

**Mental  
Hygiene Law  
Article 81**

**Nuts and  
Bolts for APS  
Attorneys**

**2023 NYPWA Summer  
Conference**

**Mark E. Maves, Esq. Counsel, NYPWA**

**Morgan R. Thurston, Esq., Assistant  
Welfare Attorney Onondaga County  
Department of Law**

# History of Guardianship in New York



# MHL Article 81 vs SCPA Article 17-a



Statutory and  
Regulatory  
Basis for APS  
Involvement in  
MHL Art. 81  
Guardianships

**Social Services Law §473**

**18 NYCRR 457.6 Serving involuntary  
clients**

**Mental Hygiene Law §81.06 Who  
May Commence a Proceeding**

# Overview of MHL Art. 81 Guardianship

Standard for Appointment

Definitions

Jurisdiction

Venue

# Commencement of the Article 81 Case

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**Assessing Functional Capacity**

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**Drafting the Petition**

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**What Can Be Done While the Guardianship Appointment Is Pending?**

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**Service of the Order to Show Cause and Notice to Interested Persons**

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**Notice of Pendency**

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**Court Evaluator**

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**Counsel for the AIP**

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**Notice of Pendency**

# The Hearing

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**Timing**

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**A Hearing is Required**

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**Jury Trial**

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**Presence of AIP at the Hearing**

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**Burden of Proof**

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**Rules of Evidence**

# The Hearing

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**Evidentiary Issues**

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**Closure of the Courtroom/sealing of the Record**

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**Required Findings**

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**Dispositional Alternatives**

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**Other Issues that the Court May Consider**



Appointment  
of Guardian  
and Post-  
Appointment  
Procedures

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**Who Can Serve as Guardian?**

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**Bond**

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**Designation**

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**Commission**

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**Guardian Education**

# Duties and Powers of the Guardian

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**Duties**

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**Powers- Property Management**

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**Powers- Personal Needs**

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**Guardian Reporting Requirements**

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**Effect of the Guardianship Upon the Incapacitated Person**

# Removal of Guardian, Discharge of Guardianship, and Modification of Powers



# Proceedings Upon the Death of the IP



# Mental Hygiene Law Article 83



# Helpful Websites

**NYS Office of Guardian and  
Fiduciary Services**

[www.nycourts.gov/ip/gfs](http://www.nycourts.gov/ip/gfs)

**Guardian Assistance Network**

[http://www.courts.state.ny.us/  
ip/gan/manual/index.shtml](http://www.courts.state.ny.us/ip/gan/manual/index.shtml)

# QUESTIONS

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