

Art. 17A Breakdown

1) Question: Does your County use the Hot Docs Forms?

Answer: Most counties accept Hot Docs Forms, so long as they are in compliance with uniform/state/court/official forms, or are certified pursuant to 207.4(b) of the Uniform Rules for Surrogate's Court.

- Counties that do not accept Hot Docs include:

- **Broome, Chenango, Herkimer, Onondaga, Orleans, Schenectady, and Yates.**

2) Question: Does your County use the Hot Docs Forms for the Medical Affidavits?

Answer: Like in the first question, most counties accept Hot Docs Forms for Medical Affidavits, so long as they meet the compliance requirements listed in that question.

- Counties that do not accept Hot Docs for Medical Affidavits:

- **Broome, Chenango, Delaware, Greene, Lewis, Monroe, Onondaga, Orleans, Schenectady, Schuyler, and Yates.**

3) Question: Do the Affidavits of the Physician and/or licensed psychologist have to be notarized?

Answer: The majority of counties require psychologist affidavits to be notarized, but do not require physicians' affirmations to be notarized.

- Counties that require notarization of both a psychologist affidavit and a physician affirmation include:

- **Allegany, Cattaraugus, Chautauqua, Delaware, Lewis, Livingston, Nassau, Onondaga, Otsego, Schoharie, Steuben, St. Lawrence, Ulster, Warren, and Yates.**

- Counties that do not require notarization of either a psychologist affidavit or a physician affirmation include:

- **Erie, Fulton, Monroe, Niagara, Oswego, and**

Wyoming.

4) Question: What is the filing fee?

Answer: Virtually every county charges a \$20 filing fee for Article 17A's.

- Some exceptions:

- **Nassau:** Charges \$38, which includes the decree and letters.
- **Westchester:** Charges \$30.

5) Question: Does your County appoint a Guardian ad Litem when there are no assets to be managed by the Guardianship?

Answer: When it comes to appointing a GAL in situations there are no assets to be managed, there is no consensus, nor even a clear majority in the approach.

- Counties that appoint GALs when there are no assets:
 - **Cattaraugus, Cayuga, Chemung, Clinton, Columbia, Delaware, Dutchess, Jefferson, Lewis, Livingston, Monroe, Montgomery, Oneida, Ontario, Putnam, Seneca, Steuben, St. Lawrence, Sullivan, Wayne, and Yates.**
- Counties that do not appoint GALs when there are no assets:
 - **Bronx, Chautauqua, Chenango, Erie, Fulton, Kings, Nassau, Onondaga, Oswego, Otsego, Queens, Rensselaer, Schuyler, Suffolk, Tioga, and Wyoming.**
- Some counties take different approaches:
 - Determination is made on a case-by-case basis in **Albany, Allegany, Cortland, Essex, Genesee, Greene, Herkimer, New York, Orleans, Tompkins, and Warren** Counties.
 - GALs will only be appointed if there are assets or there is a report from OCFS in **Broome and Orange** Counties.
 - MHLS will be appointed GAL if the respondent is in an OMRDD, state, or private facility in **Niagara, Rockland, Saratoga, Schenectady, Schoharie, Ulster, Washington, and Westchester** Counties.

6) Question: Does the County appoint a Guardian of the Person and Guardian of the Property even if there is no property to be managed?

Answer: The counties are likewise split when appointing guardians of property and/or guardians of the person in scenarios without property.

- Counties that appoint both guardians in these cases are:
 - **Allegany, Broome, Clinton, Delaware, Genesee, Jefferson, Nassau, Putnam, Rensselaer, Rockland, Seneca, St. Lawrence, Tioga, Washington, Westchester,**

and Yates.

- Counties that *do not appoint both* guardians are:

- **Bronx, Cattaraugus, Chautauqua, Columbia, Greene, Herkimer, Kings, Lewis, Livingston, New York, Oneida, Onondaga, Orange, Oswego, Otsego, Queens, Schoharie, Schuyler, Suffolk, and Ulster.**

- The following counties will *grant both if requested* by the petitioner:

- **Albany, Cayuga, Cortland, Dutchess, Erie, Essex, Montgomery, Ontario, Orleans, Saratoga, Schenectady, Sullivan, Tompkins, Wayne, and Wyoming.**

- Both will be appointed *only if an inheritance or future assets are expected*, or depending on *other circumstances* in **Chemung, Fulton, Steuben, and Warren** Counties.

7) Question: Does the Court hold a hearing in some, all or no uncontested cases?

Answer: The majority of counties hold hearings in all uncontested cases.

- Counties that hold hearings in *some* uncontested cases include:

- **Chemung, Cortland, Genesee, Oneida, Orleans, Putnam, Queens, Schoharie, Suffolk, Tompkins, and Yates.**

- Counties that *do not* hold hearings in uncontested cases include:

- **Cayuga, Chenango, Columbia, Essex, Fulton, Jefferson, Lewis, Livingston, Otsego, Steuben, St. Lawrence, Tioga, Wayne, and Westchester.**

8) Question: Does the Court hold a hearing in some, all or no contested cases?

Answer: The overwhelming majority of counties hold hearings in all contested cases.

- The following counties take a *case-by-case approach*:

- **Chemung, Cortland, Essex, Genesee, Jefferson, Orleans, St. Lawrence, Tompkins, and Yates.**

- **Schenectady** County will hold a *second hearing if objections are raised* at the first hearing, which occurs on the return date.

- **Suffolk** County looks to *who is seeking the guardianship* to determine if a hearing will be held in contested matters. If it is the

parents seeking an appointment, a hearing will usually not be held. If it is a successor guardian seeking appointment, and no parents are involved, a hearing will be held. Finally, if there is a divorce, and one parent is seeking the guardianship and the other does not sign a waiver and consent, a hearing will be held.

9) Question: Does the Court appoint Mental Hygiene Legal Services in some, all or no cases?

Answer: Most counties will appoint MHLS in cases where the respondent lives in an OMRDD, an ARC, DOH, or other facility.

- The following counties appoint MHLS in all cases:

- **Clinton, Erie, Livingston, Ontario, Orange, Otsego, Seneca, Steuben, and Wayne.**

- The counties that do not appoint MHLS include:

- **Broome, Cayuga, Chenango, and Jefferson.**

10) Question: Are Guardians of the Person given authority to make end of life health decisions regardless of the diagnosis of MR or Developmental Disabilities?

Answer: Guardians of the Person are given the authority to make end of life health decisions regardless of diagnoses in most counties.

- The following counties make a case-by-case determination:

- **Albany, Chemung, Cortland, Dutchess, Erie, Genesee, Jefferson, Lewis, New York, Ontario, Orleans, Seneca, Warren, and Washington.**

- Counties that will not grant authority regardless of diagnosis include:

- **Delaware, Onondaga, Saratoga, and Suffolk.**

11) Question: Does the Court accept applications for Supplemental Needs Trusts?

Answer: All responding counties accept applications for SNT's, although it is a rare occurrence in certain areas.

12) Question: Does the Court require Annual Accountings of Trustees of Supplemental Needs Trusts?

Answer: Nearly all counties require SNT trustees to account to the Court.

- Counties that do not require accountings include:

- **Allegany, Fulton, Genesee, Livingston, Ontario,**

Oswego, Schoharie, Seneca, and Washington.

- **Cayuga, Ontario, Steuben, and Wayne** Counties require trustees to file accounts with DSS, as opposed to the Court.

- In **St. Lawrence** County, accountings by SNT trustees are required depending on the circumstances of the individual case.

13) Question: Does the Court have a provision to allow bonding in lieu of joint control for investments? Does this differ if there is an SNT?

Answer: Whether bonding is allowed in lieu of joint control for investments, and particularly in SNT cases, is an area that no uniformity in the counties' approach exists. Nearly all counties have their own unique take on these situations, making it wise to contact the Court in your county for direction.

14) Question: Does the Court require approval of annual budgets for the Guardian of the Property? And for the Trustee of a Supplemental Needs Trust?

Answer: (see 13)

15) Question: Does the Court prepare the Decree or does the attorney prepare the Decree?

Answer: The Court prepares Decrees in most of the counties.

- The attorney prepares the Decree in the following counties:

- **Dutchess, Greene, Onondaga, Queens, Seneca, Steuben, and Warren.**

- Either the attorney or the Court prepares the Decree in **Bronx, Cayuga, Cortland, Erie, Livingston, Montgomery, and Oswego** Counties.

- In **Cattaraugus, Ontario, Schenectady, Tioga, and Wayne** Counties, the Court prepares an Article 17A Decree, but attorneys prepare Decrees approving SNTs.

- In **Sullivan and Yates** Counties, the attorney prepares the Article 17A Decree, unless the petitioner is appearing pro-se, in which the case the Court would prepare the Decree.

16) Question: Does the Court handle applications for Supplemental Needs Trusts contemporaneously with an application for the appointment of a Guardian of the Property or must there be two (2) separate applications?

Answer: Generally speaking, most counties require two separate applications for SNTs and for Guardian of the Property appointments.

- The following counties require two separate applications but will handle them contemporaneously:

- **Broome, Cattaraugus, Chemung, Genesee, Herkimer, Jefferson, Oneida, and Westchester.**

- **Fulton, Nassau, Onondaga, and Washington** Counties will address both as part of the same application or proceeding.

- **Oswego and Tompkins** Counties take a case-by-case approach to matters such as this.

17) Question: Are there certain scores in certain tests that the Court looks for in a determination of developmental disability or MR?

Answer: Only a few counties look for certain test scores when making a determination of developmental disability or mental retardation. The majority look to the affidavits of medical practitioners and the facts of the matter as a whole.

- **Otsego and Warren** Counties look for certain test scores when making their respective determinations.

- **Westchester** County likely will not question the need for a guardian if a respondent exhibits an IQ of 60 or below, but for respondents with IQs above 60, medical affidavits should reference other tests showing behavioral deficits, functional capacity, and the need for a guardian generally.

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