|  |  |  |
| --- | --- | --- |
| STATE OF SOUTH CAROLINA | ) |  |
|  | ) |  |
| COUNTY OF | ) |  |
|  | ) |  |
| IN THE MATTER OF: | ) |  |
| , | ) |  |
| Decedent  Alleged Incapacitated Individual  Minor  Other: | ) | PROBATE COURT USE ONLY |
|  | )  ) | IN THE PROBATE COURT |
| , | )  )  ) | CASE NUMBER      -GC-     - |
| Petitioner(s), | ) |  |
| vs. | ) |  |
| , | )  ) | **SUMMONS** |
| Respondent(s).\* | ) |  |

\*For Guardianship/Conservatorship matters, you must include the alleged incapacitated individual as a Respondent.

**TO THE RESPONDENT(S) LISTED ABOVE:**

YOU ARE HEREBY SUMMONED and required to Answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the Petitioner(s) listed above at the following address(es):

*Please Type or Print.*

(Name of Petitioner/Attorney for Petitioner)

(Street Address or Mailing Address)

(City, State, and Zip Code)

Your Answer must be served on the Petitioner at the above address within **thirty (30) days** after the service of this Summons and Petition upon you, exclusive of the day of such service; and if you fail to answer the Petition within that time, judgment by default will be rendered against you for the relief demanded in the Petition.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Petitioner(s)/Attorney for Petitioner(s)

Date:

**INSTRUCTION SHEET FOR FORM #530GC**

**PETITION FOR FINDING OF INCAPACITY, APPOINTMENT OF GUARDIAN (or CO-GUARDIANS), APPOINTMENT OF SUCCESSOR GUARDIAN, ORDER RATIFYING EXISTING HEALTH CARE POA**

This petition is intended to be used when a petitioner is seeking the appointment of a Guardian for an alleged incapacitated individual (A.I.I.). The following actions may be requested with the filing of the attached Petition:

* **FINDING OF INCAPACITY**
* The Petitioner may seek to have the A.I.I. found to be incapacitated for the purpose of the appointment of a Guardian or to assist in ratifying a valid, existing Health Care Power of Attorney (HCPOA). Incapacity is determined by the court based on a medical examination and report and other relevant evidence. Generally, if there is no finding of incapacity, the court will not be able to proceed with any other action regarding the person who is alleged to be incapacitated.
* A finding of incapacity may be made by the court because of the A.I.I.’s inability to meet the essential requirements for his or her physical health, safety, or self-care and/or the inability to manage his or her property or financial affairs or provide for his or her support or for that of his or her legal dependents. This could be because of allegations that are based on, but not limited to, mental illness, significant intellectual disability, physical illness or disability, brain injury, chronic use of and/or addiction to illicit or prescription drugs, or chronic intoxication and/or addiction to alcohol. The presence of one or more of these conditions does not automatically prove incapacity, but it may be what prompts the filing of the petition.
* **If authority is needed to make decisions regarding health care, medical treatment, medical decisions, or appropriate placement for the A.I.I., please read below for applicable situations and check the appropriate box(es) in the Petition:**
* **APPOINTMENT OF GUARDIAN (*including appointment on an EMERGENCY or TEMPORARY basis; see Forms 512GC and 513GC*)** – Can be used to request permanent appointment of an individual or professional guardian and, if needed, appointment of a Guardian on a temporary basis before the permanent appointment can be made.
* **APPOINTMENT OF** **SUCCESSOR GUARDIAN** –Can beused to request appointment of a successor to the previously appointed permanent Guardian.
* **IF NOMINATED TO SERVE IN A WILL -** Based on the facts of the case and the filings of the parties, pursuant to S.C. Code Ann. § 62-1-100, it is within the court’s discretion to determine whether a testamentary guardian designation in the Will of a parent or spouse prior to January 1, 2019, the effective date of the revisions to Article 5 of the S.C. Probate Code, will fall under the processes and procedures of the 1987 Code or under the processes and procedures enacted by the 2017 amendments. *(See S.C. Code Ann. § 62-5-301 of the 1987 Code versus the changes to S.C. Code Ann. § 62-5-301 enacted by the 2017 amendments.)*
* **RATIFICATION OF EXISTING HEALTH CARE POWER OF ATTORNEY (HCPOA) -** An existing, valid HCPOA creates the presumption that there is a “support and assistance” (see Section 62-5-101(23)) in place that would eliminate the need for guardianship. The Petitioner may seek an order ratifying (confirming) the HCPOA. Otherwise, the Petitioner must show by clear and convincing evidence why that document is not valid, is not sufficient to meet the needs of the A.I.I., or present other issues that would support voiding that document if the appointment of a Guardian is requested.
* **RIGHTS AND POWERS OF THE ALLEGED INCAPACITATED INDIVIDUAL**
* S.C. Code Ann. § 62-5-303(B)(7) requires that the petitioner must indicate in the petition what rights the Court is being asked to remove from the A.I.I. For guardianships those rights are stated in S.C. Code Ann. § 62-5-304A. The burden of proof will be on the petitioner to show why certain rights should be removed. Rights not asked to be removed or not stated as being removed in the court order will be retained.
* If the A.I.I. is found to be incapacitated based on mental illness, “mental deficiency,” “mental defect,” or an impairment other than **solely** a physical impairment or disability, the court is required to report the name of the incapacitated individual to the State Law Enforcement Division (SLED), pursuant to S.C. Code Ann. § 23-31-1020. **He or she will not be allowed to purchase, possess, or have access to firearms or ammunition, pursuant to S.C. Code Ann. § 23-31-1040(A).**

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| --- | --- | --- |
| STATE OF SOUTH CAROLINA | ) |  |
| COUNTY OF | ) |  |
|  | ) |  |
| IN THE MATTER OF: | ) |  |
| , | ) | PROBATE COURT USE ONLY |
| an alleged incapacitated individual. | ) |  |
|  | )  ) | IN THE PROBATE COURT |
| , | )  )  )  ) | CASE NUMBER      -GC-     -  **PETITION FOR:** (Check Appropriate Boxes) |
| Petitioner(s), | )  )  )  )  ) | FINDING OF INCAPACITY  APPOINTMENT OF:  GUARDIAN(S) |
|  | )  )  )  )  )  )  ) | TEMPORARY GUARDIAN(S) (On an Emergency or Temporary Basis)  SUCCESSOR GUARDIAN(S)  ORDER RATIFYING AN EXISTING HEALTH CARE POWER OF ATTORNEY |
| ,  Respondent(s).\* | )  ) |  |
|  |  |  |

\*You must include the alleged incapacitated individual (A.I.I.) as a Respondent.

1. **Information about Petitioner(s):**

Petitioner(s):      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address(es):      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone (preferred):      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Telephone (secondary):      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Relationship to A.I.I. or proceeding:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Information about A.I.I.:**

A.I.I. Full Legal Name (include all known names):      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Birth:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Last 4 digits of Social Security #: XXX-XX-     \_\_\_\_\_\_\_\_\_\_\_\_\_

Address:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This address is a:  Private Home  Facility  Other (specify):      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone (preferred):      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Telephone (secondary):      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Hair Color:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Eye Color:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Height:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Weight:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. **Existing legal documents and/or legal appointments relating to the A.I.I.:**

To my knowledge, the A.I.I:  Does have  Does not have a Will

Does have  Does not have a general Durable

Power of Attorney (POA)

Does have  Does not have a Health Care POA

Does have  Does not have a Living Will

Does have  Does not have a Guardian

Does have  Does not have a Conservator or Trustee

If the A.I.I. does have any of the above-named documents, copies must be provided with this Petition or an explanation provided as to why the document is not available. The Petitioner has the burden of showing why guardianship is needed if the A.I.I. has a HCPOA.

4. **Jurisdiction:**

The A.I.I. has been physically present in South Carolina for the six (6) month period immediately preceding the filing of this petition or for at least six (6) consecutive months ending within the six (6) month period immediately preceding the filing of this petition.

If the A.I.I. has not been physically present in South Carolina for the period of time described above, explain what connections the A.I.I. has to South Carolina. Please refer to SC Code §§ 62-5-700 through 62-5-711.

5. **Venue** (*check all that apply*):

Venue for this proceeding is proper in this county because the A.I.I.:

resides in this county and has resided in this county for more than six (6) months;

resides in this county (this is his/her county of residence);

is physically present in this county at this time; or

is admitted to an institution in this county pursuant to an order of a court of competent

jurisdiction, but this is not the county of residence.

If the A.I.I. has not resided in this county for the six (6) months preceding this action, state the address where the A.I.I. did reside or where he/she is currently residing:

6. **Information about family of the A.I.I.** – You must provide information about the spouse and any children of the A.I.I.; if there is no spouse or adult children, then list his/her parents. If no parents are living, then list the closest adult relative(s).

|  |  |
| --- | --- |
| **Spouse\*\*:** |  |
| Address: |  |
| Year of Birth: |  |

\*\*If deceased, a certified death certificate is required.

**Children of A.I.I.:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Full Legal Name |  | Year of Birth |  | Full Address |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**See attached for additional children (check if applicable).**

**(*IF REQUIRED*)** Living Parents of A.I.I.:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Full Legal Name** |  | **Year of Birth** |  | **Full Address** |
|  |  |  |  |  |
|  |  |  |  |  |

**(*IF REQUIRED*)** Closest Living Adult Relative(s) of A.I.I. – use additional paper if needed:

|  |  |
| --- | --- |
| Name: |  |
| Address: |  |
|  |  |
| Relationship to A.I.I.: |  |

7. Information about any other interested parties such as a Guardian, Conservator, Trustee, representative payee, agent under a general durable power of attorney, or a health care agent under a health care power of attorney.

**Name**  **Relation to A.I.I. Full Address**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
|  |  |  |  |  |

8. **Rights and Powers of the A.I.I.** (*See § 62-5-304A.*)

(*If you are the A.I.I. in this matter, you should be prepared to defend the assertion that any of the following rights should be removed; however, the burden is on the Petitioner to show why.*)

Do you believe the A.I.I. should **retain** the following rights to:

1. Make decisions about health care and medical treatment?  YES  NO
2. Choose a physician?  YES  NO
3. Make end-of-life decisions?  YES  NO
4. Authorize disclosure of confidential information?  YES  NO
5. Choose where to live?  YES  NO
6. Participate in social and religious activities?  YES  NO
7. Vote?  YES  NO
8. Consent to or refuse educational services?  YES  NO
9. Contract for marriage (*i.e.*, get married)?  YES  NO
10. File for divorce?  YES  NO
11. Travel independently?  YES  NO
12. Be employed without consent of a Guardian?  YES  NO
13. Operate a vehicle?  YES  NO
14. Pay his or her bills?  YES  NO
15. Enter into contracts?  YES  NO
16. Bring or defend a lawsuit?  YES  NO
17. Make gifts?  YES  NO

If you answered NO to any of the above-listed rights, please explain:

9. Any other rights and powers not specifically stated here that the Court should address:

10. Please note any of the rights in Question 8 you believe should be given to the Guardian (*vested in the Guardian*) to exercise on behalf of the incapacitated individual and/or for which the written consent of the Guardian should be obtained prior to exercising such right. Some rights, such as voting, cannot be given to the Guardian.

11. **Authority to Make Decisions About Health Care, Medical Treatment, and Placement for the A.I.I.:**

A. Why do you believe the A.I.I. needs a Guardian/Successor Guardian/Temporary Guardian to provide continuing care and supervision? Provide a brief description of the nature and extent of the alleged incapacity. (*See 62-5-403(B)(6)*).

1. Is there a less restrictive alternative? If so, please explain.

1. In what ways is the A.I.I. able to provide for health, education, maintenance, and support for himself/herself and his or her dependents?

1. Is it necessary to hold any type of emergency or temporary proceeding to protect the physical person of the A.I.I., to make immediate decisions concerning health care or medical treatment, or is the appointment of a temporary Guardian necessary before a final hearing can be held on this Summons and Petition? (*If seeking emergency or temporary relief, use Form #512GC or Form #513GC*.)

NO.  YES. If yes, please explain:

1. Why does the A.I.I. need a Guardian to give consents or approvals that may be necessary to enable the A.I.I. to receive medical or other professional care, counsel, treatment?

1. What does the A.I.I. need for care, assistance, protection, or supervision on a daily basis?

G. Has a Guardian appointed by a will accepted such appointment?

NO.  YES. If yes, please explain and provide a copy of the will.

H. I request the appointment of (*if someone other than Petitioner*):

|  |  |
| --- | --- |
| Name: |  |
| Address: |  |
|  |  |
| Preferred Phone: |  |
| Email: |  |
| Relationship to A.I.I.: |  |

1. Priority of appointment for the proposed Guardian (*Petitioner or person(s) named in11H., above*):

A previously appointed Guardian or his/her nominee;

Person nominated to serve as Guardian by the A.I.I., if A.I.I. has sufficient mental capacity to make a reasoned choice;

An agent designated in a recorded Power of Attorney whose authority includes powers relating to the care of the A.I.I. or his/her nominee;

Spouse of the A.I.I. or person nominated as testamentary Guardian in the probated will of the spouse or their nominee;

Adult child of the A.I.I. or their nominee;

Parent of the A.I.I. or person nominated as testamentary Guardian in the probated will of the parent or his/her nominee;

Closest adult relative to the A.I.I. (*specify relationship*) ;

Person with whom A.I.I. resides (*does not include health care facility, group home, homeless shelter,*

*prison*);

Person nominated by a heath care facility caring for the A.I.I.; or

Other (*specify*): .

J. What does the A.I.I. own?

Real property - Address:

Vehicle - Make/Model/Value:

Bank Account - Bank and current balance:

Monthly Income – Source and amount:

Other:

**VERIFICATION**

The Petitioner, being sworn, states: That the facts set forth in the foregoing Petition are true to the best of the Petitioner’s knowledge, information, and belief.

SWORN to me this       day of           , 20\_\_\_ Signature of Petitioner: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Address:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name of Notary: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Preferred Telephone:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public for State of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Secondary Telephone:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SWORN to me this       day of           , 20\_\_\_ Signature of Co-Petitioner: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Address:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name of Notary: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Preferred Telephone:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public for State of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Secondary Telephone:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email:      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**This section is to be signed by the individual(s) nominated to serve in one of the roles listed below.**

**QUALIFICATION AND STATEMENT OF ACCEPTANCE**

I agree to serve as appointed and to perform the duties and discharge the trust of the office of (*check the applicable choices*):  Guardian(s);  Successor Guardian; or  Temporary Guardian

Executed this       day of           , 20     .

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |
| --- | --- | --- |
| STATE OF SOUTH CAROLINA | ) |  |
|  | ) |  |
| COUNTY OF | ) |  |
|  | ) |  |
| IN THE MATTER OF: | ) |  |
| , | ) |  |
| an alleged incapacitated individual. | ) | PROBATE COURT USE ONLY |
|  | )  ) | IN THE PROBATE COURT |
| , | ) | CASE NUMBER      -GC-     - |
| Petitioner(s), | ) |  |
| vs. | ) | **NOTICE OF RIGHT TO COUNSEL** |
| , | ) |  |
| Respondent(s). | ) |  |

You, the alleged incapacitated individual, have the right to choose your own attorney to represent you in the above matter.

If a notice of appearance by your own attorney has not been received by the Court within fifteen (15) days from the filing of the proof of service in this matter, the court will appoint an attorney for you.

|  |  |
| --- | --- |
|  |  |

|  |
| --- |
| Executed this       day of      , 20     . |

|  |  |
| --- | --- |
| Signature: |  |
| Print Name: |  |
| Address: |  |
|  |  |
| Preferred Telephone: |  |
| Secondary Telephone: |  |
| Email: |  |

|  |  |
| --- | --- |
| Attorney Signature: |  |
| Print Name: |  |
| Firm Name: |  |
| Bar Number: |  |
| Address: |  |
|  |  |
| Telephone: |  |
| Email: |  |
| Attorney for: |  |

**Note: This form must be served on the Alleged Incapacitated Individual, along with your Summons and Petition.**