SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

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In the Matter of the Application of

_____, Index No._____

For the Appointment of a Guardian of the Person and Property of

_____,

VERIFIED PETITION
(With Request for Temporary Restraining Order and Injunction)

A Person Alleged To Be Incapacitated.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____:

The petition of _____, Esq., respectfully shows upon information and belief:

1. Your Petitioner, an attorney-at-law duly admitted to practice before the courts of the state of New York, is a member of _____ and maintains offices for the said practice at [Address], telephone _____. Petitioner is a friend concerned with the welfare of _____, an alleged incapacitated person, and commences these proceedings pursuant to Article 81 of Mental Hygiene Law for the appointment of _____ as Guardian of the person and property of _____.

2. _____, the person alleged to be incapacitated, is a widow; she is __ years of age; her date of birth is _____; and she has no issue and no brothers or sisters. Upon information and belief she has a first cousin, to wit, _____, who is the son of her deceased mother's brother, and who resides at [Address], but who is unable to become involved. Her husband, _____, died on [date]. _____ had resided with her husband in one of the apartments in a three-family house located at [Address], telephone _____. _____ is presently living alone in the aforesaid apartment and she requires the assistance of a home health aide for 12 hours per day.

3. According to _____, M.D., _____'s primary care physician, _____ suffers from, *inter alia*, Munchausen's syndrome and was recently hospitalized with a broken hip.

4. She is able to walk short distances in her apartment with the assistance of a cane or walker, but cannot leave her home unless she is seated in a wheelchair. By reason of her said infirmity, she cannot shop or prepare food and requires assistance with her personal hygiene and all activities of daily living. She is confused at times and is unable to consistently articulate the

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nature or amount of her assets and income, nor is she able to consistently articulate her liabilities. She is unable to supervise the home attendants who care for her.

5. _____ has requested the assistance of an attorney to manage her affairs since she is aware that she is unable to manage the same as more fully hereinafter set forth.

6. It is respectfully submitted to the Court that _____ is unable to provide for her personal needs and property management and cannot adequately understand or appreciate the nature and consequences of such inability. Her functional level requires assistance with all activities of daily living, including collection of her assets and income, paying bills, banking, shopping, cooking, toileting, bathing, grooming, meals and socializing.

7. It is respectfully submitted to the Court that by reason of her physical and other infirmities, _____ is likely to suffer harm because of her inability to provide for her own personal needs and to provide for the management of her property and her inability to adequately understand and appreciate the nature and consequences of her said inability. It would be in her best interests that a Guardian be appointed for her, and it is respectfully submitted that the said appointment is the least restrictive form of intervention appropriate to _____.

8. On or about [date], your Petitioner received a call from _____ seeking legal assistance in settling the estate of her husband. I met with her at her home, wherein she advised me that _____, who is the nephew of _____, the deceased husband of the alleged incapacitated person and the nominated Executor under the Last Will and Testament of _____, and his attorney, _____, had told her that all of her bank accounts had been frozen. _____ stated to me that she had no access to any cash to purchase food, medicine and to pay her home care attendants. In addition _____ told your Petitioner that _____ and _____ had rummaged through her apartment without her permission and removed various papers and records from her apartment. _____ expressly stated that _____ and _____ had frightened her and that she felt threatened by them.

9. _____ called your Petitioner numerous times requesting help for various physical problems she was having. Your Petitioner respectfully submits that in his opinion, _____ is both physically and mentally infirm and is in grave need of assistance. _____ appears to have no family or friends that could give her the assistance that she requires.

10. As aforestated, _____'s husband, _____, left a Last Will and Testament on his death. Annexed hereto and made a part hereof, marked Exhibit A, is a photocopy of said Will. _____ stated to me that she was unaware of the existence of the said Will and she is unable to comprehend the terms of the said Will.

11. _____ was granted Preliminary Letters Testamentary in respect of the said estate by the Surrogate's Court of the County of _____ on [date]. Annexed hereto and made a part hereof, marked Exhibit B, is a photocopy of said Letters granted to him. _____ failed to disclose _____'s disability to the Surrogate's Court in

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his Petition for the probate of her deceased husband's Will; however, in his Petition for the issuance to him of Preliminary Letters Testamentary he alleges, *inter alia*, that _____ is in a "state of ill health" and is "elderly and disabled" and that she "has been expending unusual and extraordinary sums of money from the account of the decedent." Photocopies of the said Petitions are annexed hereto and made a part hereof, marked Exhibits C and D, respectively.

12. It is respectfully submitted that unless a guardian is appointed to represent _____, she will be severely disadvantaged in the settlement of her husband's estate and may sustain injury to her own estate.

13. Upon information and belief, _____ is in possession and control of property of _____ without any legal authority therefor, including paying to his attorney, _____, Esq., the sum of $_____ to dispose of obligations of _____. The details of the same are more fully set forth in the Affirmation of _____, annexed hereto and made a part hereof.

14. Moreover, apparently on or about [date], without the knowledge or consent of _____, _____ caused certain sums contained in the joint bank accounts numbered _____ and _____ at _____ Bank held in the names of _____ and _____ to be transferred to joint accounts numbered _____ (checking) and _____ (savings) in the names of _____ *and* _____, and caused checking and savings accounts numbered _____ and _____, respectively, to be opened in the name of _____ individually. _____ stated that she had no knowledge of these transactions and further stated that _____ did not provide her with any checks so that she could access the funds held in either of the said checking accounts.

15. I met with _____ at her home on [date], at which time she stated to me that she had no money to pay her home attendants and since she was not in possession of the checkbooks for either her new individual checking account or the joint account with _____, she was unable to pay her bills. _____ was present at the said meeting and commenced her investigation herein and on [date], _____ was able to recover certain of _____'s funds held at _____ Bank and transferred the same to _____ Savings Bank in accounts held solely in the name of _____. The details of the same are more fully set forth in _____'s aforesaid Affirmation.

16. By reason of the foregoing actions of _____, it appears that _____'s welfare is endangered and her property is at risk of dissipation since he may persist in his said actions of withdrawing sums from the accounts which are property of _____. It is respectfully requested that the Court grant a temporary restraining Order, pursuant to Mental Hygiene Law section 81.23(b) and a preliminary injunction enjoining _____ individually and as Preliminary Executor of the Estate of _____, and _____ from obtaining, receiving, selling, assigning or disposing of property of _____ in their possession and restraining _____ Bank from releasing the proceeds of account number _____ held in the names of _____ and _____ during the pendency of these proceedings and until the final determination thereof.

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17. It is the plan of your Petitioner to have _____ remain in her apartment with the assistance of home attendants on a twelve-hour basis since her familiarity with the surroundings will be beneficial to her. While _____ was bequeathed a life estate in the said apartment under her husband's will, the nature and extent of her interest in the said estate is more particularly unknown, and her ability to expend sufficient sums to provide her with 24-hour care has not as yet been determined.

18. The approximate value and description of the remaining financial resources of _____ are as follows:

ASSET/INCOME	VALUE
Monthly Social Security Benefits	$ _____.___
Monthly Pension Benefits — Storeworkers Retirement Plan	_____.___
Medicare refund	_____.___
_____ Bank Account #: _____	_____.___
_____	_____.___
_____	_____.___
Safe-Deposit Box #_____ _____ Bank—held in the names of _____ and _____	_____.___
Estate of _____ Life estate in premises _____, _____, New York	_____.___
1/2 residuary interest	_____.___
interest under the testamentary trust	_____.___

19. To the best of Petitioner's knowledge, _____ is not a recipient of public assistance or Medicaid; she has not given a power of attorney to any individual; she has not executed a Health Declarations Document or a Living Will; and she has no Last Will and Testament.

20. To the best of the Petitioner's knowledge, the nature and amount of any claim, debt, or obligations of _____ are as follows:

ITEM	AMOUNT
Home attendants' salaries	$ _____.___
Blue Cross/Blue Shield Supplemental	

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Medical Insurance Premiums _____.___

Utilities _____.___

21. The following powers in respect of the personal needs of _____ are being sought for the guardian to be appointed herein:

a. to provide for proper living arrangements for _____, based on the recommendation of her physicians;

b. to determine who shall provide personal care or assistance to _____;

c. to make decisions regarding social aspects of the life of _____;

d. to determine whether she should travel; and

e. to access and release all of _____'s medical records in order to provide for her proper medical treatment.

22. The following powers in respect of the property management needs of _____ are being sought for the guardian to be appointed herein:

a. to collect all assets and income of _____ and to invest and reinvest the same as would a person of reasonable prudence;

b. to dispose of the lawful liabilities of _____;

c. to provide for the proper care and maintenance of _____ and to pay the providers of the same, including physicians, hospitals, nurses, aides, if any;

d. to retain counsel to represent the Guardian in respect of the proceedings of such Guardian, including the interposition of the claim, if any, of _____ against _____ and to appear for her in respect of the proceedings in the estate of her deceased husband;

e. to hire and pay an accountant to prepare _____'s tax returns as required; and

f. to exercise such other powers necessary and sufficient to manage the property and financial affairs of _____, including arranging for a funeral and burial at the time of the alleged incapacitated person's demise and disposing of her lawful obligations incurred prior thereto.

23. The relationship of these powers to the functional level and needs of _____ is as follows: Since she is unable to provide for her personal needs or to manage her property, it is respectfully submitted that she will suffer harm to her person and waste will be committed to her estate if the Guardian to be appointed herein is not authorized to fully provide for her personal needs and to manage her property.

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24. These powers are sought for an indefinite period given _____'s physical incapacities.

25. The names, addresses, and telephone numbers of presumptive distributees of _____, as that term is defined in Surrogate's Court Procedure Act section 103, subdivision 42, are as follows:

26. The names, addresses and telephone numbers of the respondents herein are as follows:

27. Your Petitioner respectfully requests that the Court appoint _____ as Guardian of _____. Ms. _____ maintains offices for her law practice at [Address], telephone (____)_____. Your Petitioner is familiar with Ms. _____ and the nature of her law practice; and after your Petitioner's office had provided _____ with all services it could, we requested that Ms. _____ undertake the investigation into _____'s assets and to serve as counsel in the within proceedings. Ms. ____ has spent several days meeting with ____ both in person and by telephone and _____ has requested that Ms. _____ serve as Guardian herein.

28. The available resources that have been considered by your Petitioner are as follows: conversations and meetings with _____ and various of her caretakers and a physician who has treated _____; examination of the Surrogate's Court file in respect of the proceedings for the probate of _____'s Will; conversation with _____; and investigation of the accounts held at _____ Bank. In your Petitioner's opinion, the sufficiency and reliability of these resources is ample and credible since the professionals that have been involved in this matter have identified _____'s incapacity to provide for herself.

29. Your Petitioner has retained the services of _____, Esq., to represent him in the within proceedings and your Petitioner respectfully requests that the Court grant an Order fixing a legal fee to be paid to Ms. _____ from the proceeds of _____'s estate and further directing the reimbursement to the said attorney from the proceeds of the estate of her necessary disbursements advanced herein.

30. No previous application has been made for the relief requested herein.

WHEREFORE, your petitioner prays that the Court grant an Order:

a. Declaring that _____ is incapacitated as that term is defined in section 81.02(b) of Mental Hygiene Law since she is unable to provide for her personal needs or for the management of her property;

b. Restraining and enjoining _____, individually and as Preliminary Executor of the Estate of _____ and _____ from selling, assigning, obtaining, receiving

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or disposing of property of _____ in their possession during the pendency of this proceeding and until the final determination thereof;

c. Restraining and enjoining _____ Bank from releasing the proceeds of account number _____;

d. Appointing _____ as Guardian of the person and property of _____ with the powers requested herein;

e. Fixing a fee to be paid from the proceeds of _____'s estate to _____, Esq., for her legal services rendered herein and directing the reimbursement to her of her necessary disbursements advanced;

f. Granting such other and further relief as to the Court seems just and proper.

Dated: _____, New York
_____, _____

_____
[Name of Petitioner]

_____, Esq.
Attorney for Petitioner
[Address]
[Telephone No.]

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STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

_____, Esq., being duly sworn, deposes and says:

That I am the Petitioner in the within proceeding; that I have read the foregoing PETITION and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

_____
[Name of Petitioner]

s/_____
[Signing Attorney's Name]

Sworn to before me this
____ day of _____, _____.

_____
Notary Public

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