

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

In the Matter of the Application of

_____,
Petitioner,

Index No.

PETITION

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

_____,
Alleged Incapacitated Person.

-----X

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

The petition of _____, of _____, New York, respectfully states and
alleges:

1. That I am a person “concerned with the welfare of the person alleged to be
incapacitated,” and therefore entitled to commence this proceeding under section 81.06 of the
Mental Hygiene Law. My address and phone number are as follows:

2. _____ is an alleged incapacitated person (AIP) who is approximately ___ years of
age. _____ resides at _____. Her telephone number is
_____.

3. The name, address and telephone number of the people with whom the AIP resides, if
any, and the name, address and telephone number of any persons that the petitioner intends to
serve with the order to show cause and the nature of their relationship to the alleged
incapacitated person are as follows:

**[NOTE; In order to hear a case the court must have jurisdiction pursuant to Mental
Hygiene Law sec. 81.17. This means that New York must be the AIP’s home state, or it must be a
significant connection state, or the home state and all significant connection states must have
declined jurisdiction, or there must be a basis for special jurisdiction. The term “home state” is
defined in Mental Hygiene Law sec. 83.03(e). The term “significant connection state” is defined in
Mental Hygiene Law sec. 83.03(m) and as supplemented by Mental Hygiene Law sec. 83.13. Six**

alternate jurisdictional paragraphs are set forth below. Use the appropriate allegation based on the facts of the case.]

4. The court has jurisdiction to hear this matter pursuant to Mental Hygiene Law sec. 83.17(a) and Mental Hygiene Law sec. 83.03(e). New York is the home state of the AIP because, the AIP has been physically present in New York for at least six months immediately prior to the filing of this petition. **[NOTE: If the AIP has had a temporary absence from New York during the six month period, New York is still the home state but the temporary absence should be alleged and explained.]**

4. The court has jurisdiction to hear this matter pursuant to Mental Hygiene Law sec. 83.17(a) and Mental Hygiene Law sec. 83.03(e). New York is the home state of the AIP because there is not a state in which the AIP has been physically present (including any period of temporary absence) for at least six months prior to the filing of this petition and the AIP has been physically present in New York (including any period of temporary absence) for at least six months ending in the six months prior to the filing of this petition.

4. The court has jurisdiction to hear this matter pursuant to Mental Hygiene Law sec. 83.17(b)(1) and Mental Hygiene Law sec. 83.13. The AIP does not have a home state (or the AIP has a home state but the courts of the home state have declined to exercise jurisdiction because New York is a more appropriate forum) and New York is a significant connection state. There is substantial evidence concerning the AIP that is available in New York and the AIP has significant connections to New York other than mere physical presence. The connections of the AIP to New York include the following (include the following allegations to the extent that they are applicable). The family members and other individuals who are required to be notified of this proceeding and who are present in New York are as follows _____. The AIP has been physically present in New York for _____ months. [Alternative: The AIP was physically present in New York for _____ (state length of time) and has been absent for _____ (state length of time)]. The location of the property of the AIP is as follows _____. The AIP has the following ties to New York (discuss voting

registration, where state and local tax returns have been filed, vehicle registration, driver's license, social relationships and receipt of services).

4. The court has jurisdiction to hear this matter pursuant to Mental Hygiene Law sec. 83.17(b)(2) and Mental Hygiene Law sec. 83.13. The home state of the AIP is _____. However, no petition for the appointment of a guardian is pending in the home state of the AIP or in any other significant connection state. New York is a significant connection state. There is substantial evidence concerning the AIP that is available in New York and the AIP has significant connections to New York other than mere physical presence. The connections of the AIP to New York include the following (include the following allegations to the extent that they are applicable). The family members and other individuals who are required to be notified of this proceeding and who are present in New York are as follows _____. The AIP has been physically present in New York for _____ months. [Alternative: The AIP was physically present in New York for _____ (state length of time) and has been absent for _____ (state length of time)]. The location of the property of the AIP is as follows _____. The AIP has the following ties to New York (discuss voting registration, where state and local tax returns have been filed, vehicle registration, driver's license, social relationships and receipt of services). **[NOTE: If the court proceeds on this jurisdictional basis it will subsequently lose jurisdiction if before the court makes an appointment or issues an order, a petition for an appointment is filed in the AIP's home state or an objection is filed to the proceeding in New York. In addition, before making an appointment or issuing an order the court must conclude that New York is an appropriate forum pursuant to Mental Hygiene Law sec. 83.23]**

4. The court has jurisdiction to hear this matter pursuant to Mental Hygiene Law sec. 83.17(c). New York is not the home state or a significant connection state of the AIP but the home state of the AIP and all significant connection states of the AIP have declined to exercise jurisdiction, and, consistent with Mental Hygiene Law sec. 83.23, New York is the most appropriate forum to hear the case, and jurisdiction is consistent with the Constitutions of the United States and the State of New York.

4. New York is not the home state or a significant connection state of the AIP but the court has special jurisdiction to hear this matter pursuant to Mental Hygiene Law sec. 83.19. The following emergency exists _____. **[NOTE: If the court is exercising special jurisdiction because of an emergency it can: appoint a guardian of the person for a person physically present in New York for a period not to exceed 90 days, or; issue a protective order with regard to real or tangible personal property located in New York. If a proceeding for the appointment of a guardian of the person in an emergency is brought in New York and New York was not the home state of the AIP, that proceeding must be dismissed at the request of the courts of the home state of the AIP, even if a guardian has already been appointed.]**

5. The functional level (as defined in MHL § 81.03) of the AIP, including said person's ability to manage the activities of daily living, behavior and understanding and appreciation of the nature and consequences of any inability to manage these activities of daily living can be described as follows:

6. In that powers are sought herein with respect to the personal and property needs of the AIP, Petitioner makes the following specific allegations as to the personal actions or other actual occurrences involving the AIP which demonstrate that the AIP is likely to suffer harm because the AIP cannot adequately understand and appreciate the nature and consequences of an inability to provide for personal and property needs; if powers are sought to transfer a part of the alleged incapacitated person's property or assets to or for the benefit of another person, including the petitioner or guardian, the petition shall include the information required by subdivision (b) of section 81.21.

POWERS OVER THE PERSON

7. It is respectfully requested that any Guardian appointed herein be granted the following powers over the person of the AIP pursuant to MHL section 81.22:

- a. Determine who shall provide personal care or assistance.
- b. Make decisions regarding social environment and other social aspects of the life of the AIP.
- c. Determine whether the incapacitated person should travel.
- d. Determine whether the incapacitated person should possess a license to drive.
- e. Authorize access to or release of confidential records.

- f. Make decisions regarding education.
 - g. Apply for government and private benefits.
 - h. 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.
 - i. 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 incapacitated person resides; and provided further that based upon the findings made by the Court, the Guardian of the Person requests 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.
8. All of the requested powers are necessary to allow the Guardian to provide for the personal needs of the AIP.

POWERS OVER THE PROPERTY

9. It is respectfully requested that any Guardian appointed herein be granted the following powers over the property of the AIP pursuant to MHL section 81.21:
- a. Marshal income and assets.
 - b. Pay such bills as may be reasonably necessary to maintain the AIP.
 - c. Invest funds with the same authority as a trustee pursuant to EPTL 11-2.3.
 - d. Lease a primary residence for up to three years.
 - e. Defend or maintain any civil judicial proceeding.
 - f. Retain counsel subject to Court approval of fees.
 - g. Retain an accountant.
 - h. Pay the funeral expenses of the AIP.
 - i. Pay bills after the death of the AIP, if incurred prior to said death if authority to pay any such bills would otherwise have existed.
 - j. Exercise such authority as may be granted by any statute of the United States of America or any other jurisdiction including, but 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.

10. All of the requested powers over the Property are necessary for general financial management.

11. The duration of the powers being sought is indefinite as the condition of the AIP is not expected to improve.

12. The approximate value and description of the financial resources of the AIP are as follows:

13. Upon information and belief, the AIP is not a recipient of public assistance.

14. To the best of Petitioner's knowledge, the AIP has no outstanding claim, debt or obligation.

15. Pursuant to MHL § 81.07(g), to the extent they are known or their existence and addresses can be ascertained by Petitioner with reasonably diligent efforts, the names and addresses of the relatives entitled to notice of the proceeding pursuant to MHL § 81.07(g)(1)(i) are as follows:

Spouse/Parents:

Adult Children:

Adult Siblings:

Person(s) with whom the AIP resides:

16. In addition to the next-of-kin identified in Paragraph 14, the names and addresses of other interested parties are as follows:

(If no one is listed in paragraph fourteen above, then list at least one and not more than three living relatives of the AIP in the nearest degree of kinship known to the petitioner or whose existence can be ascertained with reasonable diligence. All known distributees of the AIP should be listed (include telephone numbers). Any person who has received a power of attorney from the AIP, or been named health care proxy should be listed. If it is known that the AIP receives public assistance, the local Department of Social Services should be listed. If the person resides in a facility licensed by the New York State Department of Health, the New York State Department of Social Services, the New York State Office of Mental Hygiene, the New York State Office of Mental Retardation and Developmental Disabilities or the New York State Office of Alcoholism and Substance Abuse Services, then the Chief Executive Officer of that facility and the Mental Hygiene Legal Service should be listed. Any person who has demonstrated a genuine interest in promoting the best interest of the AIP should be listed.)

17. The name, address and telephone number of the proposed guardian and standby guardian, if any are as follows:

Their relationship to the AIP is as follows:

The reasons they are suitable to act herein are as follows:

18. The available resources (as defined in MHL § 81.03(e)) if any, that have been considered by the petitioner, and petitioner's opinion as to their sufficiency and reliability as a substitute for a guardianship are as follows:
19. The following additional information will assist the Court in making its decision:
20. No prior application has been made for the relief requested herein.

WHEREFORE, it is respectfully requested that the Court:

- a. Sign the Order to Show Cause herein;
- b. Appoint a Guardian of the Person and of the Property of the alleged incapacitated person;
- c. Authorize any Guardian of the Property appointed herein to invade for the benefit of the incapacitated person any "in trust for" accounts held by the incapacitated person for the benefit of any party to this proceeding, pro rata, to the extent that the incapacitated person has no liquid assets solely in said person's name; and
- d. Grant such other further or different relief as to the Court may seem just and proper, including but not limited to any dispositional alternative authorized by MHL section 81.16(b).

Dated: _____, New York
_____, 20__

[Name of Petitioner]

VERIFICATION

STATE OF NEW YORK)
) SS.
COUNTY OF _____)

_____, being duly sworn, deposes and says:

That [he/she] is the Petitioner in this proceeding, that [he/she] has read the foregoing petition and knows the contents thereof to be true to [his/her] own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters [he/she] believes them to be true.

[Name of Petitioner]

Sworn to before me this
____ day of _____, 20____.

Notary Public