At an I.A.S.Part 76__ of the Supreme Court of the State of New York, held in and for the County of Kings, at 360 Adams Street, Brooklyn, New York, on the_____ day of _____20_____.

P R E S E N T:

HONORABLE_____
J U S T I C E

----------X

In the Matter of the Application of

_____,

for the Appointment of a Guardian of the Person and/or Property of

_____,

A Person Alleged to be Incapacitated

----------X

ORDER TO SHOW CAUSE

Index No._____

SAMPLE

IMPORTANT

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.

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, THE HEARING WILL BE CONDUCTED WITHOUT A JURY. THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE CLERK OF THE COURT IS:

SAMPLE

JOSEPH MUSOLINO
CLERK IN CHARGE OF
GUARDIANSHIP DEPARTMENT
360 ADAMS STREET - ROOM 850
BROOKLYN, NEW YORK 11201
(347) 296-1757

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 IS:

_____

_____

_____

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 THE MONEY TO DO SO.

SAMPLE

1. AT THAT HEARING AND IN THIS PROCEEDING YOU HAVE THE FOLLOWING RIGHTS:

(A) YOU HAVE THE RIGHT TO PRESENT EVIDENCE.

(B) YOU HAVE THE RIGHT TO CALL WITNESSES, INCLUDING EXPERT WITNESSES.

(C) YOU HAVE THE RIGHT TO CROSS EXAMINE

WITNESSES, INCLUDING ANY WITNESS CALLED BY THE COURT.

(D) YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOICE. 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 THE MONEY TO DO SO.

2. SAID GUARDIAN, IF APPOINTED FOR YOU, SHALL HAVE THE AUTHORITY TO EXERCISE THE FOLLOWING POWERS ON YOUR BEHALF. THE POWER TO MAKE ALL RESIDENTIAL AND CARE ARRANGEMENTS FOR YOU, AND COMPLETE POWER TO MANAGE, INVEST AND EXPEND YOUR MONIES AND ASSETS FOR YOUR NEEDS.

SAMPLE

***(Sections §81:21 and §81:22 of the M.H.L. enumerate all powers. Be specific and list all those powers the petitioner is seeking for the guardian)**

On reading and filing the annexed petition of _____

duly verified the _____day of _____, 20___, from which it appears that

_____, the Alleged Incapacitated Person, resides at

_____, Brooklyn, New York, is presently unable to manage

his/her person and property by reason of illness, infirmity and mental weakness; and it appearing that said _____owns or possesses certain personal property within the State of New York,

LET, _____(A.I.P)_____., and the Court Evaluator appointed herein, and _____

_____

_____, the distributees of _____

_____(A.I.P. & their relationship)_____show cause before the Justice presiding at an I.A.S. Part 76__of this Court, to be held in and for the County of Kings, at the Courthouse, 360 Adams Street, Brooklyn, New York, on the _____day of _____, 200__, at 9:30 A.M. of that day or soon thereafter as counsel can be heard why an order should not be made and entered herein:

SAMPLE

Appointing __(Proposed Guardian_____) or some suitable person, as Guardian of the personal needs, and/or property management of _____(A.I.P.)_____within the State of New York, based upon their qualifying in accordance with the laws of the State of New York:

WHY Petitioner shall not have such other and further and different relief as may be just and proper.

SUFFICIENT reason appearing therefor; it is

ORDERED, that _____of _____

_____New York , is hereby appointed Court Evaluator herein to explain this proceeding to _____(A.I.P.)_____and to

investigate the claims made in the petition; and it is further

ORDERED, that _____of_____

_____Brooklyn, New York is hereby appointed as attorney for the above-named _____(A.I.P.)_____ to protect his/her interest in this proceeding and it is further

*** **ORDERED**, that _____be and he/she is hereby appointed **Temporary Guardian** of the property of _____(A.I.P.)_____, to protect his/her health and well-being pending the hearing on this application; and it is further

*** **ORDERED**, that _____(Nominee)_____is directed to file a bond in the amount of $_____with the Clerk of the Court within (10) days after the issuance of the Commission of temporary guardianship; and it is further

SAMPLE

*** **ORDERED**, that _____shall upon presentation of a certified copy of this Order, turn over to _____ the sum of $_____from the funds of _____; and it is further

*** **ORDERED**, that _____shall maintain the aforesaid funds in a separate bank account to be used exclusively for the care, support and maintenance of _____and that _____ shall account therefore at such time as the annual accounting of the Guardian to be appointed is submitted; and it is further

***These paragraphs are to be used where a Temporary Guardian is being appointed.**

ORDERED, that this Order to Show Cause, a copy of the Petition and the Notice of Proceeding upon which it is based, shall be served upon _____,

the person alleged to be incapacitated, by **personally delivering** to _____ _____not less than fourteen (14) days prior to the hearing date of this Order to Show Cause .(**Upon a showing by the Petitioner that service can not be effectuated in the above manner, the Court may direct an alternative means of service-changes - effective 12/13/04),** and it is further

ORDERED, that this Order to Show Cause, Petition and Notice of Proceeding shall be served by facsimile, personal or by overnight delivery service to the office of _____the Court Evaluator and _____, the Court appointed attorney, within three (3)business days following the appointment of said_____and _____;and it is further

SAMPLE

ORDERED, that this Order to Show Cause and the Notice of Proceeding shall be personally served or served by mail upon _____, not less than fourteen (14)days prior to the return date of this Order to Show Cause; and it is further

ORDERED, that the Court Evaluator and (any Court Appointee) appointed herein shall comply with Part 36 of the Rules of the Chief Judge and file the notice of appointment and certification of compliance required by Section 36.4 (a) of the Rules of the Chief Judge.

E N T E R

_____

J. S. C.

APPLICATION TO APPOINT GUARDIAN
ARTICLE 81 M.H.L.

Relevant statutes:

Section §81.05	**Venue (where presented)**
Section §81.06 (a)	**Who may commence a proceeding**
Section §81.07	**Notice**
Section §81.08	**Petition (contents of verified petition)**

CONTENTS OF THE VERIFIED PETITION

1. Name, age, address and telephone number of the alleged incapacitated person (AIP).
2. Name, address and telephone number of person or persons with whom the AIP resides, if any.
3. Description of AIP's functional level.
4. If personal needs powers are sought, specific factual allegations that demonstrate the AIP is likely to suffer harm because of his/her inability to provide for personal needs.
5. If property management powers are sought, specific factual allegations that demonstrate the AIP is likely to suffer harm because of his/her inability to provide for property management.
6. Particular powers being sought and their relationship to the functional level and needs of the AIP.
7. Duration of the powers.
8. Approximate value and description of AIP's assets, and if AIP is a recipient of public assistance.
9. Nature and amount of any claim, debt or obligation of the AIP.
10. Names, addresses and telephone numbers of presumptive distributees.
11. Name, address and telephone number of the petitioner.
12. Name, address and telephone number of the proposed guardian, their relationship to the AIP and why they are suitable to act as such.
13. Any provisional remedies sought (Temporary Guardian, Injunction, TRO).
14. Available resources considered by petitioner and petitioner's opinion as to their sufficiency and reliability.
15. Any other information that will assist the Court Evaluator in the investigation and report.
16. C.P.L.R. 2217 (b) — Prior application for similar relief.

Mental Hygiene Legal Services must be noticed and served on all cases where the AIP resides in a mental hygiene facility.

Mental Hygiene Legal Services
170 Old Country Road
Mineola, New York 11501

Office of Revenue & Investigation
HRA - ATTENTION: H. Gibbs
220 Church Street
New York, New York 10013

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X

In the Matter of the Application of

(CAPTION)
for the Appointment of a Guardian of the Person and/or Property of

INDEX NO._____

NOTICE OF GUARDIANSHIP PROCEEDING (MHL § 81.07 (f))

(CAPTION)
A Person Alleged to be Incapacitated

----------X

Place of Hearing:

Date & Time: _____
Honorable: _____
Supreme Court, Kings County
360 Adams Street, Room ____
Brooklyn, NY 11201

Nature of Proceeding:

Article 81 Guardianship Proceeding Seeking the Appointment Of a Guardian for Personal Needs and Property Management of (AIP's Name)

Alleged Incapacitated Person:

Name:_____
Address: _____
Phone: _____

Names and Addresses of Other Potential Interested Parties:

Petitioner:

Name:_____
Address: _____
Phone: _____

Attorney:

Name:_____
Address: _____
Phone: _____

01 Notice of Guardianship Proceedings.wpd