



RICHLAND COUNTY PROBATE COURT

Adult Guardianships

Richland County Probate Court is not qualified to give legal advice, nor can our staff assist you with completing the forms pertaining to this action. Should you need assistance, you may contact SC Legal Services at 803-799-9668 or the SC Bar Referral Service at 803-799-7100.

The following documents and information are required:

- ____ Summons and Petition for Finding Incapacity and Appointment of Guardian (enclosed)
- ____ Filing Fee of \$150.00 OR a Motion and Affidavit to Proceed *In Forma Pauperis*
(Available upon request)
- ____ Notice of Right to Counsel (enclosed)
- ____ Examiner's Report and Affidavit regarding Capacity (enclosed)
- ____ Acceptance of Service Renunciation/Nomination form (if applicable-enclosed)
- ____ SLED background check or criminal background check from your state of residence
(Instructions for South Carolina residents enclosed)
- ____ Copies of Petitioners Driver's License/ID and Social Security Card
- ____ Copies of alleged incapacitated adult's Driver's License/ID and Social Security Card
- ____ Current Picture of alleged incapacitated individual

All interested parties are required to be served with this action; therefore, Proof of Service should be perfected by way of the following methods:

- Acceptance of Service Renunciation/Nomination form (enclosed)
- Certified mail (green card with interested parties signature)
- Personal Service (performed by a Process Server or you may contact Richland County Civil Process Division to have a Richland County Deputy serve such documents)

IF THE A. I. I. DOES NOT have their own attorney the Law requires the Probate Court to appoint one on their behalf. The Law also requires our office to appoint a GAL for the A. I. I. for these matters. The Petitioner is responsible for payment for these two individuals, as stated in Section 62-5-105(C) of the Probate Code.

Richland County Probate Court charges for copies at \$.50 per page. Should you need copies of the above forms, please include with the original forms. Once they are filed, we will return your copies to you. Should you have procedural questions, please contact the Richland County Probate Court, Guardianship/Conservatorship Division at 803-576-1962.

OPENING ADULT GUARDIANSHIPS

1. Q: What is a Guardian?

A: A Guardian is a court appointed individual that handles the personal and custodial matters for an incapacitated adult. The primary responsibilities of the guardian are to decide where the ward will live and make provisions for the ward's care, comfort and maintenance, including medical and healthcare decisions.

2. Q: What individuals need a Guardian?

A: Individuals over the age of eighteen that suffer from a mental or physical illness or disability; mental deficiency; advanced age; chronic use of drugs or alcohol; or any other cause to the extent that the individual lacks sufficient understanding, insight or capacity to make responsible decisions concerning their personal affairs and have not executed the proper legal documents to name an agent to make decisions for them. (ie. Durable Power of Attorney and Health Care Power of Attorney)

3. Q: Who would be an appropriate guardian?

A: An immediate family member, such as spouse, adult child, parent or sibling, would be an ideal guardian. If there are no immediate family members then the Court will look to other relatives or interested individuals, such as a neighbor or friend of the incapacitated adult. Under certain circumstances, the Court may look into the possibility of appointing an institutional conservator.

4. Q: Does the Probate Court handle Guardianship of Minors?

A: No, guardianships for minors are under the jurisdiction of the Family Court. You may want to contact the Richland County Family Court at 803-576-3320.

5. Q: What must be filed to begin the Guardianship Proceeding?

A: A Summons; Petition for Finding of Incapacity and Appointment of Guardian; \$150.00 filing fee.

6. Q: How do I obtain a Sled Report?

A: You make a written request for the criminal report from SLED, P. O. Box 21398, Columbia, SC 29221-1398. Provide the following information about the Proposed Guardian to SLED: full name including maiden and alias names; date of birth; sex; race; and social security number. You must include \$25.00 (business check, certified check, money order, or cashier's check) per search and a self-addressed envelope. You may also make an internet request at www.sled.sc.gov and you may pay for the search with a credit card.

7. Q: How can you avoid a Guardianship?

A: In order to avoid the Probate Court appointing a Guardian, you should execute the proper legal documents, such as a Health Care Power of Attorney and Durable Power of Attorney.

8. Q: Do I need an attorney to petition to be a Guardian?

A: Due to the legal complexity of the Guardianship action, it is suggested to have an attorney assist you with this process, but not a requirement. Our office cannot provide legal advice..

9. **Q: How do I know if Richland County is the appropriate place to file the petition?**

A: The law specifies where the proceedings are to take place and this is called venue. Venue for guardianship proceedings is in the county where the incapacitated person presently resides or where the person physically is present.

10. **Q: How does the Guardianship terminate?**

A: If the capacity of the adult changes or the incapacitated person passes away, the Guardian should file a final guardian report and Application for Relief. A hearing may be held before the guardianship is terminated to determine capacity. If death is the reason for termination then a death certificate should be provided along with the Application for Relief.

OVERVIEW OF DUTIES OF A GUARDIAN

1. ANNUAL GUARDIAN REPORT (Form 534GC)

Other than specifics addressed by the judge that may need to be taken care of according to the situation, the only obligation of the Guardian to the court is to file an Annual Guardian Report), once a year. This report is a standard form available on the website and in our office that is due one year from the date of appointment of Guardian and annually thereafter. This report consists of several questions and serves as an update to the court on the status of the incapacitated individual. Updated photo of the incapacitated person is to be filed annually as well.

Any major changes in the protected person's status, which occur during the interim of these reports, should be reported to the court as well.

2. PLAN OF CARE FORM (Form 521GC)

This report is required to be filed within 30 days of the Appointment of Guardian and can be updated as needed.

3. CLOSING A GUARDIANSHIP

If the incapacitated adult becomes capable of handling his or her own affairs, the Guardian must file a new Examiner's Report and Affidavit regarding Capacity and Application for Relief with supporting documentation of the change in status for the incapacitated adult. If the incapacitated person dies, the Guardian must file a certified death certificate and Application for Relief. The court will review these documents and then proceed in closing the file. At that time, a Termination of Appointment will be issued relieving the Guardian of their duties.

HOW TO OBTAIN A SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED) CRIMINAL HISTORY REPORT

REQUEST METHOD

To obtain a SLED Report, you must submit a request to the South Carolina Law Enforcement Division by using the following methods:

Telephone Request: (803) 737-9000
Mail: South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, SC 29221-1398
Web: www.sled.sc.gov

INFORMATION NEEDED

According to South Carolina State Law, the following information is necessary to process a criminal history search for the Richland County Probate Court:

1. FULL name (including middle initial and suffixes as well as maiden and other names used)
2. Current mailing address
3. Current home phone number with area code
4. Social Security Number (individual must agree to the use of their social security number for name search)
5. Driver's License Number and the State where it was issued
6. Date of Birth

You must enclose a self-addressed stamped envelope with your request.

- **COST**

There is a **\$25.00** fee per name, excluding maiden and alias names. The payment must be in the form of a money order, cashier's check or certified check, **personal checks are not accepted.**

INFORMATION FOR SLED CHECK

Name

Address

Phone #

Social Security

Driver's License
(Please list state)

Date of Birth

By my signature, I acknowledge that the above information is required for a SLED background check and I am consenting to the use of the above information for purposes of a criminal background check for the Richland County Probate Court.

Signature

Date

STATE OF SOUTH CAROLINA

COUNTY OF Richland

IN THE MATTER OF:

☐ Decedent ☐ Alleged Incapacitated Individual
☐ Minor ☐ Other: _____

▲ PROBATE COURT USE ONLY ▲

IN THE PROBATE COURT

CASE NUMBER -GC- -

SUMMONS

Petitioner(s),
vs.

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 be used 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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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:

- | | | |
|--|------------------------------|-----------------------------|
| A. Make decisions about health care and medical treatment? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| B. Choose a physician? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| C. Make end-of-life decisions? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| D. Authorize disclosure of confidential information? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| E. Choose where to live? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| F. Participate in social and religious activities? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| G. Vote? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| H. Consent to or refuse educational services? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| I. Contract for marriage (<i>i.e.</i> , get married)? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| J. File for divorce? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| K. Travel independently? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| L. Be employed without consent of a Guardian? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| M. Operate a vehicle? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| N. Pay his or her bills? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| O. Enter into contracts? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| P. Bring or defend a lawsuit? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| Q. Make gifts? | <input type="checkbox"/> YES | <input type="checkbox"/> 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)). _____

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

C. 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?

D. 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:

E. 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?

F. 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.: _____

I. Priority of appointment for the proposed Guardian (Petitioner or person(s) named in 11H., 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 health 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: _____
Printed Name of Notary: _____

Notary Public for State of: _____
My commission expires: _____

Signature of Petitioner: _____
Printed Name: _____
Address: _____
Preferred Telephone: _____
Secondary Telephone: _____
Email: _____

SWORN to me this _____ day of _____, 20____

Signature: _____
Printed Name of Notary: _____

Notary Public for State of: _____
My commission expires: _____

Signature of Co-Petitioner: _____
Printed Name: _____
Address: _____
Preferred Telephone: _____
Secondary Telephone: _____
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 Richland)
)
IN THE MATTER OF:)
)
An alleged incapacitated individual.)
)
)
_____,)
Petitioner(s),)
vs.)
_____,)
Respondent(s).)

▲ PROBATE COURT USE ONLY ▲

IN THE PROBATE COURT
CASE NUMBER -GC- -

NOTICE OF RIGHT TO COUNSEL

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.

An alleged incapacitated individual.

▲ PROBATE COURT USE ONLY ▲

IN THE PROBATE COURT
CASE NUMBER -GC- -

ACCEPTANCE OF SERVICE; RENUNCIATION/NOMINATION

ACCEPTANCE OF SERVICE

- ☐ I accept service of a copy of the Summons and Petition in this matter pursuant to Rule 4(j), SCRCP at the following location: _____ on the following date: _____; and/or

RENUNCIATION/NOMINATION FOR CONSERVATORSHIP

(Check only one of the following two boxes):

- ☐ I renounce my right to be considered for appointment as conservator; OR
- ☐ I renounce my right to be considered for appointment as conservator and nominate the following person:

Name: _____

Address: _____

Preferred Telephone: _____

Secondary Telephone: _____

Email: _____

Relationship to alleged incapacitated individual: _____

RENUNCIATION/NOMINATION FOR GUARDIANSHIP

(Check only one of the following two boxes):

- ☐ I renounce my right to be considered for appointment as guardian; OR
- ☐ I renounce my right to be considered for appointment as guardian and nominate the following person:

Name: _____

Address: _____

Preferred Telephone: _____

Secondary Telephone: _____

Email: _____

Relationship to alleged incapacitated individual: _____

SWORN to before me this 20 day of June, 2018.

Signature: _____

Print Name: _____

Notary Public for: _____

(State)

My Commission Expires: _____

(Date)

Signature: _____

Print Name: _____

Address: _____

Preferred Telephone: _____

Secondary Telephone: _____

Email: _____

Relationship to the alleged incapacitated individual:

COUNTY OF

an alleged incapacitated individual

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)
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▲ PROBATE COURT USE ONLY ▲

IN THE PROBATE COURT
CASE NUMBER -GC- -

**PROBATE COURT GUIDELINES FOR
REPORTS BY APPOINTED EXAMINER**

- ☐ GUARDIANSHIP
- ☐ CONSERVATORSHIP
- ☐ PROTECTIVE PROCEEDING

A petition has been filed with the Probate Court for appointment of a guardian, conservator, or the issuance of a protective order. The person nominated in the petition is seeking appointment in order to assist the alleged incapacitated individual (A.I.I.).

Your role as an examiner is to help the Court determine whether and to what degree the A.I.I. is incapacitated and to assist the Court in the appointment of a guardian or conservator, or issuance of a protective order. You have been appointed because you have knowledge of the individual from a past professional relationship, you possess expertise in a desired area, or both.

Please review the definitions of “incapacity,” “incapacitated individual,” “guardian,” and “conservator,” which are defined in the Order Appointing Examiner (Form #533GC). In reviewing the definitions, please note that the standard is incapacity, and not incompetency. S.C. Code Ann. § 62-5-407(A) of the conservatorship statutes provides: “The court shall exercise its authority to encourage maximum self-reliance and independence of the protected person and issue orders only to the extent necessitated by the protected person’s mental and adaptive limitations.” S.C. Code Ann. § 62-5-304(A) of the guardianship statutes provides: “The court shall exercise its authority to encourage maximum self-reliance and independence of the incapacitated individual and issue orders only to the extent necessitated by the incapacity of the individual.” Degrees of incapacity may exist, and the Court must adjudicate to what extent the A.I.I. should continue to possess certain rights.

After you conduct the examinations, interviews, or tests that are appropriate, submit your report to the Probate Court in written form unless directed by the Court otherwise. Please give a factual basis for your conclusions. Give any general background information, specific concerns or findings, and a prognosis where possible. You are encouraged, but not required, to attach a narrative report to your Examiner Report and Affidavit Regarding Capacity (Form #539GC).

an alleged incapacitated individual.

PROBATE COURT USE ONLY

IN THE PROBATE COURT
CASE NUMBER -GC- -

**EXAMINER REPORT AND AFFIDAVIT
REGARDING CAPACITY**

Please answer the following questions concerning the alleged incapacitated individual (hereinafter, "patient") and provide explanations or additional comments and details at the end of this form or on an attached sheet of paper.

1. Patient's name: _____
2. Have you treated the patient previously? Yes ☐ No ☐
If yes, how long? _____
3.
 - a) Date(s) and place(s) of all examination(s) within previous ninety (90) days: _____
 - b) Date(s) and place(s) of all examination(s) relied upon in making this report: _____
4. Please provide a diagnosis and assessment of the patient's mental and physical condition, including whether he/she is taking any medications that may affect his/her actions: _____

Are additional tests or assessments, such as lab tests, neuroimaging/MRI, neuropsychological testing, or other tests needed in order to give a more definitive diagnosis? If so, what further tests or examinations are needed?

5. Please specify which diagnoses and/or condition(s) are progressive, permanent, or temporary.
- Progressive:
- Permanent:
- Temporary:
6. Please describe the nature and extent of any incapacity, including specific impairments:

7. Please describe the nature and extent of the patient's abilities, including those that would allow him/her to accomplish certain tasks with reasonably available "supports and assistance"¹:
8. Does the patient have the capacity to retain the following rights (If you cannot attest to yes or no, please explain what additional test/s can be done to achieve that information):
- a) Marry or divorce? Yes ☐ No ☐ Unknown ☐
 - b) Reside in a place of his/her choosing, and consent or withhold consent to any residential or custodial placement? Yes ☐ No ☐ Unknown ☐
 - c) Travel without the consent of a guardian? Yes ☐ No ☐ Unknown ☐
 - d) Give, withhold, or withdraw consent and make other informed decisions relative to medical, mental, and physical examinations, care, treatment, and therapies? Yes ☐ No ☐ Unknown ☐
 - e) Make end-of-life decisions including, but not limited to, a "do not resuscitate" order or the application of any medical procedures intended solely to sustain life, and consent or withhold consent to artificial nutrition and hydration? Yes ☐ No ☐ Unknown ☐
 - f) Consent or refuse consent to hospitalization and discharge or transfer to a residential setting, group home, or other facility for additional care and treatment? Yes ☐ No ☐ Unknown ☐
 - g) Authorize disclosures of confidential information? Yes ☐ No ☐ Unknown ☐
 - h) Operate a vehicle*? Yes ☐ No ☐ Unknown ☐
 - i) Vote? Yes ☐ No ☐ Unknown ☐
 - j) Be employed without the consent of a guardian? Yes ☐ No ☐ Unknown ☐
 - k) Consent to or refuse educational services? Yes ☐ No ☐ Unknown ☐
 - l) Participate in social, religious or political activities? Yes ☐ No ☐ Unknown ☐
 - m) Buy, sell, or transfer real or personal property or transact business of any type? Yes ☐ No ☐ Unknown ☐
 - n) Make, modify, or terminate contracts? Yes ☐ No ☐ Unknown ☐
 - o) Bring or defend any action at law or equity? Yes ☐ No ☐ Unknown ☐
 - p) Any other rights and powers? Please list.

COMPLETE EXPLANATION(S) FOR QUESTIONS a) through p) HERE.

If more space is required, use additional sheets and attach.

(*If you answered "yes" to h), please state below whether a full driving evaluation has been conducted.)

¹ As defined in S.C. Code Ann. § 62-5-101(23), "Supports and assistance" includes:

(a) systems in place for the alleged incapacitated individual to make decisions in advance or to have another person to act on his behalf, including, but not limited to, having an agent under a durable power of attorney, a health care power of attorney, a trustee under a trust, a representative payee to manage social security funds, a Declaration of Desire for Natural Death (living will), a designated health care decision maker under Section 44-66-30, or an educational representative designated under Section 59-33-310 to Section 59-33-370; and

(b) reasonable accommodations that enable the alleged incapacitated individual to act as the principal decision maker, including, but not limited to, using technology and devices; receiving assistance with communication; having additional time and focused discussion to process information; providing tailored information oriented to the comprehension level of the alleged incapacitated individual; and accessing services from community organizations and governmental agencies.

9. Would the patient benefit from:

- a) Therapy or treatment?
- b) Medical aids or equipment?
- c) An operation or medical procedure(s)?
- d) Psychiatric treatment?

Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐

10. Has the patient had in the last six months:

- a) Hospitalization(s)?
- b) Therapy or treatment?
- c) Inpatient or outpatient surgery?
- d) Major medical test(s)?
- e) Psychological or psychiatric testing?

Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐
Yes ☐ No ☐

11. In your opinion, does the patient have the ability to:

- a) effectively manage his/her property or individual financial affairs, provide for his/her support, or for the support of his/her legal dependents? Yes ☐ No ☐

If yes, is the ability limited in any way? Please explain:

- b) meet the essential requirements for his/her physical health, safety, or self-care. Yes ☐ No ☐

If yes, is the ability limited in any way? Please explain:

12. The patient continues to perform the following activities of daily living:

13. Does the patient have:

- a) A power of attorney?
- b) A healthcare power of attorney?
- c) A "living will"?

Yes ☐ No ☐ Unknown ☐
Yes ☐ No ☐ Unknown ☐
Yes ☐ No ☐ Unknown ☐

14. Does the patient have any of the following coverages?

- a) Health insurance?
- b) Medicare?
- c) Medicaid?
- d) Veteran's health care?

Yes ☐ No ☐ Unknown ☐
Yes ☐ No ☐ Unknown ☐
Yes ☐ No ☐ Unknown ☐
Yes ☐ No ☐ Unknown ☐

15. Does the patient have a primary caregiver?

Yes ☐ No ☐

If yes, provide caregiver's name, address, and relationship to the patient.

16. Please identify the persons with whom you met or consulted regarding the patient's mental or physical condition:

17. BASED UPON MY EVALUATION OF THIS PATIENT:

- a. ☐ I DO NOT BELIEVE THIS PATIENT IS "INCAPACITATED."² I do not find that he/she lacks the ability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, even with appropriate, reasonably available support and assistance cannot:
- a) meet the essential requirements for his/her physical health, safety, or self-care, necessitating the need for a guardian; or
 - b) manage his/her property or financial affairs or provide for his/her support of for the support of his/her legal dependents, necessitating the need for a protective order.
- b. ☐ I DO BELIEVE THIS PATIENT IS "INCAPACITATED" to such an extent, that he/she lacks the ability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, even with appropriate, reasonably available support and assistance cannot:
- a) meet the essential requirements for his/her physical health, safety, or self-care, necessitating the need for a guardian; or
 - b) manage his/her property or financial affairs or provide for his/her support of for the support of his/her legal dependents, necessitating the need for a protective order.

Use this space to provide explanations or additional comments.

SWORN to before me
this

day of

20

Examiner's Signature:

Print Name:

Credentials:

(e.g., M.D., Ph.D., D.O., R.N.)

Address:

Telephone:

Print
Name:

Notary Public for:

(State)

My Commission Expires:

(Date)

²As defined in S.C. Code Ann. § 62-5-101(13), "Incapacity" means the inability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, **even with appropriate, reasonably available support and assistance cannot:**

a) meet the essential requirements for his/her physical health, safety, or self-care, necessitating the need for a guardian; or
b) manage his property or financial affairs or provide for his support of for the support of his legal dependents, necessitating the need for a protective order.