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

P R E S E N T:
HON. _____
Justice

----------X

In the Matter of the Application of

_____,
Petitioner,

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

_____,
Respondent.

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Index No.

ORDER AND JUDGMENT APPOINTING GUARDIAN OF THE PERSON AND PROPERTY[1]

An order having been duly made herein at IAS Part ___ of this Court on the ___ day of _____, 20___, directing that _____ and [Name of AIP] show cause why a Guardian of the Person and Property should not be appointed for _____ and granting other relief, and _____, having been appointed as Court Evaluator and having duly appeared as same, and _____ having been appointed as attorney for the Alleged Incapacitated Person, and having duly appeared as same, and _____ having appeared for the Petitioner herein, and this matter having regularly come on for hearing on _____, 20__, and the parties having adduced their proof and it appearing therefrom to the satisfaction of this Court that the alleged incapacitated person is likely to suffer harm because the alleged incapacitated person is unable to provide for her personal needs and property management, and the Court having made the findings required by section 81.15 of the Mental Hygiene Law and upon all the pleadings and proceedings heretofore had herein, and due deliberation having been had,

NOW, on motion of _____, attorneys for the Petitioner, it is

ORDERED AND ADJUDGED, that _____ be and hereby is determined to be a person requiring the appointment of a Guardian of the Person and Property as the Court has found that said incapacitated person is likely to suffer harm because of her inability to provide for her personal needs and property management; and it is further

_____

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.

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ORDERED AND ADJUDGED, that _____, of _____, is hereby appointed Guardian of the Person and Property of _____, upon filing with this Court, pursuant to Mental Hygiene Law section 81.25, a bond in a sum of $_____ with sufficient sureties, conditioned that the Guardian will in all things faithfully discharge the trust imposed herein, obey all the directions of the Court in respect to the trust, make and render a true and just account of all monies and other properties received pursuant to the authority granted herein and the application thereof, and of all acts performed in the administration of the trust imposed herein whenever required to do so by the Court, and will file the designation required by section 81.26 of the Mental Hygiene Law; and it is further

ORDERED AND ADJUDGED, that pursuant to section 81.27 of the Mental Hygiene Law, upon the filing of such bond and designation as required by statute a commission in the due form of law shall be issued by the Clerk of the Court; and it is further

ORDERED AND ADJUDGED, that the authority of the Guardian of the Person and Property shall extend to all of the property of the incapacitated person, both real and personal; and it is further

ORDERED AND ADJUDGED, that all persons are hereby directed and commanded to deliver to the Guardian of the Person and Property, upon demand and presentation of a certified copy of the commission, all property of the incapacitated person, of every kind and nature which may be in their possession or under their control; and it is further

ORDERED AND ADJUDGED, that the Guardian of the Property shall have the following powers pursuant to section 81.21 of the Mental Hygiene Law:

1) Marshal income and assets;

2) Pay such bills as may be reasonably necessary to maintain the alleged incapacitated person in an appropriate residential care facility;

3) Invest funds with the same authority as a trustee pursuant to EPTL 11-2.3;

4) Lease a primary residence for up to three years;

5) Defend or maintain any civil judicial proceeding;

6) Retain counsel subject to court approval of fees;

7) Retain an accountant;

8) Pay the funeral expenses of the incapacitated person;

9) Pay bills after the death of the incapacitated person if incurred prior to said death if authority to pay any such bill would otherwise have existed;

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10) Exercise such authority as may be granted by any statute of the United States of America or any other jurisdiction including but not limited to the state of New York, to a Guardian of the Property, Conservator or Committee of the Property unless any such statute specifically requires the permission of the Court before the exercise of the power granted therein;

ORDERED AND ADJUDGED, that the Guardian of the Person shall have the following powers pursuant to section 81.22, of the Mental Hygiene Law:

1) Determine who shall provide personal care or assistance;

2) Make decisions regarding social environment and other social aspects of the life of the incapacitated person;

3) Determine whether the incapacitated person should travel;

4) Determine whether the incapacitated person should possess a license to drive;

5) Authorize access to or release of confidential records;

6) Make decisions regarding education;

7) Apply for government and private benefits;

8) Consent to or refuse generally accepted routine or major medical or dental treatment, subject to the provisions of subdivision (e) of section 81.29 of this article dealing with life-sustaining treatment, provided that the Guardian of the Person shall make treatment decisions consistent with the findings required under Mental Hygiene Law section 81.15 and in accordance with the patient's wishes, including the patient's religious and moral beliefs, or if the patient's wishes are not known and cannot be ascertained with reasonable diligence, in accordance with the person's best interests, including a consideration of the dignity and uniqueness of every person, the possibility and extent of preserving the person's life, the preservation, improvement or restoration of the person's health or functioning, the relief of the person's suffering, the adverse side effects associated with the treatment, any less intrusive alternative treatments, and such other concerns and values as a reasonable person in the alleged incapacitated person's circumstances would wish to consider;

9) Choose the place of abode, provided that the choice of abode must be consistent with the findings required under Mental Hygiene Law section 81.15, the existence of and availability of family, friends and social services in the community, the care, comfort and maintenance, and where appropriate, rehabilitation of the incapacitated person, the needs of those with whom the alleged incapacitated person resides; and provided further that based upon the findings made by the Court the Guardian of the Person shall have the authority to place the incapacitated person in a nursing home or residential care facility as those terms are defined in section 2801 of the Public Health Law without the consent of the incapacitated person.

ORDERED AND ADJUDGED, that the Guardian of the Person and Property shall have the authority to invade any Totten trusts established by the incapacitated person for the benefit of

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any party to this proceeding pro rata upon the exhaustion or unavailability of all liquid assets solely in the name of the incapacitated person; and

ORDERED AND ADJUDGED, that pursuant to section 81.20 of the Mental Hygiene Law the Guardian of the Person and Property shall:

1) exercise only those powers that the Guardian is authorized to exercise by order of the Court;

2) exercise the utmost care and diligence when acting on behalf of the incapacitated person;

3) exhibit the utmost degree of trust, loyalty and fidelity in relation to the incapacitated person;

4) visit the incapacitated person not less than four times per year;

5) afford the incapacitated person the greatest amount of independence and self-determination with respect to property management and personal needs in light of that person's functional level, understanding and appreciation of his or her functional limitation, and personal wishes, preferences and desires with regard to managing the activities of daily living; and it is further

ORDERED AND ADJUDGED, that pursuant to section 81.20 of Mental Hygiene Law the Guardian shall:

1) preserve, protect and account for the incapacitated person's property and financial resources faithfully;

2) determine whether the incapacitated person has a will, determine the location of any will, and the appropriate persons to be notified in the event of the death of the incapacitated person, and in the event of the death of the incapacitated person, notify those persons;

3) at the termination of the appointment, deliver the property of the incapacitated person to the person legally entitled to it;

4) file with the recording office of the county wherein the incapacitated person is possessed of real property, an acknowledged statement to be recorded and indexed under the name of the incapacitated person, identifying the real property possessed by the incapacitated person, and the tax map number of the property, and stating the date of adjudication of incapacity of the person regarding property management and the name, address and telephone number of the Guardian of the Property and the Guardian of the Property's surety; and

5) perform all other duties as required by law; and it is further

ORDERED AND ADJUDGED, that any safe deposit box owned by the incapacitated person shall be opened by the Guardian of the Property in the presence of a representative of the bank and a representative of the surety on the Guardian of the Property's bond (unless the surety waives being present in writing) and the Guardian shall promptly file an inventory of the contents of the safe deposit box with the Court; and it is further

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ORDERED AND ADJUDGED, that pursuant to section 81.39 of the Mental Hygiene Law, no later than ninety days after the issuance of a commission, the Guardian of the person and property shall complete a training program approved by the Chief Administrator of the courts and obtain proof that the training was completed; and it is further

ORDERED AND ADJUDGED, that pursuant to section 81.30 of the Mental Hygiene Law, no later than ninety days after the issuance of the commission to the Guardian, the Guardian shall file with the Court an initial report in a form prescribed by the Court and proof of completion of the guardian education requirements under section 81.39 of the Mental Hygiene Law; and it is further

ORDERED AND ADJUDGED, that the Guardian shall file during the month of May in the office of the clerk of the county in which the incapacitated person last resided before the appointment of a Guardian, an annual report in the form required by section 81.31 of the Mental Hygiene Law; and it is further

ORDERED AND ADJUDGED, that the Guardian's compensation shall be determined pursuant to section 2309 of the Surrogate's Court Procedure Act, unless modified by the Court in accordance with section 81.28 of the Mental Hygiene Law; and it is further

ORDERED AND ADJUDGED, that the Guardian shall make the following disbursements from the funds of the incapacitated person:

1) To _____, attorney for the Petitioner herein, the sum of $_____, as legal fees, plus the further sum of $_____, for disbursements; and

2) To _____, for services rendered as Court Evaluator herein, the sum of $_____; and

3) To _____, for services rendered as attorney for the Alleged Incapacitated Person herein, the sum of $_____; and

4) To _____, M.D., the sum of $_____ for expert testimony rendered herein; and it is further

ORDERED AND ADJUDGED, that pursuant to section 81.16(c)(3) of the Mental Hygiene Law, notice of all further proceedings with regard to this matter shall be given to _____ and [Name of AIP]; and it is further

ORDERED AND ADJUDGED, that pursuant to section 81.16(e) of the Mental Hygiene Law, the order and judgment must be entered and served within 10 days of the signing of the order. A copy of this Order and Judgment shall be personally served upon and explained to the incapacitated person, in a manner which the person can reasonably be expected to understand, by [Name of Court Evaluator], or by counsel for the person, or by the guardian; and it is further

ORDERED AND ADJUDGED, that any appointee herein shall comply with section 35-a of the Judiciary Law and Part 36 of the New York Rules of Court and no fee shall be paid to such appointee until such appointee has filed OCA Form 875 with the Court.

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J.S.C.

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