

In the Matter of the Application of _____,
_____, Petitioner,
Pursuant to Article 81 of the Mental
Hygiene Law for the Appointment of a
Guardian of the Person and Property of

an Alleged Incapacitated Person .

PETITION

Index No. **E**
RJI No.: **E**
Judge Assigned:

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

The petition of _____ respectfully states and alleges:

PETITIONER

1. That your petitioner is _____ and resides at _____ (Telephone number _____.)
2. I am the _____ of _____ ("Respondent").

ALLEGED INCAPACITATED PERSON

3. Respondent is _____ years of age having been born on _____ and currently resides at _____. The telephone number is _____. Respondent's attending physician is _____.

4. Functional limitations: (NOTE: State specific factual allegations as to the personal actions and/or financial transactions or other actual occurrences involving the AIP which are claimed to demonstrate that the AIP

is likely to suffer harm because he/she cannot adequately understand and appreciate the nature and consequences of his/her inability to provide for personal needs and/or property management.)

NEED FOR PROPERTY MANAGEMENT AND PERSONAL NEEDS POWERS

5. Because of the aforementioned functional limitations Respondent has been unable to manage his/her personal and property needs. Petitioner submits that Respondent is likely to suffer harm because he/she cannot adequately understand and appreciate the nature and consequences of his/her inability to provide for his/her personal needs and property management. The appointment of a Guardian of his/her Personal and Property Needs will ensure the preservation, maintenance and care of him/her and his/her financial affairs.

6. As a result of the foregoing, Petitioner submits that Respondent's incapacities as described above require that a guardian be appointed.

POWERS BEING SOUGHT UNDER MHL [81.21(a) and 81.22(a)]

7. The powers being sought on behalf of Respondent pursuant to Mental Hygiene Law Sections 81.21(a) and 81.22(a), respectively, are as follows:

(NOTE: PLEASE SUBSTITUTE NAME OF INCAPACITATED PERSON FOR "IP")

PROPERTY MANAGEMENT POWERS

- a) Transact any banking business including establishing checking accounts, savings accounts, certificates of deposit, collecting,

negotiating, depositing, withdrawing, endorsing checks, drafts, or any negotiable instrument and any incidental powers related thereto.

- b) Prosecute, defend, settle, and maintain any cause of action, arbitration, or civil judicial proceeding. Any settlement for the payment or receipt of more than \$10,000 shall require the approval of the Court.
- c) Marshal all income and assets, and necessary incidental powers to effectuate such power including power to open and inventory safe deposit boxes, and the power to redirect and open any and all mail directed to the Incapacitated Person.
- d) Prepare, complete, and sign all tax returns, and pay the tax due as shown by said returns; appear on behalf of the IP before Federal, State and Local taxing authorities; prosecute, defend and settle all tax claims, litigation, assessments and levies relating to any taxing authority or any type of tax.
- e) Establish, terminate, change or complete any transaction regarding pension retirement incentives, IRA/Keogh/SEP and similar plans, programs and annuities.
- f) Compromise, forgive, collect, prosecute, pay, and settle debts with creditors and debtors.
- g) Endorse, collect, negotiate, deposit and withdraw Social Security, pension or annuity benefit checks.
- h) Apply, negotiate, prosecute and settle actions, claims and arbitrations for government entitlements and benefits of all kinds with any governmental administration or agency. Any settlement for the payment or receipt of more than \$10,000 shall require the approval of the Court.
- i) Provide support for persons dependent upon the IP for support whether or not the IP is legally obligated to provide that support.
- j) Convey, release or assign contingent and expectant interests in property, both real and personal, including marital property rights and any right of survivorship incidental to joint tenancy or tenancy by the entirety or tenancy in common.
- k) Convey, release or assign any other interests of the Incapacitated Person in tangible personal property.
- l) Exercise or release powers held by the IP as trustee, personal representative, guardian for a minor, guardian for donee, or power of appointment.

- m) Enter into, rescind, assign, repudiate any and all contracts.
- n) Create revocable or irrevocable or supplemental needs trusts of property which may extend beyond the incapacity or life of the IP with the terms thereof to be approved by the Court.
- o) Exercise any right to an elective share in the estate of the IP's deceased spouse.
- p) Renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer consistent and pursuant to §2-1.11(c) of the Estates, Powers and Trust Law upon authorization by the Court.
- q) Authorize access to or release confidential records.
- r) To purchase, sell, hypothecate, assign and pledge stocks, bonds, mutual funds, stock rights, stock dividends, coupons and all securities, and to retain investment advisors and/or stock brokers to manage same.
- s) Retain attorneys, accountants, auctioneers, appraisers, property managers, and real estate brokers, and to pay the necessary disbursements and fees for such individuals upon authorization by the Court.
- t) Pay the funeral expenses of the IP.
- u) Lease or mortgage real property for the benefit of the IP.
- v) Sell or purchase real property for the benefit of the IP upon authorization by the Court pursuant to Article 17 of the Real Property Actions & Proceedings Law.
- w) File, prosecute, compromise and settle all personal and property insurance claims and all incidental powers related thereto necessary to effectuate this power, including without limitation to surrender insurance policies for cash value. Any settlement for the payment or receipt of more than \$10,000 shall require the approval of the Court.
- x) Change beneficiaries on life insurance or annuity policies owned by the IP upon authorization by the Court.

PERSONAL NEEDS POWERS

- a) Determine who shall provide the personal care, health care and assistance for the personal needs and health of the IP. To enter

into contracts for the same and pay such persons, firms or corporations.

- b) Make decisions regarding social environment and other social aspects of the life of the IP.
- c) Determine whether the IP should travel or should have a license to drive an automobile.
- d) Make decisions regarding education of the IP and participation in mental health programs and the necessary powers to implement such decisions.
- e) Consent to or refuse generally accepted routine or major medical or dental treatment; provided (a) treatment decisions shall be made in accordance with the IP's wishes, religious and moral beliefs, or, if such are not known and cannot be ascertained with reasonable diligence, in accordance with the IP's best interests, including a consideration of the dignity and uniqueness of every person, the possibility and extent of preserving life, the preservation or improvement or restoration of health or functioning, relief of suffering, adverse side effects of treatment, less intrusive alternative treatments, and such other concerns and values of a reasonable person in the IP's circumstances, and (b) such treatment decision is made with consideration of the requirements of Mental Hygiene §81.15.
- f) Choose the place of abode of the IP, consistent with the Findings pursuant to Section 81.15 of the Mental Hygiene Law, including the power to move the IP to a nursing home or other residential facility as those terms are defined in the Public Health Law §2801, and consistent with the factors set forth in Section 81.22(a)(9) of the Mental Hygiene Law.

COURT AUTHORIZATION TO RETAIN PROFESSIONALS

8. Court authorization is requested to retain _____
as _____ (attorney, accountant, auctioneer, appraiser, property manager,
real estate broker).

DURATION OF THE POWERS BEING SOUGHT

14. On _____, Respondent executed a Will, which was drawn by _____. The original Will is now located at the offices of _____ at _____

AVAILABLE RESOURCES

15. To the best of Petitioner's knowledge, there are no Powers of Attorney, Health Care Proxies, Do Not Resuscitate Orders or other available resources which would sufficiently and reliably provide for Respondent's personal and property management needs, except (LIST ANY SUCH AVAILABLE RESOURCES)

INTERESTED PARTIES

16. The names, addresses, telephone numbers and relationships of the interested parties are:

<u>Name</u>	<u>Address</u>	<u>Telephone No.</u>	<u>Relationship</u>
-------------	----------------	----------------------	---------------------

(NOTE: LIST ALL DISTRIBUTEES, AS WELL AS ANY OTHER INTERESTED PARTIES AS SET FORTH IN MHL [§1.07(d)]

PROPOSED GUARDIAN

17. The name, address, telephone number and relationship of the proposed Guardian are:

<u>Name</u>	<u>Address</u>	<u>Telephone No.</u>	<u>Relationship</u>
-------------	----------------	----------------------	---------------------

18. The reasons why the proposed Guardian is suitable to exercise the powers necessary to assist the Respondent are that the proposed Guardian, _____ is the Respondent's _____ and has his/her best interests at heart.

PROPOSED STANDBY GUARDIAN

E

19. The Petitioner hereby requests that the Court appoint _____ of _____, the Respondent's _____, as a Standby Guardian of the Respondent in the event that the appointed Guardian shall resign, die, be removed, discharged, suspended or become incapacitated.

ADDITIONAL POWERS SOUGHT UNDER MHL § 81.21(b)

20. a) *(List any other powers sought - ex: power to transfer assets)*

Note: If requesting power to transfer assets to or for the benefit of another person, must include information set forth in MHL § 81 (2)(b).

b) The Respondent's only financial obligation is *(ex: Medicaid)*

(Example: The Petitioner also respectfully submits that the reason why the requested transfer should be permitted is that the Petitioner believes that if the Respondent were competent, the Respondent would desire to gift to his/her children, as much of the assets as possible without jeopardizing his/her entitlement to Medicaid)

OTHER INFORMATION

21. *(Example: The Respondent's presence at the hearing on this matter will be physically impossible due to the Respondent's medical condition. The Petitioner further submits that the Respondent would not be able to participate in the proceedings in any meaningful manner as the Respondent is not able to communicate and does not possess the cognitive ability to understand the nature of these proceedings.)*
22. The Respondent receives/does not receive public assistance or protective services under article nine-B of the social services law.
23. No previous application has ever been made for the relief sought herein to this Court or any other Court of competent jurisdiction.

M

WHEREFORE, the Petitioner requests:

1. That the annexed Order to Show Cause be signed by this Court;
2. That in the discretion of the Court, some proper person(s) be appointed as Court Evaluator and/or Counsel for the Respondent, an Alleged Incapacitated Person, to protect his/her interest in this proceeding;
3. That a Guardian of the person and property of _____, the Alleged Incapacitated Person, be appointed;
4. That the Petitioner have such other, further or different relief as the court deems just and proper.

COURT USE ONLY

THIS FORM MUST BE FILED WITH THE PETITION FOR GUARDIANSHIP

The name, address, date of birth and social security number of the proposed Guardian(s), Standby Guardian(s), and Alternate Standby Guardian(s) are as follows:

Name _____

Address _____

Date of Birth _____ **Social Security No.** _____

Name _____

Address _____

Date of Birth _____ **Social Security No.** _____

Name _____

Address _____

Date of Birth _____ **Social Security No.** _____

Name _____

Address _____

Date of Birth _____ **Social Security No.** _____

Name _____

Address _____

Date of Birth _____ **Social Security No.** _____