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__.

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

----------X

In the Matter of the Application of
_____, as Administrator of
_____ Nursing Home
for the Appointment of a Special
Guardian of

_____,
An Alleged Incapacitated Person.

----------**X**

Index No.

ORDER AND JUDGMENT APPOINTING SPECIAL GUARDIAN[1]

The petition of _____, as Administrator of _____ Nursing Home, duly verified on the ___ day of _____, 20___, having been presented to this Court seeking an Order declaring that _____ is incapacitated as defined in section 81.02, subdivision (b) of the Mental Hygiene Law, and seeking the appointment of a Special Guardian of _____ pursuant to section 81.16(b) of the Mental Hygiene Law, and HONORABLE _____ having granted an Order to Show Cause on the ___ day of _____, 20__, and having required service of said petition and order to show cause personally upon the alleged incapacitated person, _____, and by certified mail on the Department of Social Services of the city of New York; and the said petition and order to show cause having thereafter been duly served and proof of service thereof filed with the Court; and _____ of _____ having duly qualified as Court Evaluator; and _____, having appeared for petitioner, and _____ having been present at the hearing held hereunder;

NOW on reading and filing said petition and Order to Show Cause and the proof and allegations of the parties then and there presented; certain medical records of _____; the statement of _____, M.D., dated _____, 20___; the Report of the Court Evaluator, _____, dated _____, 20___; the Affidavit of Services of the said Court Evaluator, sworn to the ___ day of _____, 20___; the Affidavit of Legal Services of _____, attorney for the Petitioner, sworn to on the ___ day of ____, 20___; and the Court having heard testimony at the hearing held herein on _____, 20___; and upon all the evidence adduced; and after due deliberation; and the Court having rendered its written decision on _____,

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.

Sample

20___, wherein it found that it having been established by clear and convincing evidence that it is necessary to appoint a Special Guardian of _____ since she is an incapacitated person, as that term is defined in section 81.02(b) of Mental Hygiene Law, in that she is likely to suffer harm because she is unable to provide for the management of her property and that she cannot adequately understand the nature and consequences of such inability; and that she has the following functional limitations: she is suffering from physical and mental deficiencies which have impaired her ability to care for her property; and that the powers given to the Special Guardian are determined to be the least restrictive form of intervention based upon the said findings;

NOW, on motion for _____, attorney for petitioner, it is

ORDERED AND ADJUDGED, that _____ be, and she hereby is, appointed Special Guardian of _____, upon her executing and filing with this Court a bond in the sum of $_____ with sufficient sureties conditioned that she will in all things faithfully discharge the powers granted by this Court, obey all the directions of the Court in respect to the power, and make and render a true and just account of all monies and other properties received by her and the application thereof, and make and render a true and just report of her acts in the administration of her powers, whenever she is required to do so by the Court and, upon her further filing with the Clerk of this Court a designation, duly executed and acknowledged as required by section 81.26 of the Mental Hygiene Law, of the Clerk of this Court or his successor in office as a person on whom service of any process may be made in like manner and with like effect as if it were served personally upon the Special Guardian whenever she cannot with due diligence be served within the state of New York; and it is further

ORDERED AND ADJUDGED, that within five (5) days after said Special Guardian has filed the above bond and designation, the Clerk of this Court shall issue a commission stating the title of this proceeding and the name, address, and telephone number of _____, the incapacitated person, and the name, address, and telephone number of the Special Guardian, and the specific powers of the Special Guardian and the date when the appointment of the said Special Guardian was ordered by this Court; and it is further

ORDERED AND ADJUDGED, that the duration of the guardianship shall be _____; and it is further

ORDERED AND ADJUDGED, that _____ Nursing Home, with offices at _____, _____, New York _____, be and is hereby deemed the successor agent on the prepaid funeral contract of _____ at _____, with offices at _____, _____, New York ____; and it is further

ORDERED AND ADJUDGED, that the Special Guardian shall report to this Court within _____ days after her Commission issues setting forth the exercise of her said powers and the results thereof; and it is further

ORDERED AND ADJUDGED, that the Special Guardian shall have the following powers with respect to the property management needs of _____:

a) to collect the proceeds of a certain bank account held at _____ Bank in the name of _____ and any other assets of the incapacitated person identified by the Special Guardian;

Sample

b) to estabish a personal fund for _____ at _____ Nursing Home in the sum of $_____;

c) to dispose of certain of the lawful obligations of the incapacitated person, including the fees hereinafter set forth;

d) to communicate with _____ advising it that _____ Nursing Home is the successor agent for the prepaid funeral contract held for the benefit of the incapacitated person;

e) to access and release all of _____'s medical records in order to make the aforesaid report to this Court regarding her medical treatment; and

f) to exercise such other powers necessary and sufficient to effectuate the duties and responsibilities of the Special Guardian hereunder, including the continuation of _____'s eligibility for Medicaid benefits; and it is further

ORDERED AND ADJUDGED, that the plan for the compensation of the Special Guardian shall be _____ and shall be fixed by the Court by further Order; and it is further

ORDERED AND ADJUDGED, that all persons are hereby directed and commanded to deliver to the said Special Guardian, upon demand and presentation of a certified copy of her commission, all the 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 following persons shall be entitled to notice of all further proceedings herein, to wit, _____ and the Department of Social Services of the City of New York; and it is further

ORDERED AND ADJUDGED, that the said Special Guardian pay out of the said funds in her hands to _____ Nursing Home the sum of $_____ as and for reimbursement of its necessary disbursements incurred herein; and it is further

ORDERED AND ADJUDGED, that the said Special Guardian pay out of the said funds in her hands to _____, attorney for the petitioner herein, the sum of $_____ as and for her legal fee for her professional services rendered herein plus the further sum of $_____ for her necessary disbursements herein; and it is further

ORDERED AND ADJUDGED, that the Guardian pay to _____, for services rendered by its representative as Court Evaluator herein, the sum of $_____ and the further sum of $_____ for its necessary disbursements herein; and it is further

ORDERED AND ADJUDGED, that the Guardian pay to _____, M.D., for services rendered by him as an expert witness herein, the sum of $_____; and it is further

ORDERED AND ADJUDGED, that the said Special Guardian is required, out of the estate and out of any monies which shall come into her hands after the payment of monies directed to be paid herein, to dispose of such remaining lawful debts of the incapacitated person so as to continue her eligibility for Medicaid benefits; and it is further

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ORDERED AND ADJUDGED, that any appointee herein shall comply with Judiciary Law section 35-a and no fee shall be paid to said appointee until she has filed OCA Form 830 with this Court.

E N T E R,

_____

J.S.C.

[NOTE; Some counties have their own official forms for Guardianship or orders. Check with the appropriate court clerk or the court's website before using this form.]

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Sample