

At IAS Part ____ of the Supreme Court of the State of New York, held in and for the County of _____, at the Courthouse thereof at _____, _____, New York, on the ____ day of _____, 20__.

Present: HON. _____
Justice

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In the Matter of the Application of _____, as Administrator of _____ Nursing Home

Index No.

ORDER TO SHOW CAUSE¹

For the Appointment of a Special Guardian of

_____ ,
An Alleged Incapacitated Person

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IMPORTANT²

An application has been filed in court by _____, Administrator of _____ Nursing Home, who believes you may be unable to take care of your personal needs and financial affairs. _____ is asking that a proper person be appointed to make decisions for you. With this paper is a copy of the application to the Court showing why _____ believes you may be unable to take care of your personal needs and financial affairs. Before this Court makes the appointment of someone to make decisions for you, the Court holds a hearing at which you are entitled to be present and to tell the Judge if you do not want anyone appointed. This paper tells you when the court hearing will take place. If you do not appear in court, your rights may be seriously affected.

1 Pursuant to N.Y.C.R.R. tit. 22, § 130-1.1a(a) an attorney signature is required. An attorney can comply by signing one of the following as long as it accompanies the papers: a cover page, a litigation back or a separate certification. Many counties have their own local forms. You should consult with the clerks of the court in which you are commencing this proceeding before using this form.

2 The following bolded paragraphs must be in 12-point or larger, double-spaced, bold type.

You have the right to demand a trial by jury. You must tell the Court if you wish to have a trial by jury. If you do not tell the Court, the hearing will be conducted without a jury. The name, address and telephone number of the clerk of the court are:

The Court has appointed a Court Evaluator to explain this proceeding to you and to investigate the claims made in the application. The Court may give the Court Evaluator permission to inspect your medical, psychological, or psychiatric records. You have the right to tell the Judge if you do not want the Court Evaluator to be given that permission. The Court Evaluator's name, address and telephone number are:

You are entitled to have lawyer of your choice represent you. If you want the Court to appoint a lawyer to help you and represent you, the Court will appoint a lawyer for you. You will be required to pay that lawyer unless you do not have the money to do so.

At the hearing to be held herein as hereinabove set forth, and in this proceeding, you have the following rights:

- a. You have the right to present evidence.**
- b. You have the right to call witnesses, including expert witnesses.**
- c. You have the right to cross-examine witnesses, including any witnesses called by the Court.**

- d. **You have the right to be represented by a lawyer of your own choice. If you want the Court to appoint a lawyer to help you and represent you, the Court will appoint a lawyer for you. You will be required to pay that lawyer unless you do not have the money to do so.**

UPON reading and filing the annexed Petition of _____, duly verified on the ____ day of _____, 20__, and the statement of _____, dated _____, from which it appears that _____ is unable to manage her property and financial affairs,

LET _____, the alleged incapacitated person, the Department of Social Services and the Court Evaluator appointed herein

SHOW CAUSE, before a Justice of this Court at IAS Part ____, _____, _____, New York, Room ____, on the ____ day of _____, 20__, at _____ o'clock or as soon thereafter as counsel may be heard,

WHY an Order should not be made determining that _____ is an incapacitated person and is likely to suffer harm because she is unable to provide for the management of her property;

WHY an Order should not be made appointing some proper person Special Guardian of the property of _____, upon qualifying in accordance with the statutes of the state of New York, and granting to him the following powers:

- a. to collect the proceeds of a certain bank account held at _____ Bank in the name of _____;
- b. to establish a personal fund for _____ at _____ Nursing Home in a sum to be determined by the Court;
- c. to dispose of the lawful obligations of the alleged incapacitated person;
- d. to communicate with _____ advising it that _____ Nursing Home is the successor agent for the said burial fund;
- e. to prepare and file a Report to the Court with respect to the foregoing, including therein such other information as the Court may direct, pursuant to section 81.16 of Mental Hygiene Law; and
- f. to exercise such other powers necessary and sufficient to effectuate _____'s continuing eligibility for Medicaid benefits; and

WHY Petitioner should not have such other and further or different relief as to this Court seems just and proper;

SUFFICIENT REASON APPEARING THEREFOR, it is

ORDERED, pursuant to Mental Hygiene Law section 81.09, that _____, whose office address is _____ and whose office telephone number is _____, upon filing his consent and affidavit of responsibility, be and hereby is appointed Court Evaluator for you, _____, the person alleged to be incapacitated, to appear for you and protect your interests in this proceeding, upon his duly qualifying and consenting according to law, complying with Part 36 of the Rules of the Chief Judge and filing the certificate and the notice of appointment required by section 36.4 thereof; and

LET personal delivery of a copy of this Order to Show Cause and of the papers on which it is granted upon _____, the Alleged Incapacitated Person, on or before the _____ day of _____, 20__, be deemed good and sufficient service; and

LET service of a copy of the Notice of Proceeding and this Order to Show Cause, by mail, upon _____, at the addresses listed in the Petition on or before the _____ day of _____, 20__, be deemed good and sufficient service; and

LET service of a copy of the Notice of Proceeding, this Order to Show Cause and the papers on which it is granted by facsimile if a facsimile telephone number is designated by the attorney for that purpose or by personal delivery or by overnight delivery service upon _____, court evaluator appointed herein, and _____, court appointed counsel to _____, on or before the _____ day of _____, 20__, be deemed good and sufficient service.

ENTER,

J.S.C.