**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

|  |  |  |
| --- | --- | --- |
| In the matter of:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  A person with an alleged disability | :  :  :  : | C.M. # \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**PRELIMINARY ORDER FOR THE APPOINTMENT OF AN   
ATTORNEY *AD LITEM* AND TO SCHEDULE THE HEARING**

WHEREAS the Petition for the Appointment of a Guardian of the Person and/or the Property (“Petition”) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a person with an alleged disability, hereinafter called “a person with an alleged disability,” was filed in this matter and has been read and duly considered by the Court,

IT IS ORDERED this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, as follows:

1. A hearing shall take place on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_\_\_\_\_ \_\_\_.m. to determine if the proposed guardian(s) should be appointed the guardian(s) of the person and/or property of the person with an alleged disability.
   1. The hearing on the Petition will be telephonic. To be connected to the call, parties must dial, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ then enter this password, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The dial-in information is confidential and may not be shared with anyone other than interested parties.
   2. Only the interested parties will be allowed on the call. Any interested person who wishes to appear for the purpose of objecting to the Petition and/or to file a Cross-Petition seeking an alternative guardian shall dial into the hearing and file the objection or Cross-Petition in writing with the Court of Chancery no later than two (2) days before the hearing.
2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Esquire, is appointed *ad litem* for the person with an alleged disability to represent their best interest. The attorney *ad litem* shall be entitled to all protection, limitation from liability, and immunity available at law or in equity to a court-appointed attorney, including, without limitation, all protection, limitation from liability, and immunity to the fullest extent possible by applicable law, including the Delaware Tort Claims Act.
3. The attorney *ad litem* shall utilize the attorney *ad litem* checklist.
4. The attorney *ad litem* shall give actual notice of the petition to the person with alleged disability pursuant to Chancery Court Rule 176.
   1. The attorney *ad litem* shall visit the person with an alleged disability at his or her residence. If such a visit is not practicable, the attorney *ad litem* shall detail why it is not practicable in his or her report. If a visit is not practicable, the attorney *ad litem* may satisfy the visitation and actual notice remotely by two-way electronic video communication where the attorney *ad litem* and the person with an alleged disability are able to see and hear each other, or such other method of communication that permits meaningful contact with the person with an alleged disability, enabling the attorney *ad litem* to evaluate the person with an alleged disability’s living accommodations, and to protect the health and safety of all involved.
   2. If the physician’s affidavit indicates sufficient capacity to understand the nature of the guardianship or the attorney *ad litem* believes that the person with an alleged disability has the capacity to review the Petition, the attorney *ad litem* shall cause a copy of the Petition to be provided to the person with an alleged disability. The attorney *ad litem* must confirm that the person with an alleged disability received the papers or reasonably observe the papers being physically handed to or left within reach of the person with an alleged disability. Reasonable observation would include, but is not limited to, video or photographic confirmation of delivery of the Petition to the person with an alleged disability.
5. The attorney *ad litem* shall file a report with the Court before noon on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_. In addition to the information required by and expected under Rule 176, the attorney *ad litem* shall also describe in detail the method of communication with, and delivery of the Petition to the person with an alleged disability (consistent with §4(b)) and the attorney *ad litem*’s opinion of the effectiveness of both in the report.
6. Pursuant to the preparation of the report referenced in Paragraph 5 of this Order:
   1. All physicians, hospitals, and other healthcare providers covered under the Privacy Standards of the Health Insurance Portability and Accountability Act (“HIPAA”) are authorized to disclose to the attorney *ad litem* and shall provide the attorney *ad litem* unobstructed and free access to all medical records, treatment providers, clinical information and other healthcare information relating to the current mental and physical health of the person with an alleged disability (*see* 45 CFR sec. 164.512(e)) that the attorney *ad litem* deems necessary for the proper discharge of his/her duties;
   2. All agencies and service providers that are a division of, monitored by, report to, or administered by the Department of Health and Social Services, including, but not limited to Adult Protective Services, are authorized to disclose to the attorney *ad litem* and shall provide the attorney *ad litem* unobstructed and free access to all records and information relating to the current mental and physical health and safety of the person with an alleged disability that the attorney *ad litem* deems necessary for the proper discharge of his/her duties and any such disclosure of confidential information by Adult Protective Services is deemed necessary for purposes directly connected with the administration of adult protective services;
   3. All financial institutions are authorized to disclose to the attorney *ad litem* and shall provide the attorney *ad litem* unobstructed and free access to all records and information relating to any income, expenses, deposits, expenditures, and any other activity or investigations of any account belonging to or for the benefit of the person with an alleged disability that the attorney *ad litem* deems necessary for the proper discharge of his/her duties;
   4. All educational agencies, institutions, or facilities governed by the Family Educational Rights and Privacy Act (“FERPA”), the Individuals with Disabilities Education Act (“IDEA”), or Section 504 of the Rehabilitation Act (“Section 504”) are authorized to disclose to the attorney *ad litem* and shall provide the attorney *ad litem* unobstructed access to, and/or copies of, all educational records maintained by the institution relating to the current or past education of the student that the attorney *ad litem* deems necessary for the proper discharge of his/her duties;
   5. All said physicians, hospitals and other healthcare providers, agencies or service providers, financial institutions and educational institutions shall grant said access described in Paragraph 6a, 6b, 6c and 6d of this Order to the attorney *ad litem* without delay;
   6. The attorney *ad litem* is prohibited from using or disclosing any health, financial, educational or other confidential information of the person with an alleged disability for any purpose other than this guardianship proceeding; and
   7. The attorney *ad litem* shall return to the physician(s), hospital(s), healthcare provider(s), agency, service provider(s), financial institution(s) or educational institutions(s) or shall destroy all the health, financial, or other confidential information provided to the attorney *ad litem* by the physician(s), hospital(s), healthcare provider(s), agency, service provider(s), financial institution(s), or educational institution(s) (including all copies made) at the end of these guardianship proceedings.
7. At least thirteen (13) days beforethe hearing date, the petitioner(s) must send a copy of this preliminary order and notice by registered mail, certified mail, or any other courier service that provides real time tracking of delivery, to each interested party who did not sign a Waiver of Notice and Consent. The notice must state the time and purpose of the hearing.
8. Petitioner(s) must file at the Register in Chancery’s Office proof of mailing from the notice(s) mailed to the interested parties no later than two (2) days before the hearing date.

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

Magistrate in Chancery