

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE MATTER OF:)

_____,)
 Decedent Alleged Incapacitated Individual)
 Minor Other: _____)

▲ PROBATE COURT USE ONLY ▲

IN THE PROBATE COURT

_____,)
Petitioner(s),)
vs.)

CASE NUMBER _____-GC-_____-_____

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 #520GC
DUAL PETITION FOR APPOINTMENT OF CONSERVATOR (OR OTHER PROTECTIVE ORDER) AND GUARDIAN
(FOR ADULT)**

This petition is intended to be used when a Petitioner is seeking the appointment of both a Guardian and Conservator (or the issuance of another protective order) for an alleged incapacitated individual (A.I.I.). The following actions may be requested and considered 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 appointment of a Conservator or the issuance of another protective order and appointment of a Guardian (or ratification of a healthcare power of attorney). 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 of incapacity that are based on, but not limited to, mental illness, significant intellectual disability, physical illness or disability, brain injury, a cognitive impairment such as dementia, 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 manage financial affairs and/or assets, please read below for available options and check the appropriate box(es) in the Petition:**

- **APPOINTMENT OF CONSERVATOR (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 fiduciary and, if needed, appointment of a Conservator on a temporary basis before the permanent appointment can be made.
- **PROTECTIVE ORDER** - Can be used to establish incapacity, assist in establishing a Special Needs Trust, or to ratify (confirm) a durable power of attorney for business and/or financial affairs.
- **APPOINTMENT OF SPECIAL CONSERVATOR** - Can be used to request appointment of an individual or professional fiduciary to complete specific tasks within a specific period of time.
- **APPOINTMENT OF SUCCESSOR CONSERVATOR** - Can be used to request appointment of a successor to the previously appointed permanent Conservator.
- **EFFECT OF EXISTING POWER OF ATTORNEY (POA) FOR FINANCES AND BUSINESS AFFAIRS** - An existing, valid Durable General POA creates the presumption that there is a "support and assistance" (see Section 62-5-101(23)) that would eliminate the need for a conservatorship. If the Petitioner wants to have the court confirm or ratify the POA, he or she may request a protective order. 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 Conservator is requested.

- **If authority is needed to make decisions regarding the physical person of an individual and his/her health care, 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) and 62-5-403(B)(7) require that the Petitioner must indicate in this Petition what rights the court is being asked to remove from the A.I.I. Those rights are stated in S.C. Code Ann. §§ 62-5-304A and 62-5-407(B). The burden of proof will be on the Petitioner to show why certain rights should be removed.
 - 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 probate court is required to report the name of the incapacitated individual to the S.C. 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).**

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

- To my knowledge, the A.I.I.:
- | | | | |
|--------------------------|-----------|--------------------------|--|
| <input type="checkbox"/> | Does have | <input type="checkbox"/> | Does <u>not</u> have a Will |
| <input type="checkbox"/> | Does have | <input type="checkbox"/> | Does <u>not</u> have a General Durable Power of Attorney (POA) |
| <input type="checkbox"/> | Does have | <input type="checkbox"/> | Does <u>not</u> have a Health Care POA |
| <input type="checkbox"/> | Does have | <input type="checkbox"/> | Does <u>not</u> have a Living Will |
| <input type="checkbox"/> | Does have | <input type="checkbox"/> | Does <u>not</u> have a Guardian |
| <input type="checkbox"/> | Does have | <input type="checkbox"/> | Does <u>not</u> 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. If a guardianship or conservatorship is requested, the Petitioner has the burden of showing why a guardianship or conservatorship is needed if the A.I.I. has a POA.

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 S.C. Code Ann. §§ 62-5-700 through 62-5-711.

5. Venue. Venue for this proceeding is proper in this county because the A.I.I. (*check all that apply*):

- 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;
- 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;
- does not reside in this state but owns real or personal property in this county; or
- does not reside in this state but has the right to take legal action in this county (a copy of the pleadings will be required).

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 S.C. Code Ann. §§ 62-5-304A and 62-5-407(B).) (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. Buy, sell, or transfer real property? YES NO
- B. Buy, sell, or transfer personal property? YES NO
- C. Make, modify, or terminate contracts relating to obligations of A.I.I.? YES NO
- D. Make significant purchases? YES NO
- E. Transact business of any type? YES NO
- F. Bring or defend a lawsuit? YES NO
- G. Pay his or her bills? YES NO
- H. Make gifts? YES NO
- I. Make decisions about health care and medical treatment, including consents? YES NO
- J. Choose a physician? YES NO
- K. Make end-of-life decisions? YES NO
- L. Consent to or refuse hospitalization, discharge, or transfer to residential, group home, or other? YES NO
- M. Authorize disclosure of confidential health or medical information? YES NO
- N. Choose where to live? YES NO
- O. Participate in social, religious, and political activities? YES NO
- P. Consent to visitation with family, friends, others? YES NO
- Q. Consent to or refuse educational services? YES NO
- R. Make, modify, or terminate contracts having to do with duties of the guardian? YES NO
- S. Contract for marriage (i.e., get married)? YES NO
- T. File for divorce? YES NO
- U. Travel independently? YES NO
- V. Be employed without guardian consent? YES NO
- W. Operate a vehicle? YES NO
- X. Vote? YES NO

If you answered NO to any of the rights listed in Question 8, please explain:

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

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

11. THE AUTHORITY TO MANAGE FINANCIAL AFFAIRS OF THE A.I.I.

A. Why do you believe the A.I.I. needs a Conservator or protective order? Provide a brief description of the nature and extent of the alleged incapacity. (See S.C. Code Ann. § 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/her dependents?

D. Is any type of emergency or temporary proceeding needed to protect the funds, assets, or business affairs of the A.I.I.? (If temporary or emergency relief is sought, use Form #512GC or Form #513GC.)

No. Yes. If yes, please explain:

E. Has the A.I.I. been rated incapable of handling his/her estate and monies after examination by the Department of Veterans Affairs (VA)? (See S.C. Code Ann. § 62-5-403(B)(9)).

No. Yes. If yes, please explain:

F. The following is a list of the real and personal property owned by the A.I.I., business affairs of the A.I.I., funds available to the A.I.I., or legal action necessary for the benefit of the A.I.I. and an estimate of the value: (*An Inventory & Appraisal, Form #550GC, shall be completed and filed with the Court within thirty (30) days of the date of appointment.*)

Description

Value

G. I request the appointment of (if other than Petitioner) to serve as Conservator:

Name: _____
 Address: _____

 Preferred Phone: _____
 Email: _____
 Relationship to A.I.I.: _____

H. Priority of appointment for the proposed appointee (Petitioner or person listed in 5G., above) to serve as Conservator:

- Previously appointed Conservator/Guardian of Property by a Court of another county or state;
- Individual nominated by the A.I.I., who is deemed mentally capable of making such choice;
- Agent designated in power of attorney relating to the management of A.I.I.'s property, financial affairs, or assets;
- Spouse of A.I.I.;
- Adult Child of A.I.I.;
- Parent of the A.I.I.;
- Closest Adult Relative (specify relationship): _____;
- Person with whom the A.I.I. resides (specify relationship): _____;
- Nominee of any of the above (specify who made nomination) _____;
- Other (specify): _____.

I. Does the proposed Conservator plan on receiving any fees for serving as Conservator?

No Yes If Yes, indicate the hourly rate or desired compensation amount: \$ _____

Occupation of proposed Conservator: _____

12. AUTHORITY TO MAKE DECISIONS ABOUT HEALTH CARE OR MEDICAL TREATMENT, AND PLACEMENT FOR THE A.I.I.

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

B. In your opinion, are less restrictive options than Guardianship available or appropriate?

No Yes 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 any type of temporary or emergency proceeding needed to protect the physical person of the A.I.I. or to make emergency health care decisions for the A.I.I.? (*If temporary or emergency relief is sought, use Form #512GC or Form #513GC.*)

No Yes If yes, please explain:

E. Despite his/her alleged incapacity, can the A.I.I., with assistance, guide or direct decisions about his/her physical person, health care, and medical treatment?

No Yes Please explain:

F. To what extent should the Guardian be permitted to give consents or approvals that may be necessary to enable the A.I.I. to receive medical or other professional care, counsel, medical treatment, or services?

G. Are you aware of a Will that nominates a Guardian?

No Yes If yes, please explain and provide a copy of the Will:

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

Name: _____

Address: _____

Preferred Phone: _____

Email: _____

Relationship to A.I.I.: _____

I. Priority of appointment for the proposed appointee (*Petitioner or person listed in 6H., above*) to serve as Guardian is:

- Previously appointed Guardian, Guardian of the Person, Conservator (of the person) appointed by a Court of another County or State;
- Individual nominated by the A.I.I., who is deemed mentally capable of making such choice;
- Agent designated in a power of attorney by A.I.I., whose authority includes powers relating to the care of the individual;
- Spouse of A.I.I.;
- Adult Child of A.I.I.;

- Parent of A.I.I. or person nominated as testamentary Guardian in the probated will of the parent or his/her nominee;
- Closest Adult Relative (*specify relationship*): _____;
- Person with whom the A.I.I. resides (*specify relationship*): _____;
- Nominee of any of the above (*specify who made nomination*): _____;
- Other (specify): _____.

13. ALL PETITIONERS MUST COMPLETE THIS SECTION (*Check all that apply*).

- A. I request that the Court set a date, time, and place for a hearing on this Petition and that the Court find whether the A.I.I. is incapacitated.
- B. I believe that this is an uncontested matter and request that the Court consider making an appointment without a holding a formal hearing or that it consider holding an informal proceeding.
- C. I request that if the Court finds that the A.I.I. is incapacitated, that a determination be made of what rights should be retained and what rights should be removed as a result of the finding of incapacity and, further, what rights should be vested in a Guardian or Conservator, as appropriate.
- D. I request that if the Court finds that the need for appointment of a Conservator, Special Conservator, or Temporary Conservator is proper; that the Court appoint _____ as fiduciary; that letters of Conservatorship, Special Conservatorship, or Temporary Conservatorship be issued, along with a protective order.
- E. I request that if the Court finds that the need for appointment of a Guardian(s) or Temporary Guardian is proper, that the Court appoint _____ as the Guardian(s) or Temporary Guardian and that letters of Guardianship or Co-Guardianship be issued.

VERIFICATION

The Petitioner(s), 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: _____

Print 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: _____

Print Name: _____

Address: _____

Preferred Telephone: _____

Secondary Telephone: _____

Email: _____

This section is to be signed by the individual(s) nominated to serve as fiduciary in connection with this Petition
QUALIFICATION AND STATEMENT OF ACCEPTANCE

I agree to serve as appointed and to perform the duties and discharge the trust of the office of fiduciary as set forth herein.

Executed this ____ day of _____, 20__.

Signature: _____

Printed Name: _____

Requesting Appointment as: _____

Signature: _____

Printed Name: _____

Requesting Appointment as: _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 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.