

**SNACK
PRESENTATION**

GUARDIANSHIPS

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Standard for Appointment of Guardian

| SCPA Art 17A | MHL Art 81 |
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| <ul style="list-style-type: none"> • Incapable of managing himself/herself or his/her affairs by reason of MR or DD • Appointment is in the best interest of respondent | <ul style="list-style-type: none"> • Finding that AIP is unable to provide for personal needs &/or property management & cannot understand & appreciate the nature and consequences of such inability or • AIP consents to appt of guardian |

Proving Incapacity

| SCPA Art 17A | MHL Art 81 |
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| <ul style="list-style-type: none"> • Certification by 2 physicians or • Certification by 1 physician and 1 psychologist | <ul style="list-style-type: none"> • Functional assessment of actual abilities of the person to perform activities of daily living • Clear and convincing evidence |

Appointment of Counsel

| SCPA Art 17A | MHL Art 81 |
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| <ul style="list-style-type: none"> • Does not provide for the appointment of counsel | <ul style="list-style-type: none"> • Provides for the appointment of counsel • Payment of counsel - from IP funds or 18b panel |

| Appointment | |
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| SCPA Art 17A | MHL Art 81 |
| <ul style="list-style-type: none"> Limited requirements for appointment of Guardian ad litem or appointment of MHLS | <ul style="list-style-type: none"> Provides for appointment of court evaluator |

| Guardian's Powers | |
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| SCPA Art 17A | MHL Art 81 |
| <ul style="list-style-type: none"> Does not provide for "tailoring" the guardian's powers to the needs of the individual | <ul style="list-style-type: none"> Must specifically define the authority of the guardian |

| Training of Guardians | |
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| SCPA Art 17A | MHL Art 81 |
| <ul style="list-style-type: none"> Does not provide for training Appointment of guardian is continuation of parent's legal authority over their child | <ul style="list-style-type: none"> Training for court evaluators, court examiners and guardians |

| Reporting of Guardian | |
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| SCPA Art 17A | MHL Art 81 |
| <ul style="list-style-type: none"> Reporting for guardian of property only Certain courts require reporting for guardian of the person | <ul style="list-style-type: none"> Initial Report Annual Report For both guardian of person and property |

| Cost | |
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| SCPA Art 17A | MHL Art 81 |
| <ul style="list-style-type: none"> • Quicker • Less expensive | <ul style="list-style-type: none"> • Use of IP's funds to pay petitioner's counsel, court evaluator, court examiner, and guardian |

| Powers of Guardian | |
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| SCPA Art 17A | MHL Art 81 |
| <ul style="list-style-type: none"> • Plenary powers over financial &/or personal care of disabled person | <ul style="list-style-type: none"> • Orders specifically list guardian's authority |

| Considerations - Functioning level of person with disability | |
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| SCPA Art 17A | MHL Art 81 |
| <ul style="list-style-type: none"> • Low functioning because severely disabled & can't meaningfully participate in decision making | <ul style="list-style-type: none"> • High functioning & capable of making some decisions • Provides flexibility & independence |

| Infants & SNTs | |
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| SCPA Art 17A | MHL Art 81 |
| <ul style="list-style-type: none"> • Going to court more often • Prior to age of majority • After age of majority | <ul style="list-style-type: none"> • More flexibility in management of property of infant & SNT |

| Costs | |
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| SCPA Art 17A | MHL Art 81 |
| <ul style="list-style-type: none"> • Less expensive • Standardized forms • \$20 filing fee • Most are application of person not property • GAL can serve without a fee | <ul style="list-style-type: none"> • More expensive • Forms vary from county to county • Filing fee - \$305 • Provides for payment of petitioner's attorney fees, court evaluator & IP's counsel |

| Role & Authority of Guardian | |
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| SCPA Art 17A | MHL Art 81 |
| <ul style="list-style-type: none"> • Health care decision making • No training for guardian • Guidance for annual reporting for guardian of the property • Some courts require reporting of guardian of person | <ul style="list-style-type: none"> • Health care decision making • Guardianship training class • Accountability – annual reports for both person and property |

| Role & Authority of Guardian – cont'd | |
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| SCPA Art 17A | MHL Art 81 |
| <ul style="list-style-type: none"> • Duration of guardianship – indefinite | <ul style="list-style-type: none"> • Duration of guardianship - varies on the needs of the IP |

| Supported Decision Making (SDM) | |
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| <ul style="list-style-type: none"> • Model to provide individualized supports and services necessary to make informed decisions • Even with disabilities – have ability & right to make important decisions that impact the individual's life | <ul style="list-style-type: none"> • 5 year at Hunter College & Council for Quality & Leadership – working with Disability Rights New York • Program is called PADD – Protection & Advocacy for Individual with Intellectual & Developmental Disabilities |