

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

P R E S E N T:

HON. _____
Justice

-----X

In the Matter of the Application of

_____,
Petitioner,

Index No.

ORDER TO SHOW CAUSE¹

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

_____,
Respondent.

-----X

IMPORTANT²

An application has been filed in court by _____ who believes you may be unable to take care of your personal needs or financial affairs. _____

is asking that someone 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 or financial affairs. Before the 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 you wish to have a trial by jury, 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 a 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 any money to do so.

STATEMENT OF ALLEGED INCAPACITATED PERSON'S RIGHTS

In a proceeding brought pursuant to this article, any party to the proceeding shall have the right to (1) present evidence; (2) call witnesses, including expert witnesses; (3) cross-examine witnesses, including witnesses called by the Court; and (4) be represented by counsel of his or her choice.

The hearing must be conducted in the presence of the person alleged to be incapacitated, either at the courthouse or where the person alleged to be incapacitated resides, so as to permit the Court to obtain its own impression of the person's capacity. If the person alleged to be incapacitated physically cannot come or be brought to the courthouse, the hearing must be conducted where the person alleged to be incapacitated resides unless (1) the person is not present in the state; or (2) all the information before the Court clearly establishes that (a) the person alleged to be incapacitated is completely unable to participate in the hearing, or (b) no meaningful participation will result from the person's presence at the hearing.

If the hearing is conducted without the presence of the person alleged to be incapacitated and the Court appoints a Guardian, the order of appointment shall set forth the factual basis for conducting the hearing without the presence of the person for whom the appointment is made.

If the hearing is conducted in the presence of the person alleged to be incapacitated and the person is not represented by counsel, the Court shall explain to the person, on the record, the purpose and possible consequences of the proceeding, the right to be represented by counsel, and

the fact that the Court will appoint an attorney to represent the person alleged to be incapacitated if the person wishes to be represented by counsel, and shall inquire of the person whether he or she wishes to have an attorney appointed. If the person refuses the assistance of counsel, the Court may nevertheless appoint counsel if the Court is not satisfied that the person is capable of making an informed decision regarding the appointment of counsel.

If any party to the proceeding on or before the return date designated in the order to show cause raises issues of fact regarding the need for an appointment under this article and demands a jury trial of such issues, the Court shall order a trial by jury thereof. Failure to make such a demand shall be deemed a waiver of the right to trial by jury.

On reading and filing the annexed petition of _____, duly verified the _____ day of _____, 20____, from which it appears that _____, the alleged incapacitated person herein, residing at _____ is unable to provide for her personal needs and to manage her property or financial affairs,

LET _____ and _____, the alleged incapacitated person, show cause at I.A.S. Part _____, Room _____ of this court, to be held at the courthouse located at _____ on the _____ day of _____, 20____, at _____ o'clock in the [forenoon/afternoon] of that day, or as soon thereafter as counsel can be heard,

WHY a Guardian of the Property should not be appointed for the alleged incapacitated person upon qualifying in accordance with the statutes of the state of New York, said Guardian to have the authority to exercise the following powers on behalf of the alleged incapacitated person:

1. Marshal income and assets.
2. Pay such bills as may be reasonably necessary to maintain the alleged incapacitated person.
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 alleged incapacitated person.
9. Pay bills after the death of the alleged incapacitated person if incurred prior to said death if authority to pay any such bill would otherwise have existed.
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.

WHY a Guardian of the Person should not be appointed for the respondent, upon qualifying in accordance with the statutes of the state of New York made and provided, said Guardian to have the following powers:

1. Determine who shall provide personal care or assistance.
2. Make decisions regarding social environment and other social aspects of the life of the alleged 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 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. For decisions in hospitals as defined by Subdivision 18 of Section 2994-a of the Public Health Law, act as the patient's surrogate pursuant to and subject to Article 29-CC of the Public Health Law, and in all other circumstances, to consent to or refuse generally accepted routine or major medical or dental treatment subject to the decision-making standard in Subdivision 4 of Section 2994-d of the Public Health Law;

WHY the Court should not authorize any Guardian of the Property appointed herein to invade any Totten trusts established by the alleged incapacitated person pro rata upon the exhaustion of all liquid assets solely in the name of the alleged incapacitated person;

WHY the Court should not determine the ownership of any assets held jointly by the alleged incapacitated person with any party to this proceeding; and

WHY Petitioner should not have such other further or different relief as may be just in the premises including but not limited to any dispositional alternative authorized by Mental Hygiene Law section 81.16(b).

SUFFICIENT reason appearing therefor, it is

ORDERED, that _____ at _____, telephone number (____) _____, upon filing her consent and affidavit of responsibility, be and hereby is appointed Court Evaluator for the AIP to appear for and protect her interests in this proceeding; and it is further

ORDERED, that _____ at _____, telephone number (____) _____, upon filing her notice of appearance be and hereby is appointed attorney for the AIP to appear for and represent the alleged incapacitated person in this proceeding.

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.

E N T E R,

J.S.C.

Sample