

ADVOCACY SERVICES BUREAU

STATE OF NEW YORK

COMMISSION ON QUALITY OF CARE

AND ADVOCACY

FOR PERSONS WITH DISABILITIES

Winter 2007

GUARDIANSHIP

PROCEDURES FOR APPLYING FOR GUARDIANSHIP

OF A DEVELOPMENTALLY DISABLED/MENTALLY RETARDED PERSON

A. Guardianship Forms

1. GMD- 1 Petition for Appointment of Guardian
2. GMD-1A Affidavit of Proposed Guardian
3. GMD- 2A Affidavit(Certification) of Examining
Physician/Psychologist
4. GMD- 2B Affirmation (Certification of Examining Physician)
5. GMD-3 Waiver of Process and Renunciation
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12. OCFS-3909 Office of Children & Family Services Request for Information Guardianship Form
13. Form for Certification

These forms are standard and are used in every Surrogate's Court. A list of Surrogate's Courts and their addresses and telephone numbers is provided.

B. Preparation of Forms

The process for applying for guardianship commences with the filing of a form called a Petition for Appointment of Guardian (GMD-1). The petition is the principal document to be prepared in the guardianship process. It should explain to the Surrogate's Court the need for the appointment of a guardian, and it should inform the court of the people who are interested in the welfare of the developmentally disabled/mentally retarded individual. The petition should include the following information: (pg 1-11). **Please Note: When question does not apply type N.A. No line should be left blank.**

GMD-1 Petition for Appointment of Guardian

Captions:

- County of: This is the location of the Surrogate Court.
- Guardian for: The name of the respondent/ person with mental retardation/developmental disabilities.
- Appointment of Guardian of: Check appropriate box .
- Surrogate Court County of: Again, the County where court is located.

Statements:

1. Check disability of respondent & then your (petitioners') name, phone number, address, date of birth, relationship to respondent . The statements are repeated again for the co-petitioner (usually both parents).
2. (a) Name, permanent address, date of birth and marital status of person for whom you wish to be the guardian. (Respondent)
2. (b) Check which applies: Respondent is or is not admitted to a group home or facility as defined in Section 1.03 (OMRDD administered or licensed facility). Complete facility name, address, Facility Director's name, Director of MHLS name and MHLS office address (see listing further on in this document).
3. Name, date of birth (death if appropriate) address, of parents, of the respondent.
4. Name, relationship, address, of the respondent's adult children and the respondent's siblings.
5. Name and address of the respondent's primary physician.
6. If parents are deceased, names and addresses of distributes (see glossary).
7. Name and address of person with whom the respondent resides. If it is a group home state the name and then "as listed in # 2".
8. State why no family member is applying to become a guardian or standby. This usually is a situation of some other caretaker, worker steps forward to become guardian .

9. This statement stands alone.
10. Check (a) or (b) or (a) & (b). Make grammatical choices to the sentence and add information in space provided IE: “to make medical and other decisions for the respondent as the need arises”.
11. Complete (a) – (d) only if you are petitioning to be guardian of the property or guardian of person and property. If not applying for guardian of property type “N.A.” in all parts.
12. Check appropriate box for disability. Complete Physician (s)/Psychologist names and dates that they signed their affidavits.
13. If applying for limited guardian of property (control of respondent’s funds after respondent keeps \$300 per month), then complete information. If not applying for limited guardian of property put “N.A.”.
14. Put “N.A.” for both sections (a). Complete (b) – (d) with the names addresses of those whom you have chosen for standby, alternate etc. Check person, property etc. that corresponds with what you have chosen for yourself. In other words, if you are applying to be guardian of “person” then the standby etc. will be guardian of person.
15. Check statement that applies. Note, it is best that the respondent **attends** the hearing.
16. This statement stands alone unless there is information to the contrary.
17. Check appropriate verb **has/have** or **does/do not have**.
(b) Attach an affidavit **only** if you have knowledge that anyone named as potential guardian (s) was indicated on the Child Abuse Registry.

18. Stands by itself.
19. Complete **only** if the respondent is under the age of 18.
20. This statement stands alone if true.
21. Enter “None” or specify.

Requested Relief :

- (a) Check appropriate box for type of guardianship. **Granted to:** Enter petitioner(s) name (s).
- (b) **Appointment of:** Enter name of standby guardian and check appropriate box for type of guardianship.
- (c) **Appointment of:** Enter name of alternate standby guardian and check appropriate box for type of guardianship.
- (d) **Appointment of:** Enter name of second alternate standby guardian and check appropriate box for type of guardianship.
- (e) Check either “**be**” or “**not be**” dispensed with...
- (f) This statement stands alone.
- (g) If applying to be guardian of property name two banks as choices for the Judge to order the deposit of respondent’s funds.
- (h) Statement stands alone.
- (i) Add additional relief or “N.A.”

Dated:

Signature(s) as Petitioner (s)

Print name(s) of Petitioner (s)

Corporate Petitioner (IE: ARC) if Applicable

County of: This is the County in which the petitioner now signs the petition before a Notary public.

Signature of

Attorney if

Applicable: If you are petitioning on your own (pro se), then type "N.A."

COMBINED OATH AND DESIGNATION

County of: This is the County in which the petitioner, as proposed guardian, signs the oath and designation before a Notary Public.

1. Make appropriate grammatical changes.
2. ***Surrogate's Court of:*** Enter County where the court is located.

Enter Addresses and Sign before a Notary Public

Combined Corporate Consent if a Corporation like ARC is the Petitioner

GMD-1A Affidavit of Proposed Guardian

Captions:

- County of: This is the location of the Surrogate Court.
- Guardian for: The name of the respondent/person with mental retardation/developmental disabilities.
- Proposed Guardian of: Check appropriate box.
- State of NY County of: This is the County in which you sign the affidavit before a Notary Public.
- Surrogate Court County of: Again, the County where court is located.

The undersigned: Names of the petitioners now called proposed guardians

Statements:

1. Check appropriate disability.
2. Complete as directed.
3. Complete as directed.
4. Educational background.
5. (a), (b), & (c) stand alone unless you have something to add after *except*:
6. Check appropriate disability.
7. Stands alone.
8. Stands alone.
9. State why it is in the respondents best interest e.g.: you will make medical decisions and advocate on the individual's behalf.....

Signature before a Notary Public

Print Name

GMD –2A & GMD- 2B Affidavit(Certification)of Examining Physician/Psychologist

After downloading all of the forms in PDF format from the CQC web site <http://www.cqc.state.ny.us/guardianshipforms/guardfrm.htm>, these two forms can be e-mailed to the respective clinicians. This will enable the clinicians to complete the forms on a computer and print. The questions are self-explanatory and the doctors should be very complete in their answers. These affidavits make-up your proof as to why the respondent needs a guardian and further, the clinicians will be certifying that the individual cannot make any medical decisions including end of life decisions.

GMD-3 Waiver of Process and Renunciation

This waiver should be completed and signed by someone who may be eligible to become a guardian but who wishes to renounce that right. Such a case may involve one parent who is not interested in becoming the guardian. Or perhaps one of the siblings not named as a standby, alternate etc, is not interested and the court clerk requests that the person sign a waiver. If the individual does not want to sign a waiver, that person must be given a citation (GMD-7) inviting them to appear at the guardianship hearing.

Captions:

County of: This is the location of the Surrogate Court.

Guardian for: The name of the respondent/ person with mental retardation/developmental disabilities.

The undersigned : Name of individual waiving the right to become guardian (spouse, sibling etc.).

Statements:

Address: Enter address of individual signing the waiver.

Check Interest: Parent spouse etc.

1. Stands alone.

2. Stands alone.

3. Enter the petitioner (s) (proposed guardian (s) name (s). Check type of guardianship (same as listed for petitioner).

Enter standby name and check type of guardianship (same as listed for petitioner).

Enter alternate standby, if applicable, and check type of guardianship (same as listed for petitioner).

Enter second alternate standby, if applicable, and check type of guardianship (same as listed for petitioner).

Date:

Signature before a Notary Public

Print Name

GMD-4 Consent : Oath and Designation of Standby (Alternate, 2nd Alternate)

One GMD-4 form must be completed by each standby, alternate standby and second alternate standby.

Captions:

County of: This is the location of the Surrogate Court.

Guardian for: The name of the respondent/ person with mental retardation/developmental disabilities.

State of NY County of: This is the County in which you sign the affidavit before a Notary Public.

Statements:

Enter name and check either standby, alternate standby or second alternate standby. Check type of guardianship (same as listed for petitioner).

→ Check the type of guardianship (same as listed for petitioner).

1. Check either standby, alternate standby or second alternate standby. Check **again** either standby, alternate standby or second alternate standby. Check type of guardianship (same as listed for petitioner).
2. Court of: This is the location of the Surrogate Court.

Permanent address of the proposed standby, alternate standby or second alternate standby

Signature before a Notary Public

Print Name

GMD-5 Decree Appointing Guardian

Decree is the formal name given to the Surrogate's decision on the guardianship petition. It is a statement signed by the Surrogate that acknowledges the facts ascertained during the proceeding, formally orders the appointment of the guardian(s), and authorizes the issuing of the Letters of Guardianship. In many counties you will be required to submit a proposed decree. However, you may postpone the completion of this document until after the hearing and further instruction from the court clerk. The clerk may agree to complete the decree for the Surrogate's signature. The decree should contain the following information:

Captions:

For the County of: This is the location of the Surrogate Court.

At: City or Town.

On: Month & Day, 20: Year

Honorable: Name of presiding Surrogate Judge.

Guardianship of The name of the respondent/ person with mental retardation/developmental disabilities.

File No. This is the number placed on the petition by the clerk at the time that you bring your paperwork to the court.

Statements:

Petition of: Name of petitioners.

Verified: Enter day eg. Fourth,

Of: Enter month, 20: Year

Guardian of the: Choose type.

Of: Respondent's Name.

A: Choose disability.

Certifications of: Doctors Names and dates of certifications (see GMD-2A & GMD -2B).

Before this court on: Month, Day, Year

Found that: Respondent's Name.

Is a: Choose disability.

<u>Incapable of managing:</u>	Make grammatical corrections.
<u>By reason of:</u>	Choose disability.
<u>Guardian of:</u>	Choose type of guardianship.
<u>Ordered that:</u>	Name(s) of petitioners or proposed guardian(s).
<u>Guardian of the:</u>	Choose type of guardianship.
<u>Of:</u>	Name of the Respondent.
<u>Money etc:</u>	Complete only if guardian of property.
<u>Jointly with:</u>	Complete only if guardian of property.
<u>Ordered that:</u>	Name(s) of petitioners or proposed guardian(s).
<u>Ordered that:</u>	Name of Standby.
<u>Ordered that:</u>	Name of alternate standby.
<u>Ordered that:</u>	Name of second alternate standby.

GMD-6 Decree Appointing Limited Guardian of Property

This decree applies only in the instance when the petitioner requests that he she be appointed limited guardian of property. You may postpone the completion of this document until after the hearing and further instruction from the court clerk. The clerk may agree to complete the decree for the Surrogate's signature.

Complete GMD-6 in the same fashion as described above for GMD-5.

GMD-7 Citation to Show Cause

The Citation or Notice is an invitation from the Surrogate Court to attend an Article 17A hearing regarding a guardianship petition. The following persons must receive notice of the proceedings by citation:

- a. Any parent who has not consented and has not waived notice.
- b. The person with developmental disability/mental retardation. If the person lives in a facility, the director of the facility must get a citation.
- c. The court may direct further notice as it deems proper.

A competent adult (over age 18) must personally deliver the citation. The adult must sign an Affidavit of Proof of Service (GMD-7A) and submit it to the court.

Although you will have to arrange for the hand delivery of this citation, you can bring a blank copy to the Surrogate Clerk at the time of the filing of your petition. Typically, the guardianship clerk completes and signs the citation. The citation includes the following:

Captions:

File No.: This is the number placed on the petition by the clerk at the time that you bring your paperwork to the court.

CourtCounty: County where Surrogate Court is located.

To: Individual to be served e.g. Person with developmental disability/mental retardation.

Statements:

<u>Filed by:</u>	Name of petitioners or proposed guardians.
<u>Who is domiciled at:</u>	Address of petitioners or proposed guardians.
<u>Court/County:</u>	County in which Court is located.
<u>At:</u>	Address of Court.
<u>On:</u>	Month, Day, Year
<u>At:</u>	Time: e.g. 9:00
<u>In the:</u>	Fore
<u>Letters of guardianship to the:</u>	Check type of Guardianship (same as listed by petitioner).
<u>Of:</u>	Person with developmental disability/mental retardation.
<u>Granted to:</u>	Petitioners or proposed guardians.
<u>Appointment of:</u>	Name of standby guardian.
<u>Standby Guardian of the:</u>	Check type of Guardianship (same as listed by petitioner).
<u>Of:</u>	Person with developmental disability/mental retardation.
<u>Appointment of:</u>	Name of alternate standby guardian.
<u>Alternate Standby of the:</u>	Check type of Guardianship (same as listed by petitioner).
<u>Of:</u>	Person with developmental disability/mental retardation.
<u>Appointment of:</u>	Name of second alternate standby guardian.
<u>Second Alternate Standby of the:</u>	Check type of Guardianship (same as listed by petitioner).
<u>Of:</u>	Person with developmental disability/mental retardation.
<u>Dated Attested , Sealed:</u>	Completed by the Clerk.
<u>Hon:</u>	Completed by the Clerk.
<u>Chief Clerk:</u>	Completed by the Clerk.

Telephone: Completed by the Clerk.

Attorney Name & address: If applicable.

GMD-7A Affidavit of Service

A competent adult (over age 18) must sign an Affidavit of Proof of Service (GMD-7A) and submit it to the court after having personally served the individual named on the citation. The affidavit must include the following:

Captions:

County of: County Where Court is located.

Guardian for: Person with developmental disability/mental retardation.

A: Choose disability.

County of: County in which the person signs the affidavit.

Statements:

...being duly sworn: Name of individual signing the affidavit.

resides at: Address of individual signing affidavit.

Physical Description:

Complete: Name, Sex, Skin Color, Hair Color, Approximate Age, Approximate Height, Approximate Weight, Date, Time & Place for each person served with the citation e.g. person with developmental disability or group home director.

Signature before a Notary Public

Print Name

GMD –8 Notice of Petition & Affidavit of Service by Mail

If the person with developmental disability/mental retardation is residing in a developmental center or any other home or residence operated or certified by the Office of Mental Retardation and Developmental Disabilities (OMRDD), the Mental Health Legal Services must receive notice of the petition. This state agency participates in court proceedings to protect the rights of persons in institutions and other state certified residential programs. The MHLS attorney or representative assigned to represent the institutionalized individual will usually submit a report to the Surrogate's Court which will either agree with the proposed guardianship or note objections. The MHLS representative may be present at a hearing if one is held, although this is not a requirement.

A Notice of Petition along with a copy of the petition must be sent by certified mail, return receipt requested to:

- a. Mental Health Legal Services (MHLS) in the judicial department where the facility is located. (see list).
- b. **If the clerk does not require notice by citation**, then the director of the developmental center or any other home or residence operated by OMRDD.
- c. One other person if designated by the developmentally disabled/mentally retarded person in writing.

Captions:

County of: County Where Court is located.

Guardian for: Person with developmental disability/mental retardation.

File No.: This is the number placed on the petition by the clerk at the time that you bring your paperwork to the court.

Statements:

1. On the: e.g. fourth day of month, 20: year, *Name:* of Petitioners,

Address: of petitioners.

County of: County Where Court is located.

Returnable: This date will be given to you by the clerk.
Day, Month, Year in the forenoon.

Check box: Name of petitioner/proposed guardian.

Check box: Name of standby.

Check box: Name of alternate standby if appropriate.

Check box: Name of second alternate standby if appropriate.

Of the: Check the type of guardianship (same as listed for petitioner).

Complete as directed. For Example: it may be the Director of Mental Hygiene Legal Services, the Director of the group home etc.

Date:

Note Well: Keep a copy of the Notice of Petition for return to the court with the affidavit below

Affidavit of Mailing of Petition

This affidavit must be completed by the petitioner/proposed guardian and returned to the court with a copy of the Notice of Petition (GMD-8). One affidavit will suffice to certify that all of the parties listed on the notice did in fact get mailed a copy of the notice of petition.

Captions:

County of: County in which the person signs the affidavit.

Statements:

Petitioner/Proposed Guardians name

Residing at: Petitioners/Proposed Guardians Address

Choose: he, she, they

Day, Month, Year

Choose: he, she, they

Signature before a Notary Public

Print Name

If Appropriate

Attorney Name, Address, Phone#

List of Mental Hygiene Legal Services Departments:

Mail notice of your 17A Petition to the appropriate Judicial Department serving the respondent's County of residence. This must be mailed by certified mail, returned receipt requested.

Mental Hygiene Legal Service
First Judicial Department
60 Madison Avenue - 2nd Floor
New York, New York 10010
Marvin Bernstein, Director
Phone: (212) 779-1734
Fax: (212) 779-1894

Counties Covered: **Bronx, Manhattan**

Mental Hygiene Legal Service
Second Judicial Department
170 Old Country Road
Mineola, New York 11501
Sidney Hirschfeld, Director
Phone: (516) 746-4545
Fax: (516) 746-4372

Counties Covered: **Dutchess, Kings, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Westchester**

Mental Hygiene Legal Service
Third Judicial Department
40 Steuben Street, Suite 501
Albany, NY 12207
Bruce S. Dix, Director
Phone (518) 474-4453
Fax (518) 473-5849

Counties Covered: **Albany, Broome, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Madison, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Sullivan, St. Lawrence, Tioga, Tompkins, Ulster, Warren, Washington**

**Mental Hygiene Legal Service
Fourth Judicial Department**

Administrative Offices

50 East Avenue - Suite 402

Rochester, New York 14604

Emmett Creahan, Director

Phone: (585) 530-3050

Fax: (585) 530-3079

Counties Covered: **Allegany, Cattaraugus, Cayuga, Chautauqua, Erie, Genesee, Herkimer, Jefferson, Lewis, Livingston, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Seneca, Steuben, Wayne, Wyoming, Yates**

OCFS-3909 Office of Children & Family Services

Request for Information Guardianship Form

This form must be completed signed by all proposed guardians, standbys etc. Some courts may fingerprint proposed guardians. After completing the form as directed, **do not mail**. However, take it to the court at the time that you file your petition.

Form for Certification

All courts require that the petitioners complete this certification after using computer-generated forms.

Congratulations! You have completed all of the necessary forms for an Article 17 A petition in the Surrogate Court

Filing the Forms

The completed petition, physician/ psychologist affidavits, and other forms and supporting documents should be brought to the clerk of Surrogate's Court or to the guardian clerk in the county where the person alleged to be developmentally disabled/mentally retarded is domiciled. For an adult, this will generally be the county in which he or she resides. The permanent residence of the parents, however, is usually considered the domicile of a minor. A fee must be paid at the time of filing. The clerk will review the papers for accuracy, completeness and compliance with statutory law and court rules. Please follow the Checklist.