

## GLOSSARY OF TERMS

***Alleged Incapacitated Person (“AIP”)*** ó an individual alleged in a petition filed with the court to have mental and/or physical incapacities that prevent him from making decisions in his own best interests as defined in NYS Mental Hygiene Law (öMHLö) Article 81.

***Annual Report*** ó an annual report submitted by the guardian, pursuant to MHL Sect. 81.31, documenting the financial and/or personal circumstances of the incapacitated person (öIPö).

***Counsel to the Public Administrator*** ó pursuant to NYS Surrogates Court Procedure Act (öSCPAö) Sect. 1108 (a), the Public Administrators of the counties of the city of New York may appoint one or more counsels. SCPA Sect. 1108 (b) allows reasonable compensation of such counsel to be paid from the respective estates in which legal services are rendered, and may be paid as provided in EPTL 11-1.1(b), and shall be supported by an affidavit of legal services. Pursuant to SCPA Sect. 1206 (3), the Public Administrators of the counties of Erie, Monroe, Nassau, Onondaga, Suffolk and Westchester may employ counsel in any estate, whose fees and expenses therein shall be approved by the court of his county and shall be charged against the estate.

***Court Evaluator*** ó a fiduciary appointed by the court, pursuant to MHL Sect. 81.09, to help determine the capacity of an AIP. The court evaluator interviews the AIP and the petitioner; investigates the nature and extent of the AIP’s alleged incapacity; and ascertains the nature and value of the AIP’s property. As specified in MHL Sect. 81.09 (c) (5), the court evaluator’s report is provided to the court prior to a hearing.

***Court Examiner*** ó a fiduciary appointed by the court, pursuant to MHL Sect. 81.32, to examine initial and annual reports filed by a guardian. The court examiner also may serve the guardian with a demand to follow Article 81 provisions if a guardian fails to file a report, files an incomplete report or does not file a petition for discharge.

***Guardianship Referee (formerly called “Court Examiner Specialist”)*** - a court employee who ensures compliance with all mandated filings and monitors the work of court examiners in a particular judicial district.

***Fiduciary-*** an individual, usually but not always an attorney empowered by the courts to make decisions and perform services on behalf of another individual or estate.

***Fiduciary Clerk-*** a court employee responsible for ensuring that fiduciaries complete all mandated filings pursuant to Parts 26 and 36 of the Rules of the Chief Judge; and that the information contained in those filings is entered into the fiduciary database maintained by the Unified Court System (öUCSö), Office of Court Administration.

***Fiduciary Database-*** an online repository of information regarding fiduciary appointments maintained by the UCS Office of Court Administration and made available

to the public. The database provides information about the prior appointments, fee awards, current appointments and appointing judge of each Part 36 fiduciary.

***Fiduciary List***- an online list of names of individuals who are qualified for appointment as fiduciaries under Part 36; and from which an appointing judge must choose when making appointments regulated by Part 36. To be listed, a candidate must complete an application, and the UCS, Office of Court Administration certified training if required.

***Final Accounting***- a report filed by the guardian, pursuant to MHL Sect. 81.44, upon the death of the IP or the depletion of his assets documenting the accounts of the estate and any pending fees or commissions. MHL Sect. 81.44 sets deadlines for notification of death and filing of the Final Accounting. Until such report is filed, the guardianship case is not discharged and estate assets cannot be distributed.

***Guardian***- a fiduciary charged with decision making responsibilities for a person adjudicated to be incapacitated by a court. Guardians appointed pursuant to MHL Article 81 may be charged with decision making powers over the person and/or the property of the IP. Guardians may be appointed pursuant to Part 36, or they may be delay guardians, usually family members of the IP<sup>1</sup>

***Incapacitated Person (“IP”)*** - an individual who, upon adjudication, has been found to be incapable of making decisions regarding his own personal needs and/or finances. Upon a determination of incapacity, a guardian may be appointed by the court.

***Initial Report***- a mandatory report filed with the court, pursuant to MHL Sect. 81.30, by the guardian within 90 days of the issuance of his commission. The initial report reviews the IP's personal and financial circumstances and allows the guardian to notify the court if any changes are necessary concerning the specific powers granted to him. In the case of a property guardian, it should provide the court with a complete inventory of property and financial resources over which the guardian has control.

***Intestate Estate***- an estate in which a person dies without having a valid will. Property in such an estate passes by intestate succession to heirs according to state law. In New York City, pursuant to SCPA Article 11, intestate estates are handled by the Public Administrator in each of the five counties. In Erie, Monroe, Nassau, Onondaga, Suffolk and Westchester counties the Public Administrator handles intestate estates pursuant to SCPA Article 12. In all other counties, intestate estates are administered by the county's chief financial officer.

***Mental Hygiene Law Article 81***- the NYS statute governing the appointment, conduct and monitoring of guardians for incapacitated adults.

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<sup>1</sup> Note- the term “guardian” may also refer to guardians appointed pursuant to the Surrogates Court Procedure Act Article 17. These guardians are not subject to Part 36. However, Guardians ad Litem, who may be appointed in both Surrogates and Supreme Court proceedings are, with certain exceptions, subject to Part 36. Guardians ad Litem are appointed for individuals incapacitated due to mental or physical disability as well as infancy.

***Office of Guardian and Fiduciary Services***- Unit of the UCS, Office of Court Administration charged with providing training and education regarding NYS fiduciary appointments.

***Part 26 of the Rules of the Chief Judge (“Part 26”) (22 NYCRR 26)*** - requires that judges file a notice with the UCS, Office of Court Administration upon approving compensation of \$500 or more for enumerated court-appointed fiduciaries.

***Part 36 of the Rules of the Chief Judge (“Part 36”) (22 NYCRR 36)*** - creates a system that broadens the eligibility for appointment to a wide range of applicants well-trained in their category of appointment. It establishes procedures that promote accountability and openness in the selection process, and insulates that process from appearance of favoritism, nepotism or politics by disqualifying certain individuals from serving as fiduciaries, as well as limiting the number of new appointments qualified individuals may accept.

***Public Administrator (“PA”)*** ó Official charged with administering estates for which no individual is willing or available to act as administrator or executor. The PA is appointed by the Surrogate but is employed by the city or county government.