitted for decision. The order shall be in writing and shall be the same in form whether made by a court or a judge out of court. An order determining a motion made upon supporting papers shall be signed with the judge's signature or initials by the judge who made it, state the court of which he or she is a judge and the place and date of the signature, recite the papers used on the motion, and give the determination or direction in such detail as the judge deems proper. Except in a town or village court or where otherwise provided by law, upon the request of any party, an order or ruling made by a judge, whether upon written or oral application or sua sponte, shall be reduced to writing or otherwise recorded.

(b) **Signature on appellate court order.** An order of an appellate court shall be signed by a judge thereof except that, upon written authorization by the presiding judge, it may be signed by the clerk of the court or, in his absence or disability, by a deputy clerk.

## **CPLR §2220 - Entry and filing of order; service**

(a) **Entry and filing.** An order determining a motion shall be entered and filed in the office of the clerk of the court where the action is triable, and all papers used on the motion and any opinion or memorandum in writing shall be filed with that clerk unless the order dispenses with such filing. When a statute or civil practice rule requires such filing and entry in a county other than that in which the order was made, the party prevailing on the motion shall file the order and the papers used on the motion with the proper clerk after receiving them. If a party fails to file any papers required to be filed under this subdivision, the order may be vacated as irregular, with costs.

(b) **Service.** Service of an order shall be made by serving a copy of the order.

## **SAMPLE MOTIONS**

### **Outstanding Annual Reports**

- Demand letter
- Notice of Motion
- Attorney's Affidavit in Support of Motion
- Proposed Order

### **Neglect/Abandonment of Duties and Failure to File Reports**

- Letter to Judge with Order to Show Cause
- Order to Show Cause
- Examiner's Affidavit in Support of Order to Show Cause
- Mailing Affirmation of Order to Show Cause with Cover Letter to Judge
- Proposed Order with Notice of Settlement and Cover Letter to Judge

### **Dead Incapacitated Person - Guardian**

#### **Noncompliance with MHL §81.44**

- Notice of Motion
- Court Examiner's Affidavit in Support of Motion
- Order Appointing Referee to Review and Report on Final Report of Guardian
- Order Approving Final Report, Discharging Guardian, Terminating Guardianship, and Awarding Fees to Court Examiner/Referee (Order of Discharge)

### **Abhorrent Misconduct of Guardian - Injunctive Relief Sought**

- Order to Show Cause
- Attorney's Affidavit in Support of Order to Show Cause
- Order Removing Guardian of Property of Incapacitated Person and Appointing Temporary Guardian of Property

### **Dead Incapacitated Person - Informal Request for Termination**

- Letter to Judge
- Proposed Order Discharging Guardian and Terminating Guardianship Proceeding

**Outstanding**  
**Annual Reports**

**STEPHANIE M. WHIDDEN**

**ATTORNEY & COUNSELOR AT LAW**

POST OFFICE BOX 249  
WEST HURLEY, NEW YORK 12491  
PHONE: (845) 338-6500  
FAX: (845) 338-8498

EXPRESS MAIL ADDRESS  
90 ST. JAMES STREET  
KINGSTON, NY 12401

July 25, 2011

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**and**  
**VIA REGULAR MAIL**

[REDACTED]  
[REDACTED] P  
[REDACTED]  
[REDACTED]

RE: [REDACTED], Incapacitated Person  
Index No. [REDACTED]

Dear [REDACTED]

Pursuant to Article 81 of the Mental Hygiene Law, as Guardian over the property of [REDACTED], you were required to provide to me the Annual Report of Guardian for 2009 by May of 2010 and the Annual Report of Guardian for 2010 by this May of 2011.

Letters were sent to you on September 3, 2010 and February 1<sup>st</sup>, 2011, requesting these Annual Reports.

To date, neither of these Annual Reports have been filed in the Ulster County Clerk's Office or mailed to me. Please complete these Annual Reports as soon as possible. You may forward the report to my office for filing in the Ulster County Clerk's Office, or you may file it with the clerk's office directly and provide my office with a date-stamped copy.

If I am not in receipt of these Reports by August 31, 2011, I will move the Court for the appropriate relief. Pursuant to Section 81.32 of the Mental Hygiene Law, I may seek:

- (a) Compliance with the requisite filing; and/or
- (b) Removal of the Guardian(s); and/or
- (c) Sanctions.



[REDACTED]  
July 25, 2011  
Page 2

If you have any questions, please contact my office.

Very truly yours,

STEPHANIE M. WHIDDEN

SMW/pm

cc: [REDACTED]

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF ULSTER

-----X  
In the matter of the application of  
Stephanie M. Whidden, Examiner of  
Initial and Annual Reports, to compel  
[REDACTED], guardian of  
the property, and [REDACTED],  
guardian of the person, to file  
reports in the guardianship  
proceeding of

NOTICE OF MOTION

Index No. [REDACTED]

Assigned Judge:  
Acting Supreme Court  
Justice Mary M. Work

[REDACTED]  
an incapacitated person.

-----X  
PLEASE TAKE NOTICE that upon the annexed Affidavit of  
Stephanie M. Whidden, Examiner of the initial and annual  
reports of guardians of incapacitated persons pursuant to  
Article 81 of the Mental Hygiene Law in the County of  
Ulster, appointed by the Appellate Division of the Supreme  
Court in and for the Third Judicial Department, sworn to  
November 15, 2011, and upon the Order and Judgment  
Appointing Guardian of the Property executed by the  
Honorable Thomas J. Spargo, Supreme Court Justice in and for  
Ulster County, New York, on December 7, 2004, and the Order  
executed on December 3, 1993, by the Honorable Lawrence E.  
Kahn, then Supreme Court Justice, in and for Albany County,  
New York, the undersigned will move this Court at an IAS  
Term thereof to be held on the 2<sup>nd</sup> day of December, 2011, at  
9:30 a.m., or as soon thereafter as the matter may be heard,  
at the Ulster County Surrogate's Court located at 244 Fair  
Street, Kingston, New York, for an Order pursuant to Article  
81.35 of the Mental Hygiene Law, to compel Attorney [REDACTED]  
[REDACTED], guardian of the property, and [REDACTED]

█ guardian of the person, to file the outstanding reports due, (specifically █ has failed to provide the Annual Reports of Guardian of the property for 2009 and 2010, and █ has failed to file any reports in this guardianship proceeding; and if these reports are not immediately forthcoming, an Order shall be sought to remove these guardians and appoint a new Guardian in their place and stead; and for reasonable compensation to the undersigned in an amount commensurate with the services rendered; and for such other and further relief as to this Court may seem just and proper.

Please take further notice that these motion papers are served upon you at least seventeen (17) days in advance of the return date of the within motion. Any answering affidavits are to be served upon the undersigned at least seven (7) days prior to the return date of the within motion pursuant to Section 2214(b) of the Civil Practice Law and Rules. If service of answering affidavits is by mail, such answering affidavits must be served upon the undersigned at least twelve (12) days prior to the return date pursuant to Section 2103 (b) (2) of the Civil Practice Law and Rules.

Dated: West Hurley, New York  
November 15, 2011

Yours, etc.

---

STEPHANIE M. WHIDDEN, ESQ.  
P.O. Box 249  
West Hurley, New York 12491  
Telephone: (845) 338-6500

TO:

[REDACTED]

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF ULSTER

-----X  
In the matter of the application of  
Stephanie M. Whidden, Examiner of  
initial and annual reports, to compel  
[REDACTED], Guardian  
of the property, and [REDACTED]  
Guardian of the person, to file  
reports in the guardianship  
proceeding of

ATTORNEY'S AFFIDAVIT  
IN SUPPORT OF MOTION

Index No.: [REDACTED]

[REDACTED]  
an Incapacitated Person  
-----X

STATE OF NEW YORK:  
COUNTY OF ULSTER : ss:

Stephanie M. Whidden, being duly sworn, deposes and says:

(1) I am an attorney admitted to practice in the State of  
New York.

(2) In 1999, and each year thereafter through and including  
2011, the Appellate Division of the Third Judicial Department of  
the New York State Supreme Court has appointed me Examiner of the  
initial and annual reports of guardians of incapacitated persons  
pursuant to Article 81 of the Mental Hygiene Law in Ulster  
County, New York. As such, I am fully aware of all of the facts  
and circumstances set forth herein.

(3) This motion is made to compel [REDACTED]  
[REDACTED], guardian of the property, to submit the outstanding Annual  
Reports of Guardian for 2009 and 2010, and [REDACTED] guardian  
of the person, to submit the Final Report as guardian of the  
property, and the Annual Reports for 2005 through and including  
2010.

(4) Attached hereto as Exhibit "A" is a copy of an Order  
executed on October 29, 1993, by the Honorable Lawrence K. Kahn,

Supreme Court Justice in and for Albany County, New York, determining that [REDACTED] was in need of the appointment of a guardian over her person and property, and appointing her mother [REDACTED] as guardian of both her person and her property.

(5) Attached hereto and made a part hereof as Exhibit "B" is a copy of the Order and Judgment Appointing Guardian of the Property executed by the Honorable Thomas J. Spargo, Supreme Court Justice in and for Ulster County, New York, on December 7, 2007, wherein [REDACTED], was appointed Guardian of the property of [REDACTED]. By this Order, [REDACTED] was relieved of her duties as guardian of the property and was to provide a Final Report to [REDACTED] within sixty (60) days.

(6) On October 28, 2008, I received from the Honorable Mary M. Work, Acting Supreme Court Justice in and for Ulster County, New York, an Order dated June 17, 2008, approving payment to Kingston attorney [REDACTED], for his services as Court Evaluator in the [REDACTED] guardianship proceedings. A copy of the Order and Affirmation of Attorney [REDACTED] are attached as Exhibit "C".

(7) Prior to receipt of this Court Order from Judge Work, I had no record of the existence of the Auer guardianship proceedings. I contacted Judge Work's Chambers to inquire as to the nature of the guardianship and learned that Judge Work had only recently been assigned to the case and had little knowledge

about it.

(8) I requested the file from the Ulster County Clerk's Office which was voluminous dating back to 1993. I obtained copies of all of the Court Orders with regard to the guardianship and learned the following:

10/15/1993 Judge Lawrence E. Kahn appointed [REDACTED] guardian of [REDACTED] pursuant to Article 81 of the Mental Hygiene Law. The copy of this Order is attached hereto as Exhibit "A".

7/2/2002 Judge Spargo granted to [REDACTED] permission to settle a lawsuit.

8/3/2004 Judge Spargo appointed [REDACTED], Evaluator to determine if [REDACTED] should continue as guardian of the person and property of [REDACTED].

11/18/2004 A Hearing before Judge Spargo occurred.

12/7/2004 Judge Spargo terminated [REDACTED] as guardian of the property of her daughter. She was replaced by [REDACTED] who was to file a bond of \$1,000,000.00, and obtain training and certification from OCA. [REDACTED] was to provide a full accounting to [REDACTED] within sixty (60) days - [REDACTED] remained guardian over the person, and was to file Annual Reports. A copy of this Order is attached hereto as Exhibit "B".

(9) On October 28, 2008, I wrote to [REDACTED] and requested that she provide to me the outstanding reports. I provided to her the Initial Report and Annual Report of Guardian forms. I also requested a copy of the accounting which she was to provide to [REDACTED]. A copy of said letter is attached as Exhibit "D".

(10) The same date, on October 28, 2008, I wrote a letter to

[REDACTED] advising of my research and requesting that he provide to me the Initial Report and the Annual Reports of Guardian for 2005, 2006 and 2007.

(11) On December 3, 2008, [REDACTED] contacted me by telephone to discuss the case. He promised to provide the outstanding reports to me by January of 2009.

(12) On January 25, 2010, I sent another letter to [REDACTED] [REDACTED] requesting the outstanding reports.

(13) On February 12, 2010, I received a letter from [REDACTED] [REDACTED] advising the reports would be forthcoming by March 31, 2010. I wrote him to clarify which reports were outstanding and to request his assistance with obtaining compliance from [REDACTED] [REDACTED] with her reporting requirements.

(14) On March 31, 2010, [REDACTED] contacted me and discussed the guardianship estate in great detail. He also sent a letter to me via E-mail. A copy of an accountant's report was forwarded to me as a starting place so that I might understand the assets which comprised the guardianship estate.

(15) On April 22, 2010, I received from [REDACTED] the proposed Initial Report of Guardian and Annual Report for 2005 for my review. After careful review of these reports which indicated an estate with a value in excess of Fifty-Six Million Dollars and No Cents (\$56,000,000.00), I contacted [REDACTED] [REDACTED] and explained the errors in the reporting procedure, and requested corrections thereto.

(16) On May 17, 2010, May 18, 2010, and May 26, 2010,



[REDACTED] s Office was contacted to determine the whereabouts of the outstanding revised reports, and the Annual Reports for 2006, 2007 and 2008.

(17) Finally, on August 6, 2010, I received the Initial Report and the Annual Reports for the years 2005, 2006, 2007 and 2008 from [REDACTED]. The balance on hand at the end of 2008 was \$55,589.914.25. I prepared my reports thereon and served them on [REDACTED], together with a request for the outstanding Annual Report for 2009. A copy of my letter to [REDACTED] dated September 3, 2010, is attached hereto as Exhibit "D".

(18) By letter dated February 1, 2011, I sent a reminder to [REDACTED] that the Annual Report for 2010 was due in May of 2011, a copy of which letter is attached hereto as Exhibit "D".

(19) On July 25, 2011, I sent a letter via certified mail, return receipt requested to [REDACTED] requesting the Annual Reports for 2009 and 2010, and advising that failure to timely provide these reports would result in motion practice by me to compel the filing of these reports. A copy of this letter is attached hereto as Exhibit "D".

(20) On September 2, 2011, I spoke with [REDACTED] office and was advised he was sending to me the Annual Reports for 2009 and 2010. A letter dated September 2, 2011, was received from [REDACTED] several days later advising the reports would be forthcoming in the immediate future, a copy of

which letter is attached as Exhibit "D".

(21) Over the last two (2) months, several telephone messages have been left at [REDACTED] office inquiring as to the whereabouts of the promised reports.

(22) To date, the outstanding Annual Reports for 2009 and 2010 have not been received from [REDACTED]. No reports have ever been received from [REDACTED].

(23) It is herewith requested that [REDACTED] be compelled to file the outstanding Annual Reports for 2009 and 2010, or he be removed as guardian of the property and that a new Guardian be appointed in his place and stead. It is further requested that [REDACTED] be compelled to file her final accounting as guardian of the property and her Annual Reports as guardian of the Person for 2005, 2006, 2007, 2008, 2009 and 2010.

(24) Your affiant has expended six (6) hours of time to prepare the demand letters, review the file on record with the Ulster County Clerk's Office, and prepare this motion. My hourly fee is \$200.00 per hour. Upon completion of this matter it is estimated a total of at least eight (8) hours will be expended for a sum of ONE THOUSAND SIX HUNDRED DOLLARS AND NO CENTS (\$1,600.00).

WHEREFORE, it is respectfully requested that:

- (a) The Guardian [REDACTED], be compelled to file the outstanding Annual Reports for 2009 and 2010, with the failure to do so to result in his removal.
- (b) [REDACTED] be removed as the Guardian the person of [REDACTED], and that this Court appoint a new Guardian as the Guardian of the person of the incapacitated person.



At an IAS Term of the Supreme Court of the State of New York, held in Ulster County and for the County of Ulster, at the Ulster County Courthouse, Kingston, New York, on the \_\_\_ day of December, 2011.

PRESENT: Hon. Mary M. Work,  
Acting Supreme Court Justice

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF ULSTER

-----X  
In the matter of the application of  
Stephanie M. Whidden, Examiner of  
initial and annual reports, for  
removal of [REDACTED]  
Guardian of the property of

PROPOSED ORDER

Index No. [REDACTED]  
RJI #: [REDACTED]

[REDACTED]  
an Incapacitated Person

-----X

A motion having been duly made before this Court by Notice of Motion dated November 15, 2011, and upon the affidavit sworn to on November 15, 2011, by Stephanie M. Whidden, Esq., the Examiner of initial and annual reports of guardians of incapacitated persons pursuant to Article 81 of the Mental Hygiene Law in the County of Ulster, to remove the existing Guardian [REDACTED] and appoint a new Guardian in his place and for reasonable compensation to the Examiner for legal services rendered herein, and the motion return date being November 10, 2011, and the Court having reviewed the Notice of Motion and Affidavit upon which it is based, and the motion having been duly and properly served.

NOW, THEREFORE, on the motion of Stephanie M. Whidden, Esq.,  
it is

ORDERED AND ADJUDGED, that the Guardian [REDACTED] of the Property of [REDACTED], an incapacitated person, is hereby removed from said position effective immediately, and it is further

ORDERED AND ADJUDGED, that the said [REDACTED] shall take no action of a fiscal component that in any way effects the assets of [REDACTED] or to spend any of the funds or commit or encumber any of the funds of the [REDACTED] and it is further

ORDERED AND ADJUDGED, that the Court hereby appoints \_\_\_\_\_ as Guardian of the property of [REDACTED] effective immediately, and it is further

ORDERED AND ADJUDGED, that the new Guardian shall/shall not obtain a Surety Bond in the amount of \$ \_\_\_\_\_ for the faithful discharge of his/her duties herein, and it is further

ORDERED AND ADJUDGED, that the new Guardian shall/shall not be required to attend any courses or educational programs for this guardianship, and it is further

ORDERED AND ADJUDGED, that this guardianship shall continue indefinitely or until further Order of this Court, and, it is further

ORDERED AND ADJUDGED, that the new Guardian is hereby required to faithfully discharge the duties of this guardianship and fiduciary duty imposed upon him/her herein and to follow all of the orders and directions of this Court in respect to this guardianship, and it is further

ORDERED AND ADJUDGED, that the Guardian shall obtain a commission by filing his/her Bond under Section 81.25 and his/her Designation under Section 81.26 of the Mental Hygiene Law and the Ulster County Clerk shall thereafter issue a Commission to said Guardian, and it is further

ORDERED AND ADJUDGED, that [REDACTED] shall turn over all of the assets, resources and records and property of [REDACTED] including any bills, receipts, checks, expenditures, deposits, withdrawals or any other documentation for said assets or indebtedness of [REDACTED] to the new Guardian of the Property of [REDACTED] and it is further

ORDERED AND ADJUDGED, that all financial institutions, individuals or any entity holding any assets of [REDACTED] shall forthwith transfer said assets pursuant to this Order to \_\_\_\_\_, and the new Guardian shall have all the power and authority necessary to manage the property and financial affairs of [REDACTED] as outlined in Section 81.21 of the Mental Hygiene Law and shall have all the authority to handle the personal needs of [REDACTED] as outlined in Section 81.22 of the Mental Hygiene Law and such other authority as this Court may grant and order in the future, and it is further

ORDERED AND ADJUDGED, that the said [REDACTED] shall not make any withdrawals or expend any monies of [REDACTED] in any manner whatsoever nor shall she encumber, lien or charge any account or otherwise cause the [REDACTED] to become indebted in any manner whatsoever so that all authority

concerning the finances of [REDACTED] shall rest solely with the newly appointed Guardian of the property, and it is further

ORDERED AND ADJUDGED, that all present and future bills and charges be submitted to \_\_\_\_\_ as the new Guardian of the property in order for him/her to determine whether the same shall be honored and paid on behalf of [REDACTED] and it is further

ORDERED AND ADJUDGED, that \_\_\_\_\_ as the new Guardian of the property shall have the authority to pay for the care and maintenance of [REDACTED] and to make any financial decisions that he/she deems in the best interest of [REDACTED] and it is further

ORDERED AND ADJUDGED, that the new Guardian of the Property, shall be entitled to commissions pursuant to Section 81.28 of the Mental Hygiene Law, and it is further

ORDERED AND ADJUDGED, that the new Guardian of the property, shall be entitled to commissions pursuant to Section 81.28 of the Mental Hygiene Law, and it is further

ORDERED AND ADJUDGED, that the new Guardian of the property shall file a copy of this Order and shall personally serve it upon [REDACTED] and read it to [REDACTED] and it is

ORDERED AND ADJUDGED, that the new Guardian of the property shall file an initial report with this Court and provide a copy to the Examiner within 90 days of his/her appointment herein and an Annual Report for each and every calendar year ending December 31<sup>st</sup> of said year on or before May of the following year, and it

is further

ORDERED AND ADJUDGED, that this Court shall grant the sum of \$ \_\_\_\_\_ as and for legal fees for the Examiner for the legal work provided herein.

Dated: December \_\_, 2011

\_\_\_\_\_  
HON. MARY M. WORK,  
Acting Supreme Court Justice, in  
and for Ulster County, New York

E N T E R E D:

\_\_\_\_\_



**Neglect/Abandonment**  
**of Duties and Failure**  
**to File Reports**

**STEPHANIE M. WHIDDEN**

**ATTORNEY & COUNSELOR AT LAW**

POST OFFICE BOX 249  
WEST HURLEY, NEW YORK 12491  
E-mail: lawyersmw@aol.com  
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EXPRESS MAIL ADDRESS  
90 ST. JAMES STREET  
KINGSTON, NY 12401

September 23, 2015

**VIA HAND DELIVERY**

Honorable James P. Gilpatric,  
Supreme Court Justice  
Ulster County Courthouse  
285 Wall Street  
Kingston, NY 12401

RE: [REDACTED], an Incapacitated Person  
Index No.: [REDACTED]

Dear Judge Gilpatric:

It is my understanding that you are the Duty Judge for the month of September 2015. Accordingly, I am submitting to you the enclosed Order to Show Cause with Court Examiner's Affidavit in the above-referenced [REDACTED] guardianship proceeding.

As you may recall, I am the Court Examiner of initial and annual reports of guardians of Incapacitated Persons under Article 81 of the Mental Hygiene Law. In this capacity, it has come to my attention that [REDACTED] the Guardian of the Person and Property of [REDACTED] has not been paying the bills for [REDACTED], the assisted living residence in which she resides, has failed to complete the Medicaid application on her behalf, is not turning over the monthly pension, annuity, and social security payments received on behalf of [REDACTED] to [REDACTED] and has placed [REDACTED] in danger of being forced to leave [REDACTED] due to non-payment of its invoice.

The purpose of this Order to Show Cause is to demand an immediate full and complete accounting by [REDACTED] of the monies/assets received on behalf of [REDACTED] and to request his removal as guardian due to his inability to take the steps necessary to care for [REDACTED]

I enclose an original and one copy of the Order to Show Cause. I would ask the Court to fill in the return date, state whether personal appearances are necessary, set forth the manner

Honorable James P. Gilpatric  
September 23, 2015  
Page 2

in which service should be accomplished, and the date by which that service should be completed.

Please have a member of your staff contact me when the conformed copy is ready to be picked up so that I may commence the appropriate service.

Please note I have not enclosed the \$45.00 motion fee because I am a Court appointed fiduciary.

If the Court has any questions, please do not hesitate to contact me.

Respectfully submitted,

Stephanie M. Whidden, Esq.

SMW:HL  
Enc.

SUPREME COURT  
COUNTY OF ULSTER: STATE OF NEW YORK

-----X  
In the Matter of the Application of  
Stephanie M. Whidden, Esq., Court  
Examiner for Removal of [REDACTED]  
As Guardian of the Person and  
Property of

ORDER TO SHOW CAUSE

INDEX NO.: [REDACTED]

ASSIGNED JUDGE:  
HON. JAMES P. GILPATRIC,  
SUPREME COURT JUSTICE

[REDACTED]  
an Incapacitated Person

-----X  
Upon reading and filing the annexed Affidavit of Stephanie M. Whidden, Esq., Court Examiner, sworn to on September 23, 2015, and upon the Order and Judgment Appointing Guardian of the Person and Property executed on April 12, 2013, by the Honorable Michael H. Melkonian, Acting Supreme Court Justice in and for Ulster County, New York, and upon all the pleadings and proceedings heretofore had herein:

LET [REDACTED], guardian of the person and property of [REDACTED] a person determined to be an incapacitated person, and all other interested parties and their legal representatives hereinafter set forth, SHOW CAUSE on the \_\_\_ day of \_\_\_\_\_, 2015, at \_\_\_\_\_ or as soon hereafter as counsel can be heard, before the Honorable James P. Gilpatric, the Supreme Court Justice in and for Ulster County, New York, now assigned to this guardianship proceeding, at the Ulster County Courthouse located at 285 Wall Street, Kingston, New York, WHY an Order should not be granted,

(1) Directing [REDACTED] to immediately provide a full, complete, and accurate accounting for all funds/assets received, invested, and disbursed as Guardian of the Property of [REDACTED] since January 1, 2014, in the format of the Annual Report of Guardian due for the calendar year 2014, and an Annual Report

personal and property management needs. [REDACTED] the nephew of [REDACTED], was appointed the Guardian of the Person and Property of [REDACTED] for an indefinite period of time. [REDACTED] was required to obtain a bond in the amount of \$261,500.00 which represented the assessed value of [REDACTED] [REDACTED] single family residence located at [REDACTED] [REDACTED] (\$161,500.00), and liquid assets of \$100,000.00, (see page 8 of the Order). The Guardian was required to file his Initial Report within 90 days of issuance of the Commission, and the Annual Report was to be filed during the month of May each year thereafter in the form dictated by MHL Section 81.31. A copy of said Order is attached hereto as Exhibit "A".

(4) On or about May 21, 2013, the Surety Bonding Company of America issued to [REDACTED] a bond in the amount of \$261,500.00, a copy of which is attached as Exhibit "B". The Commission was issued by the Ulster County Clerk to [REDACTED] [REDACTED] on May 29, 2013, a copy of which is attached as Exhibit "C".

(5) This Affidavit is submitted to obtain immediate and permanent relief pursuant to MHL Sections 81.32(c) and 81.35. Specifically, as provided for by MHL Sections 81.32(c)(1) and (2), the Court may enter an Order requiring compliance with the demand and provide for removal of the guardian pursuant to MHL

Section 81.35 if the guardian fails to comply with said Order. Furthermore, pursuant to MHL Section 81.35, the Court may remove a guardian guilty of misconduct, or for any other cause which to the Court shall appear just. An Order to Show Cause was selected as the procedural vehicle to commence the instant motion both to shorten the return time due to exigent circumstances and to allow the Court to determine the parties to be served with this application, and the manner in which service of the application should occur.

(6) The urgent circumstance in this guardianship proceeding is the unpaid invoices of [REDACTED] assisted living residence in which [REDACTED] resides, the failure of the guardian to complete a Medicaid application in order to obtain financial assistance on behalf of [REDACTED] the failure of the guardian to sell the residence of [REDACTED] and the failure of the guardian to turn over to [REDACTED] the monthly social security and pension payments received on behalf of [REDACTED]

(7) By this motion, your affiant also seeks a Court Order compelling [REDACTED] to document all monies received and all monies spent since January 1, 2014, in his capacity as Guardian of the Person and Property of [REDACTED]

(8) One year following issuance to him of his Commission, on or about May 21, 2014, [REDACTED] filed the Initial Report

of Guardian, a copy of which is attached hereto as Exhibit "D".

The guardianship estate consisted of the following:

[REDACTED] account # [REDACTED]	\$ 8,235.18
[REDACTED] # [REDACTED]	<u>\$109,246.49</u>
	\$117,481.64
A pension valued at which provides \$608.34 per month	\$145,393.26
Personal Property including a [REDACTED] e with a total value of	\$ 8,450.00
Residence at [REDACTED] [REDACTED] (assessed value)	<u>\$161,500.00</u>
TOTAL ESTATE VALUE	\$432,824.90

(9) On May 21, 2013, your affiant sent a letter to the guardian with the Initial Report and Annual Reports advising of his responsibility to prepare and file these reports. On February 10, 2014, your affiant called and sent an email to [REDACTED] regarding the whereabouts of the Initial Report. A letter was sent on February 27, 2014, requesting the Initial Report. On April 19, 2013, by certified mail return receipt requested, a letter was sent to [REDACTED] advising that if the Initial Report was not received by May 16, 2014, I would seek Court intervention. The request for the Annual Report for 2013 was also requested.

(10) On February 1, 2015, your affiant sent a letter to the guardian requesting the Annual Reports<sup>s</sup> for both 2013 and 2014.

(11) On February 23, 2015, your affiant was contacted by a case worker for the [REDACTED] the residence in which [REDACTED] then resided. The case worker advised that rent had not been paid for three (3) months and a forty five (45) day eviction notice had been sent to [REDACTED] as her guardian. On August 27, 2015, your affiant spoke with the Senior Staff Attorney for the Ulster County Department of Social Services which had been the Temporary Guardian of the Person and Property of [REDACTED] prior to the appointment of [REDACTED] as guardian. Your affiant was advised that [REDACTED] had income and assets sufficient to fund her residency at the [REDACTED]. The question posed was "where is the money?"

(12) By letter dated February 27, 2015, your affiant requested the reassignment of the guardianship proceeding from Judge Melkonian. On March 11, 2015, this case was reassigned to the Honorable James P. Gilpatric, Supreme Court Justice in and for Ulster County, New York, and a compliance conference was scheduled to occur on March 26, 2015, at which the presence of all interested parties was required. The interested parties were:

Your affiant, Stephanie M. Whidden, Esq.

[REDACTED]  
Ulster County Mental Hygiene Legal Services

[REDACTED], Ulster County Department of Social Services

[REDACTED], Court Evaluator



(13) On March 5, 2015, the [REDACTED] sent a copy of its invoice to your affiant, a copy of which is attached hereto as Exhibit "E".

(14) On March 26, 2015, a conference took place before Judge Gilpatric at which all of the above-referenced "interested parties" were present. At this conference, [REDACTED] advised the Court of the following:

- A. He had submitted the Medicaid application earlier that week - he was missing the 2010 and 2011 bank account statements to complete the application. He intended to create an irrevocable trust for pre-paid funeral arrangements.
- B. At the end of 2013, approximately \$70,000.00 remained in the guardianship account.
- C. He had intended to list the [REDACTED] residence on the real estate market. However, a structural inspection determined the home to be uninhabitable. He had an offer to purchase the residence for \$18,000.00.
- D. [REDACTED]'s income was insufficient to pay for a "private pay" assisted living program. She would need to be transferred from [REDACTED] to an assisted living program which accepted Medicaid.

(15) At the conference, [REDACTED] provided to your affiant the outstanding Annual Report of Guardian for 2013. On March 30, 2015, your affiant prepared the Examiner's Report on Annual Report of Guardian for 2013, a copy of which is attached hereto as Exhibit "F". According to the Annual Report of Guardian for 2013, the guardianship assets as of December 31, 2013, consisted of the [REDACTED] residence with the assessed value

of \$153,500.00, a retirement pension valued at \$143,568.24, personal property valued at \$8,450.00, and bank accounts totaling \$74,051.66.

(16) To assist [REDACTED] with the sale of the [REDACTED] residence which required Court authorization, your affiant prepared an Order Approving Retention of Attorney and Appraisal of Real Estate, which Order was executed on April 13, 2015, by Judge Gilpatric, a copy of which Order is attached hereto as Exhibit "G". Pursuant to said Order, [REDACTED] was authorized to obtain an appraisal of the [REDACTED] residence and retain [REDACTED]. Upon information and belief, [REDACTED] [REDACTED] has not yet contacted [REDACTED], to commence any part of this real estate sales transaction process.

(17) On June 29, 2015, your affiant was contacted by [REDACTED] [REDACTED] of [REDACTED] [REDACTED], the assisted living residence to which [REDACTED] was transferred on April 28, 2015, from the [REDACTED]. [REDACTED] advised your affiant that funds were needed for [REDACTED] account.

(18) By letter dated July 13, 2015, sent to [REDACTED] via certified mail, return receipt requested, and via regular mail, your affiant inquired as to the status of the real property transaction to create funds to pay for [REDACTED] residency, the status of the Medicaid application, and inquired

when the Annual Report of Guardian for 2014 would be forthcoming. No response was ever received.

(19) Between July 13, 2015, and August 10, 2015, your affiant was contacted numerous times by the staff of [REDACTED] who were attempting to find out when [REDACTED] would be paid for [REDACTED] residency.

(20) On August 10, 2015, your affiant requested a conference before Judge Gilpatric to address the issue of [REDACTED] funds and outstanding invoice with [REDACTED]. A copy of this letter was sent to the "interested parties" set forth in Paragraph 12 hereinabove.

(21) On August 11, 2015, a conference was scheduled before Judge Gilpatric to occur on August 20, 2015, at 10:00 a.m. The appearance of all of the above-mentioned "interested parties" was required. A letter was sent via fax and email on August 11, 2015, to all interested parties including the [REDACTED] legal counsel [REDACTED]. A copy of said letter is attached hereto as Exhibit "H".

(22) On August 17, 2015, [REDACTED] from [REDACTED] [REDACTED] sent to your affiant an Admission and Billing form signed by [REDACTED] as guardian for [REDACTED] [REDACTED] together with a ledger indicating a balance of \$3,702.00 was due as of August 1, 2015. Four months and 3 days rent of \$1,234.00, (\$5,059.39), were offset by one payment of \$1,357.39

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

TO:

[REDACTED]

[REDACTED]

SUPREME COURT  
COUNTY OF ULSTER: STATE OF NEW YORK

-----X  
In the Matter of the Application of  
Stephanie M. Whidden, Esq., Court  
Examiner, for Removal of [REDACTED]  
As Guardian of the Person and  
Property of

[REDACTED]  
an Incapacitated Person

EXAMINER'S AFFIDAVIT IN  
SUPPORT OF ORDER TO SHOW  
CAUSE

INDEX NO.: [REDACTED]

ASSIGNED JUDGE:  
HON. JAMES P. GILPATRICK,  
SUPREME COURT JUSTICE

-----X  
STATE OF NEW YORK:  
COUNTY OF ULSTER : SS:

I, Stephanie M. Whidden, Esq., hereby depose under the  
penalty of perjury as follows:

(1) I am an attorney duly licensed to practice law in the  
State of New York with a mailing address of P.O. Box 249, West  
Hurley, New York 12491.

(2) Pursuant to Orders of the Appellate Division of the  
Supreme Court, Third Judicial Department of the State of New  
York, I have been the Examiner of Initial and Annual Reports of  
Guardians under Article 81 of the Mental Hygiene Law in Ulster  
County, New York, for the years 1999 through and including 2015.

(3) By Decision, Order, and Judgment Appointing Guardian  
of the Person and Property executed on April 12, 2013, by the  
Honorable Michael H. Melkonian, Acting Supreme Court Justice in  
and for Ulster County, New York, [REDACTED] was determined to  
be a person requiring the appointment of a guardian for her

of Guardian for the period between January 1, 2015, through August 31, 2015; and

(2) If within thirty (30) days from the date of this Order, [REDACTED] fails to provide said full, complete, and accurate Annual Reports for the periods between January 1, 2014, through and including December 31, 2014, and January 1, 2015, through and including August 31, 2015, with attached documentation, including, but not limited to, canceled checks, check ledgers, invoices, bills and paid receipts, bank statements, and brokerage account statements, [REDACTED] shall be removed as Guardian of the Property of [REDACTED] and

(3) Awarding and allowing to Stephanie M. Whidden, Esq., Court Examiner, her fee for legal services and reimbursement of expenses; and

(4) Determining the rights and interests of any of the interested parties herein; and

(5) Providing for such other, further, and different relief as the Court may consider to be just, equitable, and proper herein; and it is further

ORDERED, that service of a copy of this Order to Show Cause with all supporting papers, upon the following persons and/or attorneys for parties by regular mail postmarked no later than September \_\_, 2015, be deemed good and sufficient service:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Dated: Kingston, New York  
September \_\_, 2015

E N T E R :

---

Hon. James P. Gilpatric,  
Supreme Court Justice in and  
for Ulster County, New York

**CERTIFICATION BY ATTORNEY**

The undersigned, an attorney licensed to practice law in the State of New York, CERTIFIES that, to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of the within pleading or the contentions therein, are not frivolous as defined Subsection (c) of Section 130-1-.1 of the Rules of the Chief Administrator (22 NYCRR).

Dated: Kingston, New York  
September 23, 2015

---

Stephanie M. Whidden, Esq.



**STEPHANIE M. WHIDDEN**

**ATTORNEY & COUNSELOR AT LAW**

POST OFFICE BOX 249  
WEST HURLEY, NEW YORK 12491  
E-mail: lawyersmw@aol.com  
PHONE: (845) 338-6500  
FAX: (845) 338-8498

EXPRESS MAIL ADDRESS  
90 ST. JAMES STREET  
KINGSTON, NY 12401

September 25, 2015

**VIA HAND DELIVERY**

Honorable James P. Gilpatric,  
Supreme Court Justice  
Ulster County Courthouse  
285 Wall Street  
Kingston, NY 12401

RE: [REDACTED] an Incapacitated Person  
Index No.: [REDACTED]

Dear Judge Gilpatric:

Pursuant to the Order to Show signed by Your Honor on September 24, 2015, all interested parties were served by regular mail on September 24, 2015. Enclosed please find the Affidavit of Mailing.

Respectfully submitted,

Stephanie M. Whidden, Esq.

SMW:HL  
Enc.

SUPREME COURT  
COUNTY OF ULSTER: STATE OF NEW YORK

-----X  
In the Matter of the Application of  
Stephanie M. Whidden, Esq., Court  
Examiner for Removal of [REDACTED]  
As Guardian of the Person and  
Property of

ORDER TO SHOW CAUSE

INDEX NO.: [REDACTED]

ASSIGNED JUDGE:  
HON. JAMES P. GILPATRIC,  
SUPREME COURT JUSTICE

[REDACTED],  
an Incapacitated Person  
-----X

Upon reading and filing the annexed Affidavit of Stephanie M. Whidden, Esq., Court Examiner, sworn to on September 23, 2015, and upon the Order and Judgment Appointing Guardian of the Person and Property executed on April 12, 2013, by the Honorable Michael H. Melkonian, Acting Supreme Court Justice in and for Ulster County, New York, and upon all the pleadings and proceedings heretofore had herein:

LET [REDACTED] guardian of the person and property of [REDACTED] a person determined to be an incapacitated person, and all other interested parties and their legal representatives hereinafter set forth, SHOW CAUSE on the 2 day of October, 2015, at 10:00am as soon hereafter as counsel can be heard, before the Honorable James P. Gilpatric, the Supreme Court Justice in and for Ulster County, New York, now assigned to this guardianship proceeding, at the Ulster County Courthouse located at 285 Wall Street, Kingston, New York, WHY an Order should not be granted,

(1) Directing [REDACTED] to immediately provide a full, complete, and accurate accounting for all funds/assets received, invested, and disbursed as Guardian of the Property of [REDACTED] since January 1, 2014, in the format of the Annual Report of Guardian due for the calendar year 2014, and an Annual Report

of Guardian for the period between January 1, 2015, through August 31, 2015; and

(2) If within thirty (30) days from the date of this Order, [REDACTED] fails to provide said full, complete, and accurate Annual Reports for the periods between January 1, 2014, through and including December 31, 2014, and January 1, 2015, through and including August 31, 2015, with attached documentation, including, but not limited to, canceled checks, check ledgers, invoices, bills and paid receipts, bank statements, and brokerage account statements, [REDACTED] shall be removed as Guardian of the Property of [REDACTED] and

(3) Awarding and allowing to Stephanie M. Whidden, Esq., Court Examiner, her fee for legal services and reimbursement of expenses; and

(4) Determining the rights and interests of any of the interested parties herein; and

(5) Providing for such other, further, and different relief as the Court may consider to be just, equitable, and proper herein; and it is further

ORDERED, that service of a copy of this Order to Show Cause with all supporting papers, upon the following persons and/or attorneys for parties by regular mail postmarked no later than September 25, 2015, be deemed good and sufficient service:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

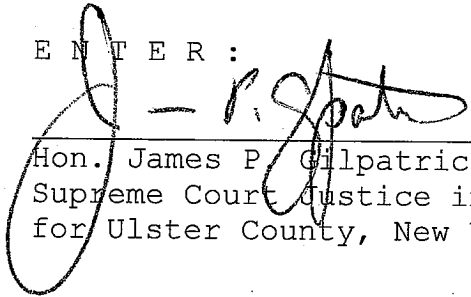
STEPHANIE M. WHIDDEN  
TORNEY & COUNSELOR AT LAW  
POST OFFICE BOX 249  
WEST HURLEY, NY 12491  
PHONE: (845) 338-6500  
FAX: (845) 338-8498

[REDACTED]

Dated: Kingston, New York  
September 24, 2015

\* **PERSONAL APPEARANCES ARE  
REQUIRED ON THE RETURN DATE. ALL  
ORIGINAL PAPERS MUST BE FILED IN THE  
COURT CLERK'S OFFICE**

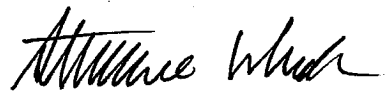
ENTER:

  
Hon. James P. Gilpatric,  
Supreme Court Justice in and  
for Ulster County, New York

**CERTIFICATION BY ATTORNEY**

The undersigned, an attorney licensed to practice law in the State of New York, CERTIFIES that, to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of the within pleading or the contentions therein, are not frivolous as defined Subsection (c) of Section 130-1-.1 of the Rules of the Chief Administrator (22 NYCRR).

Dated: Kingston, New York  
September 23, 2015



Stephanie M. Whidden, Esq.

EPHANIE M. WHIDDEN  
ORNEY & COUNSELOR AT LAW  
POST OFFICE BOX 249  
WEST HURLEY, NY 12491  
PHONE: (845) 338-6500  
FAX: (845) 338-8498

SUPREME COURT  
COUNTY OF ULSTER: STATE OF NEW YORK  
-----X

In the Matter of the Application of  
Stephanie M. Whidden, Esq., Court  
Examiner for Removal of [REDACTED]  
As Guardian of the Person and  
Property of  
[REDACTED]  
an Incapacitated Person.

AFFIDAVIT OF MAILING  
INDEX NO.: [REDACTED]  
ASSIGNED JUDGE:  
HON. JAMES P. GILPATRIC,  
SUPREME COURT JUSTICE

-----X  
STATE OF NEW YORK:  
COUNTY OF ULSTER : SS:

I, Henry R. Liu, state and affirm as follows:

(a) I am not a party to the action, am over 18 years of age and reside at Saugerties, New York.

(b) That on September 24, 2015, I served a true copy of the Order to Show Cause with Court Examiner's Affidavit with Exhibits on [REDACTED]  
[REDACTED] Court Evaluator, [REDACTED] and [REDACTED], guardian, by mailing the same in a sealed envelope, with postage prepaid thereon in a post office or official depository of the United States Postal Service within the State of New York, addressed to the last known addresses of the addressees as indicated below:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Henry R. Liu

**STEPHANIE M. WHIDDEN**

**ATTORNEY & COUNSELOR AT LAW**

POST OFFICE BOX 249  
WEST HURLEY, NEW YORK 12491  
E-mail: lawyersmw@aol.com  
PHONE: (845) 338-6500  
FAX: (845) 338-8498

EXPRESS MAIL ADDRESS  
90 ST. JAMES STREET  
KINGSTON, NY 12404

November 20, 2015

**VIA HAND DELIVERY**

Honorable James P. Gilpatric,  
Supreme Court Justice  
Ulster County Courthouse  
285 Wall Street  
Kingston, NY 12401

RE: [REDACTED] an Incapacitated Person  
Index No.: [REDACTED]  
Notice of Settlement: November 30, 2015, 10:00 a.m.

Dear Judge Gilpatric:

Per Your Honor's request, as a follow-up to the Hearing which occurred on October 2, 2015, enclosed please find the proposed Order with Notice of Settlement.

I wish to bring to the Court's attention the issue of the guardian's commission. At the hearing on October 2, 2015, the guardian [REDACTED] provided his Annual Report of Guardian for 2014. The Report reveals that [REDACTED] paid himself a commission of \$2,845.00 for his services rendered in 2013 pursuant to SCPA §2309. He did not pay himself a commission for his services in 2014. At the hearing, [REDACTED] stated his intention of waiving the right to receive the 2014 and 2015 guardian commissions. I enclose herewith my Examiner's Report on the Annual Report for 2014.

[REDACTED] also indicated he would provide a Final Report to me by October 20, 2015, which he has failed to do. Accordingly, I have indicated in the proposed Order that the Final Report is due by December 5, 2015. I have included a provision in the proposed Order pursuant to MHL §81.33(e) whereby I am appointed Referee to review and report on the Final Report.

Honorable James P. Gilpatric

November 20, 2015

Page 2

If the Court wishes any revisions of the proposed Order, please advise. I enclose a self-addressed, stamped envelope for the return to me of a conformed copy of the Order so that I may serve the parties with Notice of Entry of Order.

Respectfully submitted,

Stephanie M. Whidden, Esq.

SMW:HL

Enc.

cc:

[REDACTED]

SUPREME COURT  
COUNTY OF ULSTER: STATE OF NEW YORK  
-----X

In the Matter of the Application of  
Stephanie M. Whidden, Esq., Examiner  
of Reports, for Removal of [REDACTED]  
[REDACTED] as Guardian of the Person  
and Property of

NOTICE OF SETTLEMENT

INDEX NO.: [REDACTED]

[REDACTED]  
an Incapacitated Person

-----X  
An Order of which the attached is a true copy will be  
presented for settlement to the Honorable James P. Gilpatric,  
Supreme Court Justice in and for Ulster County, State of New  
York, on November 30, 2015.

Dated: November 20, 2015

\_\_\_\_\_  
Stephanie M. Whidden, Esq.  
P.O. Box 249  
West Hurley, NY 12491  
Tel.: (845) 338-6500

**CERTIFICATION OF ATTORNEY**

To the best of my knowledge, information and belief, formed  
after an inquiry reasonable under the circumstances, the  
presentation of this Notice of Settlement and the contentions  
herein are not frivolous as defined in Subsection (c) of  
Section 130-1.1.

\_\_\_\_\_  
STEPHANIE M. WHIDDEN, ESQ.

cc: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



At an IAS Term of the Supreme Court of the State of New York, held in Ulster County and for the County of Ulster, at the Ulster County Courthouse, Kingston, New York, on the \_\_\_ day of \_\_\_\_\_, 2015.

P R E S E N T :

Honorable James P. Gilpatric,  
Supreme Court Justice

SUPREME COURT  
COUNTY OF ULSTER: STATE OF NEW YORK  
-----X

In the Matter of the Application of  
Stephanie M. Whidden, Esq., Examiner  
of Reports, for Removal of [REDACTED]  
[REDACTED] as Guardian of the Person  
and Property of

[REDACTED]  
an Incapacitated Person

ORDER REMOVING [REDACTED]  
[REDACTED], AS GUARDIAN OF  
PERSON AND PROPERTY OF  
[REDACTED]  
INCAPACITATED PERSON

INDEX NO.: [REDACTED]

-----X

Upon the Affidavit of Stephanie M. Whidden, Esq., Examiner of Initial and Annual Reports of Guardians under Article 81 of the Mental Hygiene Law in Ulster County, New York, sworn to on September 23, 2015, an Order to Show Cause having been executed by the Honorable James P. Gilpatric, Supreme Court Justice in and for Ulster County, New York, on September 24, 2015, directing [REDACTED] Guardian of the Person and Property of [REDACTED], an Incapacitated Person, to Show Cause on October 2, 2015, at 10:00 a.m. before Judge Gilpatric why [REDACTED] should not be removed as guardian of the person and property of [REDACTED] due to his failure to provide a complete and

accurate Annual Report for 2014; and Stephanie M. Whidden, Esq. having provided proof of service of said Order to Show Cause with supporting Affidavit on all interested parties; and a hearing on the Order to Show Cause having occurred on October 2, 2015, at which were present Stephanie M. Whidden, Esq., [REDACTED]

[REDACTED], Court Evaluator, [REDACTED]

[REDACTED], [REDACTED]

[REDACTED]

[REDACTED]

having voluntarily consented to his removal as guardian of the person and property of [REDACTED] and to the appointment of [REDACTED]

[REDACTED], [REDACTED]

[REDACTED] as Guardian of the Person of [REDACTED]

[REDACTED], and [REDACTED] as Guardian of the

Property of [REDACTED] effective immediately.

NOW, THEREFORE, upon the Motion of Stephanie M. Whidden, Esq., Court Examiner, it is hereby

ORDERED AND ADJUDGED, that [REDACTED] Guardian of the person and property of [REDACTED] an Incapacitated Person, is hereby removed from said position effective as of the date of this Order; and it is further

ORDERED AND ADJUDGED, that [REDACTED] shall take no further action that in any way affects the assets of [REDACTED] including any bank accounts, brokerage accounts, real

property, or any other assets which belong to the guardianship estate of [REDACTED] but are titled in the name of [REDACTED] [REDACTED] nor shall he spend, commit, or encumber, in any way, the funds, real property, or other assets of [REDACTED] and it is further

ORDERED AND ADJUDGED, that [REDACTED] be appointed as Guardian of the Property of [REDACTED] effective immediately with all of the powers over the property of [REDACTED] [REDACTED] as set forth in the Order and Judgment Appointing Guardian of the Person and Property executed on April 12, 2013, by the Honorable Michael H. Melkonian, Supreme Court Justice in and for Ulster County, New York; and it is further

ORDERED AND ADJUDGED, that the requirement that the Guardian [REDACTED] obtain a surety bond is hereby waived; and it is further

ORDERED AND ADJUDGED, that [REDACTED] shall continue as Guardian of the Property of [REDACTED] indefinitely until further Order of the Court; and it is further

ORDERED AND ADJUDGED, that [REDACTED] is hereby required to faithfully discharge her duties in this guardianship and the fiduciary duty imposed upon her herein and to follow all of the orders and directions of this Court with respect to this guardianship; and it is further

ORDERED AND ADJUDGED, that [REDACTED] shall designate the Clerk of the Court to receive process as specified under §81.26 of the Mental Hygiene Law; and it is further

ORDERED AND ADJUDGED, that [REDACTED] shall obtain a commission by filing her Designation under §81.26 of the Mental Hygiene Law, and the Ulster County Clerk shall issue a Commission to [REDACTED]; and it is further

ORDERED AND ADJUDGED, that [REDACTED] shall turn over all of the assets, resources, and records and property of [REDACTED] the Incapacitated Person, including any bills, receipts, checks, expenditures, deposits, withdrawals, or any other documentation for said assets or indebtedness of [REDACTED] to [REDACTED], as Guardian of the Property of [REDACTED]; and it is further

ORDERED AND ADJUDGED, that on or before December 5, 2015, [REDACTED] shall provide to Stephanie M. Whidden, Esq., who is hereby appointed Referee pursuant to Mental Hygiene Law §81.33(e) the Final Report of Guardian for the period between January 1, 2015, and December 4, 2015, with the supporting documentation such as canceled checks, check ledgers, invoices, bills, paid receipts, bank statements, brokerage account statements, annuity statements, deeds, 1099s, W-2s, and income tax returns; and it is further

ORDERED AND ADJUDGED, that all financial institutions, individuals, or any entity holding any assets of the Incapacitated Person [REDACTED], whether in the name of the guardianship estate of [REDACTED], [REDACTED] as guardian for [REDACTED], or [REDACTED] individually, shall forthwith transfer said assets pursuant to this Order to [REDACTED] [REDACTED] Guardian of the Property of [REDACTED] and it is further

ORDERED AND ADJUDGED, that the authority of [REDACTED] [REDACTED] the new Guardian of the Property, shall extend to any and all property of the Incapacitated Person [REDACTED], both real and personal, wheresoever situated and found, irrespective of how said property is titled, and the new Guardian shall have all the power and authority necessary to manage the property and financial affairs of the Incapacitated Person [REDACTED] as outlined in §81.21 of the Mental Hygiene Law and such other authority as this Court may grant and order in the future; and it is further

ORDERED AND ADJUDGED, that [REDACTED] shall not make any withdrawals or expend any monies of [REDACTED], the Incapacitated Person, in any manner whatsoever nor shall he encumber, lien, or charge any account or otherwise cause the Incapacitated Person to become indebted in any manner whatsoever so that all authority concerning the finances of the

Incapacitated Person shall rest solely with [REDACTED], the newly-appointed Guardian of the Property of [REDACTED] and it is further

ORDERED AND ADJUDGED, that all present and future bills and charges be submitted to [REDACTED], as the new Guardian of the Property of [REDACTED], in order for her to determine whether the same shall be honored and paid on behalf of the Incapacitated Person; and it is further

ORDERED AND ADJUDGED, that [REDACTED], as the new Guardian of the Property of [REDACTED], shall have the authority to pay for the care and maintenance of the Incapacitated Person and to make any financial decisions that she deems in the best interest of the Incapacitated Person; and it is further

ORDERED AND ADJUDGED, that the new Guardian of the Property of [REDACTED] shall be entitled to commissions pursuant to §81.28 of the Mental Hygiene Law; and it is further

ORDERED AND ADJUDGED, that the new Guardian of the Property of [REDACTED] shall have a copy of this Order served upon the Incapacitated Person; and it is further

ORDERED AND ADJUDGED, that the new Guardian of the Property of [REDACTED] shall file an Initial Report of Guardian with this Court and a copy to the Examiner Stephanie M. Whidden, Esq. within 90 days of her appointment herein and an Annual Report

for each and every calendar year ending December 31 of said year on or before May of the succeeding year; and it is further

ORDERED AND ADJUDGED, that [REDACTED], in his capacity as [REDACTED] [REDACTED] and his successors and/or delegates be appointed Guardian of the Person of [REDACTED] effective immediately with all the powers over the person of [REDACTED] as set forth in the Order and Judgment Appointing Guardian of the Person and Property executed on April 12, 2013, by Judge Melkonian; and it is further

ORDERED AND ADJUDGED, that Stephanie M. Whidden, Esq., as Court Examiner, may submit an application for payment for her services rendered herein on notice to all interested parties herein.

Dated: \_\_\_\_\_, 2015

\_\_\_\_\_  
Hon. James P. Gilpatric,  
Supreme Court Justice in and  
for Ulster County, New York

E N T E R E D :

\_\_\_\_\_

SUPREME COURT  
COUNTY OF ULSTER: STATE OF NEW YORK  
-----X

In the Matter of the Application of  
Stephanie M. Whidden, Esq., Examiner  
of Reports, for Removal of [REDACTED]  
[REDACTED] as Guardian of the Person  
and Property of

AFFIRMATION OF MAILING

INDEX NO.: [REDACTED]

[REDACTED]  
an Incapacitated Person

-----X  
STATE OF NEW YORK:  
COUNTY OF ULSTER : SS:

I, Henry R. Liu, state and affirm as follows:

(a) I am not a party to the action, am over 18 years of age and reside at Saugerties, New York.

(b) That on November 20, 2015, I served a true copy of the proposed Order Removing [REDACTED], as Guardian of the Person and Property of [REDACTED], Incapacitated Person with Notice of Settlement by mailing the same in a sealed envelope, with postage prepaid thereon in a post office of official depository of the United States Postal Service within the State of New York, addressed to the last known addresses of the addressees as indicated below:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

\_\_\_\_\_  
Henry R. Liu



Dead Incapacitated  
Person - Guardian  
Noncompliance with  
MHL §81.44

SUPREME COURT  
COUNTY OF ULSTER: STATE OF NEW YORK

-----X  
In the Matter of the Application of  
Stephanie M. Whidden, Esq., Examiner  
of Reports, in the Guardianship  
Proceeding of

NOTICE OF MOTION

INDEX NO.: [REDACTED]

[REDACTED]  
an Incapacitated Person,  
(deceased)

-----X  
PLEASE TAKE NOTICE that upon the Affidavit of Stephanie M. Whidden, Esq., Examiner of Initial and Annual Reports of Guardians of Incapacitated Persons in Ulster County, New York, pursuant to Article 81 of the Mental Hygiene Law by Order of the State of New York Supreme Court, Appellate Division Third Judicial Department, sworn to on the 3rd day of December, 2015, due to the death of [REDACTED], an incapacitated person, on February 20, 2015, and upon the Order executed by the Honorable Mary M. Work, Acting Supreme Court Justice in and for Ulster County, New York, on June 8, 2010, pursuant to Mental Hygiene Law Sections 81.36(a)(3), 81.36(b), and 81.44(g), the undersigned will move this Court at an IAS Term thereof to be held on the 21st day of December, 2015, at 9:30 a.m., or as soon thereafter as the matter may be heard before Judge Work at the Ulster County Courthouse located at 285 Wall Street, Kingston, New York, for an Order requiring [REDACTED] the guardian of the person and property of [REDACTED] to file a Final Report accounting for the guardianship estate from January 1, 2015, to date, submit a Statement of Death pursuant to §81.44(a)(1), submit a Statement of Assets and Notice of Claim pursuant to Mental Hygiene Law §81.44(a)(4); and appointing Stephanie M. Whidden, Esq., as Referee to report on the Final Report pursuant to MHL §81.33(e); and awarding to the Court

Examiner compensation in an amount commensurate with the services rendered herein; and for such other and further relief as to this Court may deem just and proper.

Please take further notice that these motion papers are served upon you at least seventeen (17) days in advance of the return date of the within motion. Any answering affidavits are to be served upon the undersigned at least seven (7) days prior to the return date of the within motion pursuant to Section 2214(b) of the Civil Practice Law and Rules. If service of answering affidavits is by mail, such answering affidavits must be served upon the undersigned at least twelve (12) days prior to the return date pursuant to Section 2103 (b) (2) of the Civil Practice Law and Rules.

Dated: Kingston, New York  
December 3, 2015

Yours, etc.

---

Stephanie M. Whidden, Esq.  
Court Examiner  
P.O. Box 249  
West Hurley, NY 12491  
Telephone No.: (845) 338-6500

TO:

[REDACTED]

SUPREME COURT  
COUNTY OF ULSTER: STATE OF NEW YORK

-----X  
In the Matter of the Application of  
Stephanie M. Whidden, Esq., Examiner  
of Reports, in the Guardianship  
Proceeding of

COURT EXAMINER'S  
AFFIDAVIT IN SUPPORT OF  
MOTION

[REDACTED]  
an Incapacitated Person,  
(deceased)

INDEX NO.: [REDACTED]

-----X  
STATE OF NEW YORK:  
COUNTY OF ULSTER : SS:

I, Stephanie M. Whidden, Esq., being duly sworn, deposes  
and says:

(1) I am an attorney admitted to practice in the State of  
New York. Since 1999, through and including 2015, the State of  
New York Supreme Court, Appellate Division Third Judicial  
Department, has appointed me as an Examiner of the Initial and  
Annual Reports of Guardians of Incapacitated Persons in Ulster  
County, New York, pursuant to Article 81 of the Mental Hygiene  
Law. As such, I am fully aware of all of the facts and  
circumstances set forth herein.

(2) It has come to my attention that [REDACTED]  
an incapacitated person, died on February 20, 2015.

(3) I make this Affidavit pursuant to MHL §81.44(g) in  
support of an Order compelling [REDACTED] the guardian of  
the person and property of [REDACTED] to file a Final  
Report with the Ulster County Clerk's Office accounting for the

guardianship estate from January 1, 2015, to date, to submit the Statement of Death required by MHL §81.44(a)(1) and the Statement of Assets and Notice of Claim required by MHL §81.44(a)(4). In addition, pursuant to MHL §81.33(d), your affiant seeks appointment as the Referee to review and report to the Court upon said Final Report of [REDACTED].

(4) As a result of an Order to Show Cause by [REDACTED] [REDACTED] the sister of [REDACTED] and mother of the guardian [REDACTED], an Order was signed by the Honorable Mary M. Work, Acting Supreme Court Justice in and for Ulster County, New York, on November 30, 2009, determining [REDACTED] [REDACTED] to be incapacitated and in need of a guardian of her person and property. [REDACTED] and [REDACTED] were appointed as co-guardians of the person and property of [REDACTED].

(5) Attached hereto and made a part hereof as Exhibit "A" is an Order executed by Judge Work on June 8, 2010, wherein [REDACTED] [REDACTED] was appointed the sole guardian of the person and property of [REDACTED]. Apparently, [REDACTED] was unable to secure the requisite bond. [REDACTED] was required to and did subsequently obtain a bond in the amount of \$150,000.00.

(6) The Initial Report of Guardian was filed in the Ulster County Clerk's Office on October 21, 2010. The Initial Report

indicated the guardianship estate consisted of the following assets:

[REDACTED]	
Account # [REDACTED]	
[REDACTED] account	\$ 12,926.18
CD account	\$ 22,002.01
Checking account	\$ 3,202.98
[REDACTED]	
Plan No. [REDACTED]	
Account # [REDACTED]	\$ 32,941.43
CD account # [REDACTED]	\$ 20,602.63
CD account # [REDACTED]	\$ 12,755.25
[REDACTED]	
Account # [REDACTED]	\$ 4,947.05
Account # [REDACTED]	\$ 22,917.35
Account # [REDACTED]	\$ 23,334.36
[REDACTED]	
Account # [REDACTED]	\$103,102.07
[REDACTED]	
Contract # [REDACTED]	\$ 78,533.46
[REDACTED]	
Account # [REDACTED]	\$ 92,833.00
[REDACTED]	
[REDACTED]	
[REDACTED]	\$225,000.00
Real Property (Single Family Residence)	
[REDACTED]	
[REDACTED]	\$ 75,000.00
TOTAL ASSETS REPORTED ON THE INTIAL REPORT	\$730,097.77

The Examiner's Report on the Initial Report was prepared on October 30, 2010, served on November 2, 2010, and filed in the Ulster County Clerk's Office on November 5, 2010. It was later

discovered by your affiant that her Examiner's Report contained a typographical error as to the "present value" of the estate (which was addressed in the Examiner's Report on Annual Report for 2010).

(7) A review of your affiant's file shows an Amended Annual Report of Guardian for the period between October 21, 2010, and December 31, 2011, was filed in the Ulster County Clerk's Office on March 16, 2012. The Examiner's Report on this Amended Annual Report was prepared and served on March 15, 2012, and filed in the Ulster County Clerk's Office on March 19, 2012. This Examiner's Report indicates the Initial Report was prepared prior to the complete administration of the Estate of [REDACTED], the brother of [REDACTED] who was his sole heir. The values set forth in the Initial Report were based on a preliminary List of Assets prepared by [REDACTED] estate attorney. The value of the guardianship estate was subsequently reduced by \$104,681.33 based on the amount of actual proceeds transferred to the guardianship estate by the Estate of [REDACTED]. The value of the guardianship estate as of December 31, 2011, was \$684,692.60.

(8) The Annual Report of Guardian for 2012 sworn to by [REDACTED] on August 6, 2013, and filed in the Ulster County's Clerk's Office on August 14, 2013, indicated the guardianship estate received income of \$67,276.13 and had

disbursements of \$97,973.83. The closing balance of the guardianship estate on December 31, 2012, was \$653,994.90. The Examiner's Report on Annual Report for 2012 was prepared on August 13, 2013, served on August 15, 2013, and filed in the Ulster County Clerk's Office on August 21, 2013.

(9) By Court Order dated July 28, 2014, [REDACTED] was awarded compensation in the amount of \$42,051.00 for his services rendered as guardian of the person and property of [REDACTED] from the inception of the guardianship proceeding through December 31, 2012.

(10) The Annual Report of Guardian for 2013 sworn to by [REDACTED] on August 27, 2014, and filed in the Ulster County Clerk's Office on September 2, 2014, indicated the guardianship estate received income of \$84,324.96 and had disbursements of \$67,488.15. The closing balance of the guardianship estate on December 31, 2013, was \$670,831.71. The Examiner's Report on Annual Report for 2013 was prepared and served on August 29, 2014, and filed in the Ulster County Clerk's Office on September 5, 2014.

(11) The Annual Report of Guardian for 2014 sworn to by [REDACTED] on September 24, 2015, and filed in the Ulster County Clerk's Office on October 21, 2015, indicates the guardianship estate received income of \$15,457.42 and had disbursements of \$150,260.15. The closing balance of the



guardianship estate on December 31, 2014, was \$536,028.98 and consisted of the following assets:

[REDACTED] account	\$ 49,009.73
[REDACTED] account	\$175,499.78
[REDACTED] account	\$311,519.47

In addition, listed under Schedule F #3 are "Present or Future Interests to be acquired by the guardianship estate" as follows:

[REDACTED]

"The values of the Present or Future Interests are not yet known."

Said Annual Report for 2014 is attached hereto and incorporated herein as Exhibit "B". The Examiner's Report on Annual Report for 2014 was prepared on October 20, 2015, served on October 21, 2015, and filed in the Ulster County Clerk's Office on October 23, 2015. The Examiner's Report on Annual Report for 2014 is attached hereto as Exhibit "C".

(12) By Order dated November 2, 2015, your affiant was awarded \$800.00 as compensation for services as Court Examiner by the Honorable Karen K. Peters, Presiding Justice of the State of New York Supreme Court, Appellate Division Third Judicial Department. Said Order was mailed to the guardian for payment on

November 9, 2015. To date, this Order has not been paid.  
Attached as Exhibit "D" are the Order and transmittal letter.

(13) Your affiant is in possession of an obituary indicating [REDACTED] died on February 20, 2015, survived by three (3) heirs: her sisters [REDACTED] and [REDACTED]. A search at the Ulster County Surrogate's Court on December 2, 2015, indicates no estate proceedings of any kind are pending. According to the report of [REDACTED] [REDACTED] died without a will.

WHEREFORE, it is respectfully requested that the guardian [REDACTED] be compelled to pay the aforesaid Appellate Court Order immediately, file a Final Report of Guardian, the Statement of Death, Statement of Assets and Notice of Claim, your affiant be appointed as Referee to review and report on the Final Report of Guardian [REDACTED], your affiant be awarded legal fees for this motion practice, and such other and further relief as the Court may deem just and proper.

\_\_\_\_\_  
Stephanie M. Whidden, Esq.

Sworn to before me this  
3rd day of December, 2015

\_\_\_\_\_  
Notary Public

**CERTIFICATION OF ATTORNEY**

To the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of this affidavit and the contentions herein are not frivolous as defined in Subsection (c) of Section 130-1.1.

---

STEPHANIE M. WHIDDEN, ESQ.

SUPREME COURT  
COUNTY OF ULSTER: STATE OF NEW YORK

-----X

In the Matter of the Application of  
Stephanie M. Whidden, Esq., Examiner  
of Reports, in the Guardianship  
Proceeding of

ORDER APPOINTING REFEREE  
TO REVIEW AND REPORT OF  
FINAL REPORT OF GUARDIAN

INDEX NO.: [REDACTED]

[REDACTED],  
an Incapacitated Person,  
(deceased)

-----X

Upon the Notice of Motion dated December 3, 2015, and the Court Examiner's Affidavit in Support of Motion sworn to by Stephanie M. Whidden, Esq., Examiner of Initial and Annual Reports of Guardians under Article 81 of the Mental Hygiene Law in Ulster County, New York, sworn to on December 3, 2015, and the return date of the motion being December 21, 2015, and upon the Notice of Settlement dated December 30, 2015, with a settlement date of January 8, 2016, and there being no objection thereto.

NOW, THEREFORE, based on the foregoing, it is hereby

ORDERED AND ADJUDGED, that pursuant to MHL §81.33(d) Stephanie M. Whidden, Esq. is hereby appointed Referee to review and report on the Final Report of [REDACTED], guardian of the person and property of [REDACTED] an incapacitated person, deceased on February 20, 2015.

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
Hon. Mary M. Work,  
Acting Supreme Court Justice  
in and for Ulster County, New  
York

SUPREME COURT  
COUNTY OF ULSTER: STATE OF NEW YORK

-----X  
In the Matter of the Application of  
Stephanie M. Whidden, Esq., Examiner  
of Reports, in the Guardianship  
Proceeding of

[REDACTED]

an Incapacitated Person,  
(deceased)

ORDER APPROVING FINAL  
REPORT, DISCHARGING  
GUARDIAN, TERMINATING  
GUARDIANSHIP, AND  
AWARDING FEES TO  
COURT EXAMINER/REFEREE

INDEX NO.: [REDACTED]

-----X  
Upon the Notice of Motion dated December 3, 2015, with  
Court Examiner's Affidavit in Support of Motion sworn to on  
December 3, 2015, by Stephanie M. Whidden, Esq., Examiner of  
Initial and Annual Reports of Guardians of Incapacitated persons  
in Ulster County, New York, pursuant to Article 81 of the Mental  
Hygiene Law, by Order of the State of New York Supreme Court,  
Appellate Division Third Judicial Department, said motion having  
a return date of December 21, 2015, before the Honorable Mary M.  
Work, Acting Supreme Court Justice in and for Ulster County, New  
York, and there being no objection thereto; and upon the Order  
Appointing Referee to Review and Report on the Final Report of  
Guardian executed by Acting Supreme Court Justice Work on  
January 7, 2016, and a Referee's Report on Final Report having  
been prepared and served on all interested parties by Stephanie  
M. Whidden, Esq. on January 22, 2016.

NOW, THEREFORE, based on the foregoing, it is hereby

ORDERED, ADJUDGED, AND DECREED, that the Final Report of  
Guardian [REDACTED], sworn to on December 21, 2015,  
be, and the same hereby is approved; and it is further

ORDERED, ADJUDGED, AND DECREED, that guardian [REDACTED] [REDACTED] is discharged as the guardian of the person and property of his aunt [REDACTED], an incapacitated person who died on February 20, 2015, and it is further

ORDERED, ADJUDGED, AND DECREED, that the guardianship of [REDACTED] is terminated; and it is further

ORDERED, ADJUDGED, AND DECREED, that Stephanie M. Whidden, Esq., as Court Examiner, be compensated pursuant to Mental Hygiene Law Section 81.35 the sum of \$2,130.00 based on seven and one-tenth (7.1) hours of service at the rate of \$300.00 per hour, which service consisted of correspondence and telephone conversations with the guardian, preparation of the within motion, preparation of the Order Appointing Referee on Notice of Settlement, and the subsequent service of Notice of Entry of Order, preparation of the within proposed Order with Notice of Settlement, preparation, service, and filing of the Notice of Entry thereof; and it is further

ORDERED, ADJUDGED, AND DECREED, that Stephanie M. Whidden, as Court Examiner, be paid a Referee's fee in the amount of \$700.00 pursuant to Supreme Court, Appellate Division, Third Judicial Department, Rules of Practice Part 806.17(c)(2).

Date: Kingston, New York  
\_\_\_\_\_, 2016

\_\_\_\_\_  
Hon. Mary M. Work,  
Acting Supreme Court Justice  
in and for Ulster County, New York

Abhorrent  
Misconduct of  
Guardian -  
Injunctive  
Relief Sought

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ULSTER

-----X  
In the Matter of the Guardianship of the  
Property and Person of

[REDACTED]  
an Incapacitated Person

ORDER TO SHOW CAUSE

Index No.: [REDACTED]

RJI No.: [REDACTED]

Assigned Judge: Hon.  
Mary M. Work, Acting  
Supreme Court Justice

-----X  
Upon reading and filing the annexed Affidavit of Stephanie  
M. Whidden, Esq., Court Examiner, sworn to on January 22, 2013,  
and upon the Decision, Order and Judgment executed on August 23,  
2001, by the Honorable E. Michael Kavanagh, Supreme Court Justice  
in and for Ulster County, New York, and upon all the pleadings  
and proceedings heretofore had herein:

LET [REDACTED] guardian of the person and property of  
[REDACTED] a person determined to be an incapacitated person,  
and all other interested parties and their legal representatives  
hereinafter set forth, SHOW CAUSE on the \_\_\_ day of \_\_\_\_\_,  
2013, at 9:30 a.m. or as soon hereafter as counsel can be heard,  
before the Honorable Mary M. Work, Acting Supreme Court Justice  
in and for Ulster County, New York, at the Ulster County  
Courthouse located at 285 Wall Street, Kingston, New York, WHY an  
Order should not be granted,

1) Directing [REDACTED] to immediately provide a full,  
complete and accurate accounting for all funds received,  
invested, and disbursed as guardian of the Property of [REDACTED]



██████████ since June 28, 2006, when ██████████ entered into a Nine Million Dollar and No Cents (\$9,000,000.00) Release and Settlement Agreement; the format of said accounting to be the Property Management Section of the Annual Report form as required by the Decision, Order and Judgment dated August 23, 2001, and by MHL §81.31, which reports were to be filed annually in the month of May for each prior calendar year; and

2) If within thirty (30) days from the date of this Order, ██████████ fails to provide said full, complete and accurate Annual Reports for the periods between June 28, 2006, through and including December 31, 2006, and the following calendar years 2007, 2008, 2009, 2010 and 2011, with attached documentation, including, but not limited to, cancelled checks, check ledgers, invoices, bills and paid receipts, bank statements, brokerage account statements, and deeds, ██████████ shall be removed as Guardian of the Property of ██████████ and

3) Awarding and allowing to Stephanie M. Whidden, Esq., Court Examiner, her fee for legal services and reimbursement of expenses; and

4) Determining the rights and interests of any of the interested parties herein; and

5) Providing for such other, further and different relief as the Court may consider to be just, equitable and proper herein; and

6) Providing for such other and further relief as the Court may deem just, equitable and proper; and it is further

ORDERED, that service of a copy of this Order to Show Cause with all supporting papers, upon the following persons and/or attorneys for parties by regular mail postmarked no later than \_\_\_\_\_, 2013, be deemed good and sufficient service:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

and it is further

ORDERED, that service by overnight delivery of this Order to Show Cause, together with the supporting documents upon which it is based, shall be made on:

[REDACTED]  
Guardian of person and property of [REDACTED]  
[REDACTED]

Dated: \_\_\_\_\_, 2013  
Kingston, New York

E N T E R :

\_\_\_\_\_  
HON. JAMES P. GILPATRIC  
Justice of the Supreme Court  
in and for Ulster County,  
New York

**CERTIFICATION BY ATTORNEY:**

The undersigned, an attorney licensed to practice law in the State of New York, CERTIFIES that, to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the paper, listed below, or the contentions therein, are not frivolous as defined in Subsection (c) of Section 130-1-.1 of the Rules of the Chief Administrator (22 NYCRR).

Dated: West Hurley New York  
January 22, 2013

STEPHANIE M. WHIDDEN, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ULSTER

-----X  
In the Matter of the Guardianship of  
the Property and Person of

ATTORNEY'S AFFIDAVIT  
IN SUPPORT OF ORDER  
TO SHOW CAUSE

Index No.: [REDACTED]  
RJI No.: [REDACTED]

[REDACTED]  
an Incapacitated Person.

-----X  
STATE OF NEW YORK )  
COUNTY OF ULSTER ) ss.:

I, Stephanie M. Whidden, Esq., hereby depose under the  
penalty of perjury as follows:

1) I am an attorney duly licensed to practice law in the  
State of New York with a mailing address of P.O. Box 249, West  
Hurley, New York 12491.

2) Pursuant to Orders of the Appellate Division of the  
Supreme Court, Third Judicial Department of the State of New  
York, I have been the Examiner of Initial and Annual Reports of  
Guardians under Article 81 of the Mental Hygiene Law in Ulster  
County, New York, for the years 1999 through and including 2013.

3) By Decision, Order and Judgment executed on August 27,  
2001, by the Honorable E. Michael Kavanagh, Supreme Court Justice  
in and for Ulster County, New York, [REDACTED] was determined  
to be a person requiring the appointment of a guardian for his  
personal and property management needs. [REDACTED] the  
sister of [REDACTED] was appointed the Guardian of the Person

and Property of [REDACTED] for an indefinite period of time. A bond was dispensed with until further Order of the Court. The Guardian was required to file her Initial Report within 90 days of issuance of the Commission, and the Annual Report was to be filed during the month of May each year thereafter in the form dictated by MHL Section 81.31. A copy of said Order is attached hereto as Exhibit "A".

4) This Affidavit is submitted to obtain immediate and permanent relief pursuant to MHL Section 81.32(d). Specifically, as provided for by MHL Sections 81.32(d)(1) and (2), the Court may enter an Order requiring compliance with the demand for a more complete, accurate and satisfactory report, and provide for removal of the guardian pursuant to MHL Section 81.35 if the guardian fails to comply with said Order. An Order to Show Cause was selected as the procedural vehicle to commence the instant motion both to shorten the return time due to exigent circumstances and to allow the Court to determine the parties to be served with this application, and the manner in which service of the application should occur.

5) The urgent circumstance in this guardianship proceeding is the discovery of the existence of a Release and Settlement Agreement signed by the Guardian [REDACTED] on June 28, 2006, which resulted in a Nine Million Dollar (\$9,000,000.00) settlement. The settlement was paid in a Five Million Dollar

(\$5,000,000.00) lump sum payment plus a Four Million Dollar (\$4,000,000.00) structured settlement in the form of four (4) annuity contracts in the amount of One Million Dollars (\$1,000,000.00) each. These annuity payments result in monthly payments totaling Twenty-Three Thousand Three Hundred Eighty-Three Dollars and Ninety-Two cents (\$23,383.92). These payments are believed to have commenced on August 6, 2006, and will continue for twenty (20) years thereafter. As will be explained in greater detail hereinbelow, **the monies received as a result of this settlement have not been reported in the Annual Reports of Guardian submitted by [REDACTED] for the years 2006 through and including 2011.**

6) The purpose of this motion is to request a Court Order compelling [REDACTED] to document all monies received since June of 2006 as a result of this settlement, all assets purchased and owned by [REDACTED] as Guardian for [REDACTED], and all monies spent by [REDACTED] since 2006, in her capacity as Guardian of the Property of [REDACTED]

7) On or about July 23, 2012, I received from [REDACTED] the proposed Annual Report for 2011 sworn to on July 20, 2012, a copy of which is attached hereto as Exhibit "B". This report indicated the starting value of the estate to be \$25,077.57, no expenses, losses or monies disbursed and an end value of \$6,132.23. Not only did these numbers defy arithmetic logic, but the beginning value was \$11,000.00 greater than the end value for

2010, which had previously been reported as \$14,001.67. By letter dated August 10, 2012, sent to [REDACTED] via certified mail return receipt requested, I returned the original Annual Report and requested her revision thereof to explain the discrepancies in the beginning and end balances, the expenses and lack of income. A copy of said letter is attached hereto as Exhibit "C".

8) Having not received a reply from [REDACTED] after a month, on September 7, 2012, I sent two (2) letters to the Chief Clerk of the Ulster County Supreme Court requesting the reassignment of the case from Judge Kavanagh, who had become an Appellate Court Judge, and a Compliance Conference. Copies of these letters were sent to [REDACTED]. Copies of these letters are attached hereto as Exhibit "D".

9) On September 4, 2012, Claudia Jones, the Chief Clerk of the Ulster County Supreme Court, sent a letter addressed to [REDACTED], [REDACTED], (her Georgia legal counsel), [REDACTED], [REDACTED] (her counsel as petitioner and in the personal injury lawsuit), and your affiant scheduling a status conference in the [REDACTED] guardianship proceeding on December 13, 2012, at 10:30 a.m., before the Honorable Mary M. Work, Acting Supreme Court Justice, at the Ulster County Courthouse in Kingston, New York. A copy of said letter is attached hereto as Exhibit "E". [REDACTED]

[REDACTED] wrote to [REDACTED] by certified mail return receipt



requested on September 13, 2012, advising her to provide the requested documentation, and warned the failure to do so would jeopardize her position as guardian. [REDACTED] wrote to Claudia Jones on September 24, 2012, advising that the legal representation of [REDACTED] concluded once the guardianship was finalized. Copies of these letters are also attached as Exhibit "E".

10) In the end of September 2012, I received from [REDACTED] an Annual Report of Guardian for 2011 sworn to September 19, 2012, a copy of which is attached hereto as Exhibit "F". The starting balance was set forth as \$25,409.60. Expenses totaling \$19,859.49 were set forth with no itemizations other than the hand written entries:

"Home Care Nurse  
Home bills  
Hospital bills  
Mediation  
Doctor appointments  
Frequent blood tests  
Supplies - varies from month to month  
Wound care  
Home therapy 2 times a week"

The end balance was set forth as \$5,550.25 in [REDACTED] a account # [REDACTED]. The only other assets listed were set forth in Personal Property as:

"Stereo                      Wireless head phones  
I-Pod                        CD's  
Laptop                        Bed  
TV                             Hoyer lift  
Nook                          Wheel chair"  
Camera

11) Also, attached to the Annual Report were bills and

receipts as follows:

<u>Invoice, Date &amp; Bill Amount</u>	<u>Payment Amount</u>
[REDACTED] bill dated 3/7/11 - paid 7/7/11 for \$6,839.00	\$1,000.00
[REDACTED] bill dated 1/13/12 for \$12,834.04 - paid 9/32/12	\$1,132.00
Property Tax bill for 2011 dated 11/15/11 for \$2,234.41 - payment date?	\$1,472.39
[REDACTED] dated 4/9/12 for \$800.00 - payment date?	\$ 180.00
[REDACTED] bill dated 3/15/12 - paid with credit card	\$ 67.00
[REDACTED] bill dated 1/24/12 - not clear for whom services were rendered - paid with credit card	\$ 300.00
[REDACTED] taxes - paid 7/9/12	\$ 450.00
[REDACTED] tax bill dated 6/1/12 - last payment 5/4/12	\$ 172.34
[REDACTED] - paid 5/20/12 bill dated 4/25/12	\$ 137.00
[REDACTED] utility bills	\$1,729.76
paid 2/15/12 \$ 144.51	
paid 1/6/12 \$ 383.95	
paid 4/5/12 \$ 142.83	
paid 8/22/12 \$ 495.02	
paid 8/3/11 \$ 246.12	
paid 5/2/12 \$ 169.14	
paid 6/6/12 \$ 148.19	
Total	\$6,640.49

Copies of these bills and statements covering the period between March 7, 2011 and July 9, 2012, are attached as Exhibit "G".

Copies of the miscellaneous checks and receipts which may or may not have been cashed or paid are attached as Exhibit "H".

12) Also, attached to the Annual Report are the following bank statements for the Guardianship Account for [REDACTED]

[REDACTED], Guardian - [REDACTED] # [REDACTED]

Statement Period 7/17/12 through 8/16/12  
Page 1 of 18

Statement Period 6/15/12 through 7/16/12  
Page 2 of 21

Statement Period 4/14/12 through 5/15/12  
Page 1 and half of Page 2 of 18 (the page was torn in half)

Statement Period 2/14/12 through 3/15/12  
Page 2 of 21

Statement Period 1/14/12 through 2/13/12  
Pages 1 and 2 of 17

Statement Period 12/15/11 through 1/13/12  
Pages 1 and 2 of 17

Copies of these pages of the bank statements for the guardianship account are attached as Exhibit "I". [REDACTED] also provided

bank statements for [REDACTED] savings account # [REDACTED]

[REDACTED] in her name only for the period between September 10, 2011 and July 27, 2012. These pages of bank statements indicate

transfers to and from the individual bank account in [REDACTED]

[REDACTED] name and the guardianship account for [REDACTED]

Copies of the pages of the bank statements in the name of [REDACTED]

[REDACTED] alone are attached as Exhibit "J".

13) On December 13, 2012, at 10:30 a.m. I attended the status conference at the Ulster County Courthouse. Despite the fact that I was present at the Courthouse until noon, no other person appeared at the Conference. I was not contacted by any

attorney or [REDACTED] with a request for an adjournment of the Conference.

14) At the Conference I was advised that [REDACTED] an attorney in Boston, Massachusetts, had sent a large package of materials to Claudia Jones, as the Chief Clerk of the Ulster County Supreme Court, by letter dated October 4, 2012. A copy of the package was provided to me. A copy of the package is attached in its entirety as Exhibit "K". Noteworthy in this package are the following documents:

Release and Settlement Agreement signed by [REDACTED] on June 28, 2006, and approved by [REDACTED] on June 29, 2006.

[REDACTED] account check # [REDACTED] in the name of [REDACTED] and [REDACTED] - the title to this account appears to have been transferred into a guardianship account.

[REDACTED] Account Statement for October 1, 2006 through October 31, 2006, in the name of [REDACTED] in the amount of \$872,169.09.

Report of [REDACTED], Guardian, to the [REDACTED] Court dated May 11, 2007, which outlines the Settlement Agreement for Nine Million Dollars (\$9,000,000.00) and the monies which came into the guardianship estate of [REDACTED]

15) Until your affiant reviewed the contents of this package, I had no knowledge whatsoever of the Nine Million Dollar Settlement on June 28, 2006. A quick summary of the Annual Reports submitted by [REDACTED] for the years 2006 through 2010 is as follows:

\* Annual Report for 2005 dated July 6, 2006, indicated an account handled by [REDACTED] in [REDACTED], on behalf of [REDACTED] opened

April 11, 2006, in the amount of \$36,386.81.

- \* **Annual Report for 2006 sworn to on January 6, 2009,** indicated a [REDACTED] Account # [REDACTED] with \$19,104.35 as of January 16, 2007, income of \$19,104.35 received December 14, 2006, monies totaling \$17,517.50 paid throughout 2007 with an ending balance of \$2,300.

In the Examiner's Report, your affiant noted the large influx of cash into the account handled by [REDACTED] in 2006, the payment of lawyers, doctors and the pharmacy totaling in excess of \$17,000.00 and noted the guardian required assistance in preparing her reports due to inadequate financial reporting methods and inconsistent time frames covered in the reports.

- \* **Annual Report for 2007 sworn to December 8, 2008,** indicated a starting balance of \$6,700.00 in the [REDACTED] account # [REDACTED] as of November 18, 2008, no income or assets received and payment of bills\*to [REDACTED] on November 8, 2008, (\$70,000.00), lawyer [REDACTED] (\$6,000.00 on September 12, 2008), [REDACTED] (\$1,200.00 on November 1, 2008), and to a pharmacy (\$8,000.00 on September 22, 2008). The end balance in the [REDACTED] account was reported as \$6,700.00 as of November 18, 2008. Again, your affiant noted in her Examiner's Report that [REDACTED] reporting was inadequate, and she required assistance.

- \* **Annual Report for 2008 sworn to August 18, 2009,** indicated a balance of \$17,205.76 in the [REDACTED] account # [REDACTED] as of June 15, 2009, and \$1,500.00 in the account as of June 22, 2009.

Personal property consisting of a stereo, TV, CD's, Timex watch, a chair and sand bed was reported for the first time. [REDACTED] stated income tax returns were not filed because [REDACTED] "doesn't get nor pays tax". Expenses totaling in excess of \$160,000.00 were reported. Income totaling \$17,205.26 was indicated based on three (3) deposits in June of 2009. [REDACTED] indicated the purchase and renovation of a home in [REDACTED] [REDACTED] held in her name with [REDACTED]. The end balance in the [REDACTED] account was reported as \$3,883.00.

The Examiner's Report pointed out the mystery of how these expenses were being paid, how a sand bed costing \$78,000.00 and a home for \$255,000.00 were being purchased when there did not appear to be any cash reserves.

\* The Annual Report for 2009 sworn to July 13, 2010, indicated a starting value of \$24,567.59 in the [REDACTED] account # [REDACTED] and personal property such as a sand bed, Hoyer lift, shower chair, TV, stereo, clock, I-Pod and wheelchair. Income totaling \$41,762.37 was set forth and expenses were in the amount of \$188,400. The end value was reported as \$8,867.59.

Again, the Examiner's Report questioned how these expenses were being paid and whether there was an unreported source of monies. Your affiant wondered whether perhaps the guardian was paying these bills from her own funds.

\* The Annual Report for 2010 sworn to August 3, 2011, indicated a starting balance in the [REDACTED] account # [REDACTED] of \$14,001.07, losses of \$91,394.68, monies paid out of \$66,323.00 and an ending balance of \$14,001.07. No income or receipt of other assets was reported.

In the Examiner's Report, your affiant again inquired as to the source of payment of these enormous expenses, questioning whether the lawsuit had resulted in coverage of [REDACTED] expenses.

All Examiner's Reports were served on [REDACTED] and [REDACTED] of [REDACTED] the law firm which handled the personal injury case for [REDACTED] and petitioned the Ulster County Supreme Court for the appointment of [REDACTED] as guardian of the person and property of [REDACTED]. The Examiner's Reports for 2009 and 2010 were also mailed to [REDACTED] because he was allegedly [REDACTED] attorney in [REDACTED]. All of these aforesaid reports have been filed with the Ulster County Clerk's Office.

16) Based upon the terms of the Release and Settlement Agreement signed in June of 2006, [REDACTED] received a lump sum payment from the \$5 Million Dollar payment, the amount of which

is unknown. In addition, she has received \$276,000.00 per year since mid-June 2006. The annuity payments alone total \$1.5 Million Dollars.

17) As is apparent from the aforementioned summary of the Annual Reports provided by [REDACTED] for 2005 through 2011, [REDACTED] has not provided a full and complete accounting for the monies she has received or disbursed as Guardian of the Property of [REDACTED]

18) Accordingly, it is respectfully requested that [REDACTED] be required to immediately provide to the Court a true and complete accounting for all monies received and disbursed on behalf of [REDACTED] since the lawsuit settlement in June of 2006, the failure to do so resulting in her removal as Guardian of the Property of [REDACTED]

Dated: January 22, 2013  
West Hurley, New York

---

STEPHANIE M. WHIDDEN, ESQ.  
Court Examiner  
P.O. Box 249  
West Hurley, New York 12491  
Telephone: (845) 338-6500

Sworn to before me  
this \_\_\_ day of January, 2013.

---

Notary Public

TO:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



At an IAS Term of the  
Supreme Court of the State  
of New York, held in Ulster  
County and for the County  
of Ulster, at the Ulster  
County Courthouse,  
Kingston, New York, on the  
day of \_\_\_\_\_,  
2013.

PRESENT: Hon. Mary M. Work,  
Acting Supreme Court Justice

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF ULSTER

-----X  
In the matter of the application of  
Stephanie M. Whidden, Examiner of  
Reports, for removal of \_\_\_\_\_  
\_\_\_\_\_ as Guardian of the  
property of

\_\_\_\_\_ an Incapacitated Person.

ORDER REMOVING \_\_\_\_\_  
\_\_\_\_\_ AS GUARDIAN OF  
PROPERTY OF \_\_\_\_\_  
INCAPACITATED PERSON, AND  
APPOINTING \_\_\_\_\_  
\_\_\_\_\_ TEMPORARY GUARDIAN  
OF PROPERTY

Index No.: \_\_\_\_\_

RJI No.: \_\_\_\_\_

-----X  
Upon the Attorney's Affidavit in Support of Order to Show  
Cause sworn to on January 22, 2013, by Stephanie M. Whidden,  
Esq., Examiner of Initial and Annual Reports of Guardians under  
Article 81 of the Mental Hygiene Law in Ulster County, New York,  
an Order to Show Cause having been executed by the Honorable  
James P. Gilpatric, Supreme Court Justice in and for Ulster  
County, New York, on January 22, 2013, directing \_\_\_\_\_  
Guardian of the Person and Property of \_\_\_\_\_ an  
Incapacitated Person, to Show Cause on March 15, 2013, at 2:30  
p.m., before the Honorable Mary M. Work, Acting Supreme Court  
Justice in and for Ulster County, New York, why \_\_\_\_\_ should  
not be removed as guardian of the property of \_\_\_\_\_ due  
to her failure to provide complete and accurate Annual Reports

for the years 2006 through and including 2011 as to her receipt of monies, the disbursement of monies, and status of property belonging to the guardianship estate of [REDACTED] since the settlement of a personal injury lawsuit in or about June of 2006 which resulted in the payment of Nine Million Dollars (\$9,000,000.00) to [REDACTED] an Incapacitated Person; and Stephanie M. Whidden, Esq. having provided proof of service of said Order to Show Cause with Supporting Attorney's Affidavit by regular mail on all interested parties other than Guardian of the Person and Property [REDACTED] who was served on January 22, 2013, by Federal Express; and Stephanie M. Whidden, Esq. having served all parties by regular mail on February 1, 2013, with a Supplemental Attorney's Affidavit in Support of Order to Show Cause sworn to by Stephanie M. Whidden, Esq., on February 1, 2013; and a hearing on the Order to Show Cause having occurred on March 15, 2013, at which Stephanie M. Whidden, Esq., [REDACTED] Court Evaluator, and [REDACTED] of [REDACTED] were present; and Acting Supreme Court Justice Mary Work having scheduled a further hearing on the Order to Show Cause to occur on March 25, 2013, at 10:00 a.m.; and in the afternoon of March 15, 2013, [REDACTED] having submitted a Pro Se Motion for Continuance seeking a sixty (60) day adjournment of the Order Show Cause hearing scheduled for March 15, 2013; and Acting Supreme Court Justice Work having sent a letter dated March 15, 2013, addressed to [REDACTED] denying the request for an adjournment and directing [REDACTED]

to be present at the hearing scheduled to occur on March 25, 2013; and the hearing scheduled to occur on March 25, 2013, having commenced at 10:00 a.m., at which were present [REDACTED] [REDACTED] of counsel to [REDACTED] attorneys for [REDACTED] in [REDACTED] [REDACTED] Court Evaluator, Stephanie M. Whidden, Esq., Court Examiner, [REDACTED] [REDACTED] a partner of [REDACTED] [REDACTED], [REDACTED] the brother-in-law of [REDACTED] [REDACTED] the sister of [REDACTED] [REDACTED] the sister of [REDACTED]; and [REDACTED] and [REDACTED] having provided testimony; and based upon the testimony and documentary evidence received by the Court, Acting Supreme Court Justice Work determined that [REDACTED] should be removed as Guardian of the Property of [REDACTED] effective immediately and her access to all property of the guardianship estate of [REDACTED] [REDACTED] should be suspended effective immediately, and [REDACTED] [REDACTED], of [REDACTED] should be appointed Temporary Guardian of the Property of [REDACTED] effective immediately.

NOW, THEREFORE, upon the Motion of Stephanie M. Whidden, Esq., Court Examiner, and based on the findings of the Court at the hearings on March 15, 2013 and March 25, 2013, it is hereby

ORDERED AND ADJUDGED, that [REDACTED] Guardian of the Property of [REDACTED], an Incapacitated Person, is hereby removed from said position effective as of the date of the hearing on March 25, 2013; and it is further

ORDERED AND ADJUDGED, that [REDACTED] shall take no further action that in any way effects the assets of [REDACTED] including any bank accounts, brokerage accounts or any other assets which belong to the guardianship estate of [REDACTED] but are titled in the name of [REDACTED] nor shall she spend, commit or encumber, in any way, the funds of [REDACTED] and it is further

ORDERED AND ADJUDGED, that [REDACTED] be appointed as Temporary Guardian of the Property of [REDACTED] effective immediately with all of the powers over the property of [REDACTED] as set forth in the Decision, Order and Judgment dated August 23, 2001, of the Honorable E. Michael Kavanagh, Supreme Court Justice in and for Ulster County, New York; and it is further

ORDERED AND ADJUDGED, that the requirement that the guardian [REDACTED] obtain a surety bond is hereby waived; and it is further

ORDERED AND ADJUDGED, that [REDACTED] shall not be required to attend an educational program for this guardianship; and it is further

ORDERED AND ADJUDGED, that [REDACTED] shall continue as Guardian of the Property of [REDACTED] indefinitely until further Order of the Court; and it is further

ORDERED AND ADJUDGED, that [REDACTED] is hereby required to faithfully discharge his duties in this guardianship and the fiduciary duty imposed upon him herein and to follow all

of the orders and directions of this Court with respect to this guardianship; and it is further

ORDERED AND ADJUDGED, that [REDACTED] shall designate the Clerk of the Court to receive process as specified under Section 81.26 of the Mental Hygiene Law; and it is further

ORDERED AND ADJUDGED, that [REDACTED] shall obtain a commission by filing his Designation under Section 81.26 of the Mental Hygiene Law, and the Ulster County Clerk shall issue a Commission to [REDACTED]; and it is further

ORDERED AND ADJUDGED, that [REDACTED] shall turn over all of the assets, resources and records and property of [REDACTED] [REDACTED] the Incapacitated Person, including any bills, receipts, checks, expenditures, deposits, withdrawals or any other documentation for said assets or indebtedness of [REDACTED] to [REDACTED], as Guardian of the Property of [REDACTED] and it is further

ORDERED AND ADJUDGED, that within sixty (60) days from the date of this Order, [REDACTED] shall provide to Stephanie Whidden, Esq., as Court Examiner, Annual Reports for the years 2006, 2007, 2008, 2009, 2010, 2011 and 2012 which contain a full, complete and accurate accounting for all funds received, invested and disbursed since June 28, 2006, when [REDACTED] as Guardian of the Property of [REDACTED] an Incapacitated Person, entered into a Nine Million Dollar (\$9,000,000) Release and Settlement Agreement, together with the supporting documentation such as cancelled checks, check ledgers, invoices,

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TORNEY & COUNSELOR AT LAW  
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bills, paid receipts, bank statements, brokerage account statements, annuity statements, deeds, 1099's, W-2's and income tax returns; and it is further

ORDERED AND ADJUDGED, that all financial institutions, individuals or any entity holding any assets of the Incapacitated Person [REDACTED] whether in the name of the guardianship estate of [REDACTED], [REDACTED], as guardian for [REDACTED] or [REDACTED] individually, shall forthwith transfer said assets pursuant to this Order to [REDACTED] [REDACTED], Guardian of the Property of [REDACTED]; and it is further

ORDERED AND ADJUDGED, that the authority of the new Guardian of the Property shall extend to any and all property of the Incapacitated Person, both real and personal, wheresoever situated and found, irrespective of how said property is titled, and the new Guardian shall have all the power and authority necessary to manage the property and financial affairs of the Incapacitated Person as outlined in Section 81.21 of the Mental Hygiene Law and such other authority as this Court may grant and order in the future; and it is further

ORDERED AND ADJUDGED, that [REDACTED] shall not make any withdrawals or expend any monies of [REDACTED] the Incapacitated Person, in any manner whatsoever nor shall she encumber, lien or charge any account or otherwise cause the Incapacitated Person to become indebted in any manner whatsoever so that all authority concerning the finances of the

Incapacitated Person shall rest solely with the newly-appointed Guardian of the Property; and it is further

ORDERED AND ADJUDGED, that all present and future bills and charges be submitted to [REDACTED], as the new Guardian of the Property, in order for him to determine whether the same shall be honored and paid on behalf of the Incapacitated Person; and it is further

ORDERED AND ADJUDGED, that the said [REDACTED], as the new Guardian of the Property, shall have the authority to pay for the care and maintenance of the Incapacitated Person and to make any financial decisions that he deems in the best interest of the Incapacitated Person; and it is further

ORDERED AND ADJUDGED, that the new Guardian of the Property shall be entitled to commissions pursuant to Section 81.28 of the Mental Hygiene Law; and it is further

ORDERED AND ADJUDGED, that the new Guardian of the Property shall have a copy of this Order served upon the Incapacitated Person; and it is further

ORDERED AND ADJUDGED, that the new Guardian of the Property shall file an Initial Report with this Court and a copy to the Examiner Stephanie M. Whidden, Esq. within 90 days of his appointment herein and an Annual Report for each and every calendar year ending December 31st of said year on or before May of the succeeding year; and it is further

ORDERED AND ADJUDGED, that this Court shall grant legal fees to Stephanie M. Whidden, Esq., as Court Examiner, [REDACTED]

[REDACTED], as Court Evaluator, and [REDACTED] of  
counsel to [REDACTED] attorneys for [REDACTED]  
[REDACTED] in [REDACTED] [REDACTED] for the legal work provided herein  
upon their application for payment for their services rendered  
herein.

Dated: March \_\_\_\_, 2013

\_\_\_\_\_  
HON. MARY M. WORK,  
Acting Supreme Court Justice  
in and for Ulster County,  
New York

E N T E R E D:

\_\_\_\_\_

TEPHANIE M. WHIDDEN  
TORNEY & COUNSELOR AT LAW  
POST OFFICE BOX 249  
WEST HURLEY, NY 12491  
PHONE: (845) 338-6500  
FAX: (845) 338-8498



TO:

[REDACTED]

TEPHANIE M. WHIDDEN  
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Dead Incapacitated  
Person - Informal  
Request for  
Termination

# STEPHANIE M. WHIDDEN

## ATTORNEY & COUNSELOR AT LAW

POST OFFICE BOX 249

WEST HURLEY, NEW YORK 12491

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PHONE: (845) 338-6500

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EXPRESS MAIL ADDRESS

90 ST. JAMES STREET

KINGSTON, NY 12401

September \_\_, 2015

Claudia Jones  
Supreme Court Clerk  
285 Wall Street  
Kingston, NY 12401

RE: [REDACTED], Incapacitated Person, (deceased)  
Index No.: [REDACTED]

Dear Ms. Jones:

As you may be aware, I am one of the Examiners of Initial and Annual Reports of Guardians in Ulster County pursuant to Article 81 of Mental Hygiene Law. This guardianship proceeding was assigned to me. I recently saw the obituary in the Daily Freeman indicating [REDACTED] died on August 26, 2015. Based on the Annual Report of Guardian for 2014, there are no assets in this guardianship estate. The Ulster County Department of Social Services will not petition the Court for termination of this proceeding. Accordingly, I am required to do so.

By Judgment dated March 24, 2003, Supreme Court Justice Vincent G. Bradley appointed [REDACTED] [REDACTED], as guardian of the person and property of [REDACTED], incapacitated person, now deceased.

Please reassign this case to a Supreme Court Justice so that the enclosed proposed Order can be reviewed and signed. In support of my request, please find the following:

- 1) Original and one copy of an Order Discharging Guardian and Terminating Guardianship Proceeding. If the Order meets with the Court's approval, please cause the original to be signed and the copy conformed and returned to my office in the enclosed self-addressed, stamped envelope.
- 2) Original death certificate.
- 3) Examiner's Report on Annual Report of Guardian for 2014 indicating the year end balance on December 31, 2014, was \$231.52. Any extra monies will be used to pay funeral expenses.

Supreme Court Clerk

September \_\_, 2015

Page 2

- 4) A stamped, self-addressed envelope for return of conformed copy of Order.

If the Court has any questions, please contact my office.

Respectfully submitted,

Stephanie M. Whidden, Esq.

SMW:HL

Enc.

cc: 

SUPREME COURT  
COUNTY OF ULSTER: STATE OF NEW YORK

-----X  
In the Matter of the Discharge of  
Guardian [REDACTED]  
[REDACTED] and  
the Termination of the Guardianship  
Proceeding of

ORDER DISCHARGING  
GUARDIAN AND TERMINATING  
GUARDIANSHIP PROCEEDING

INDEX NO.: [REDACTED]

[REDACTED],  
an Incapacitated Person,  
(deceased)

-----X  
An informal request having been submitted by letter dated September \_\_, 2015, to the Supreme Court Clerk, Ulster County, State of New York, by Stephanie M. Whidden, Esq., the Examiner of Initial and Annual Reports of Guardians of Incapacitated Persons in Ulster County, New York, pursuant to Article 81 of the Mental Hygiene Law by Order of the State of New York Supreme Court, Appellate Division Third Judicial Department, pursuant to Mental Hygiene Law Sections 81.35 and 81.36(a) and (b) for the termination of the guardianship proceeding and the discharge of [REDACTED] and guardian of the person and property of [REDACTED], deemed incapacitated by a Judgment of the Honorable Vincent G. Bradley, Supreme Court Justice in and for Ulster County, New York, executed on March 24, 2003, due to the death of [REDACTED] on August 26, 2015, the original death certificate being attached hereto; and on the Examiner's Report on the Annual Report of Guardian for 2014 by Stephanie M. Whidden filed in the Ulster County Clerk's Office on May 22, 2015, by which it appears that as of December 31, 2014, the guardianship estate of [REDACTED] consisted of \$231.52 prior to payment of funeral expenses.

NOW, therefore upon the informal application of Stephanie M. Whidden, Esq., Court Examiner, it is hereby

ORDERED, ADJUDGED AND DECREED, that [REDACTED],

[REDACTED], is discharged as the guardian of the person and property of incapacitated person [REDACTED], deceased; and it is further

ORDERED, ADJUDGED DECREED, that Stephanie M. Whidden, Esq., as Court Examiner, be compensated pursuant to Mental Hygiene Law Section 81.35 because based on the Annual Report of Guardian for 2014, it appears the value of the guardianship estate is less than \$5,000.00, a fee of \$150.00 is granted with \$10.00 for the death certificate for a total of \$160.00, a copy of this Order is to be served on the State of New York Supreme Court, Appellate Division Third Judicial Department, by regular mail for payment pursuant to 22NYCRR 806.17(c).

Dated: Kingston, New York  
\_\_\_\_\_, 2015

\_\_\_\_\_  
Hon. \_\_\_\_\_,  
Supreme Court Justice in and  
for Ulster County