

NOTICE TO PETITIONER(S) IN
ARTICLE 81 PROCEEDINGS

SERVICE OF THIS ORDER TO SHOW CAUSE **MUST** BE SPECIFICALLY ACCOMPLISHED AS SET IN FORTH IN THE ORDER. FAILURE TO DO SO MAY RESULT IN DISMISSAL OF THIS PROCEEDING.

IN ADDITION, PROOF OF SERVICE OF THE ORDER TO SHOW CAUSE AND THE PAPERS IN SUPPORT *MUST* BE FILED WITH THE COURT ON OR BEFORE THE HEARING DATE.

ORDER TO SHOW CAUSE

PRESENT: HON. MICHAEL G. HAYES, A.C.C.J.

(01/2019)

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

IN THE MATTER OF THE APPLICATION FOR THE
APPOINTMENT OF A GUARDIAN BY:

NOTICE OF ARTICLE 81
PROCEEDING AND
ORDER TO SHOW CAUSE

Petitioner

INDEX # _____

FOR:

A PERSON ALLEGED TO BE INCAPACITATED

NOTICE OF ARTICLE 81 PROCEEDING

1. AIP'S NAME and ADDRESS: _____

2. PETITIONER'S NAME and ADDRESS: _____

3. NAMES OF ALL PERSONS TO BE GIVEN NOTICE OF PROCEEDING (include all possible legatees)

4. PETITIONER'S ATTORNEY NAME,
ADDRESS AND PHONE NUMBER:

IMPORTANT

**AN APPLICATION HAS BEEN FILED IN THIS COURT BY _____,
WHO BELIEVES YOU MAY BE UNABLE TO CARE FOR 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:

**MICHAEL THOMPSON
10 MARKET STREET, 3RD FLOOR
POUGHKEEPSIE, NEW YORK 12601
(845) 431-1720**

THE COURT HAS APPOINTED AN ATTORNEY / COURT EVALUATOR TO EXPLAIN THIS PROCEEDING TO YOU AND TO INVESTIGATE THE CLAIMS MADE IN THE APPLICATION. THE COURT MAY GIVE THE ATTORNEY / 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 ATTORNEY / COURT EVALUATOR TO BE GIVEN THAT PERMISSION.

THE ATTORNEY / COURT EVALUATOR'S NAME, ADDRESS AND TELEPHONE NUMBER IS:

The Court Evaluator is directed to submit his/her Report of Court Evaluator to the Guardianship Part at least 48 hours PRIOR to the time of the hearing.

YOU ARE ENTITLED TO HAVE A LAWYER OF YOUR CHOICE REPRESENT YOU. IF YOU WANT THE COURT TO APPOINT A LAWYER FOR YOU, YOU BE

REQUIRED TO PAY THAT LAWYER UNLESS YOU DO NOT HAVE THE MONEY TO DO SO.

1. A HEARING ON THIS APPLICATION SHALL BE HELD AT THE COUNTY COURT, DUTCHESS COUNTY, 10 MARKET STREET, POUGHKEEPSIE, NEW YORK ON THE _____ DAY OF _____, 20____ AT _____ AM/PM.

2. 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 WITNESSES 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 REQUESTED TO PAY THAT LAWYER UNLESS YOU DO NOT HAVE THE MONEY TO DO SO.

3. IF A GUARDIAN IS APPOINTED FOR YOU, HE OR SHE MAY BE GIVEN THE AUTHORITY TO EXERCISE THE FOLLOWING POWERS ON YOUR BEHALF:

[A] DETERMINING WHO SHALL PROVIDE PERSONAL CARE OR ASSISTANCE TO YOU;

[B] MAKING DECISIONS REGARDING THE SOCIAL ENVIRONMENT AND OTHER SOCIAL ASPECTS OF YOUR LIFE;

[C] DETERMINING WHETHER YOU SHOULD TRAVEL;

[D] BE AUTHORIZED ACCESS TO OR RELEASE OF YOUR CONFIDENTIAL RECORDS;

[E] APPLYING FOR GOVERNMENT AND PRIVATE BENEFITS ON YOUR BEHALF;

[F] CONSENTING TO OR REFUSING GENERALLY ACCEPTED ROUTINE OR MAJOR MEDICAL OR DENTAL TREATMENT;

[G] FACILITATE YOUR PLACEMENT IN AN APPROPRIATE LONG TERM CARE FACILITY;

[H] CHOOSING THE PLACE OF YOUR ABODE;

[I] ANY OTHER POWER WHICH THE COURT IN ITS DISCRETION SHALL DEEM APPROPRIATE TO MEET YOUR PERSONAL NEEDS;

[J] TO COLLECT ASSETS AND INCOME AND TO INVEST AND REINVEST THE SAME AS A PRUDENT PERSON OF DISCRETION AND INTELLIGENCE IN SUCH MATTERS SEEKING REASONABLE INCOME, AND TO APPLY SO MUCH OF THE INCOME AND PRINCIPAL AS NECESSARY FOR YOUR COMFORT, SUPPORT, MAINTENANCE AND WELL-BEING;

[K] COLLECTING ALL YOUR INCOME, INCLUDING BUT NOT LIMITED TO SOCIAL SECURITY, DIVIDENDS, INTEREST AND PENSION;

[L] PAYING ALL BILLS NECESSARY TO MAINTAIN YOU IN A LONG TERM CARE FACILITY;

[M] PROVIDING FOR YOUR MAINTENANCE AND SUPPORT;

[N] DETERMINING WHO SHALL PROVIDE PERSONAL CARE TO YOU, AND HAVING THE ABILITY TO PAY FOR SAID SERVICES;

[O] ANY OTHER POWER WHICH THE COURT IN ITS DISCRETION SHALL DEEM APPROPRIATE TO MEET YOUR PROPERTY MANAGEMENT NEEDS.

4. THIS ORDER TO SHOW CAUSE, A COPY OF THE PETITION AND ANY SUPPORTING PAPERS UPON WHICH IT IS BASED SHALL BE SERVED UPON _____, THE PERSON ALLEGED TO BE INCAPACITATED, BY PERSONALLY DELIVERING THEM TO HIM / HER ON OR BEFORE _____. IF THE PERSON ALLEGED TO BE INCAPACITATED IS NOT SERVED AT HIS / HER RESIDENCE, A COPY OF THIS ORDER TO SHOW CAUSE, THE PETITION AND ANY SUPPORTING PAPERS SHALL BE LEFT AT HIS / HER RESIDENCE.

5. THIS ORDER TO SHOW CAUSE, A COPY OF THE PETITION AND ANY SUPPORTING PAPERS SHALL BE SERVED BY OVERNIGHT MAIL OR PERSONALLY DELIVERED TO THE OFFICE OF THE COURT EVALUATOR / COURT APPOINTED ATTORNEY ON OR BEFORE_____.

6. THIS ORDER TO SHOW CAUSE, AND NOTICE OF THE PROCEEDING SHALL BE SERVED BY FIRST-CLASS MAIL UPON ANY NEXT OF KIN OR DISTRIBUTEES AND UPON THE CHIEF EXECUTIVE OFFICER OF THE FACILITY WHERE THE AIP RESIDES, IF ANY, AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE OF THIS ORDER TO SHOW CAUSE.

IT IS FURTHER ORDERED AND DIRECTED THAT THE PETITIONER MAKE A DILIGENT EFFORT TO CONTACT FAMILY MEMBERS, OR OTHER PERSONS WHO HAVE A RELATIONSHIP WITH THE ALLEGED INCAPACITATED PERSON AND WHO WOULD BE WILLING TO SERVE AS GUARDIAN.

IT IS FURTHER ORDERED AND DIRECTED THAT THE PETITIONER BRING OR
CAUSE TO HAVE THE ALLEGED INCAPACITATED PERSON PRESENT IN COURT ON
THE RETURN DATE HEREOF. ANY REQUEST FOR A WAIVER OF ANY PROVISIONS
OF THIS ORDER MUST BE MADE DIRECTLY TO THE COURT.

**PROOF OF SERVICE MUST BE SUBMITTED TO THE COURT ON OR BEFORE THE
RETURN DATE.**

DATED: _____
POUGHKEEPSIE, NEW YORK

HON. MICHAEL G. HAYES, A.C.C.J.

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

IN THE MATTER OF THE APPLICATION FOR THE
APPOINTMENT OF A GUARDIAN BY:

PETITION

INDEX # _____

Petitioner

FOR:

A PERSON ALLEGED TO BE INCAPACITATED

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

The petition of _____ respectfully alleges:

PETITIONER

1. I Reside at _____.

My telephone number is _____.

2. Relationship to AIP: _____

ALLEGED INCAPACITATED PERSON

3. Upon information and belief, _____ (AIP), whose date of birth
is _____ and Social Security # is _____. He / she resides at

_____, telephone number _____.

4. The name, address and telephone number of the spouse of the AIP is: _____

The name(s), address(es) and telephone number(s) of all children of the AIP are:

5. **Functional Incapacity:** _____

6. **Available Resources:** (copies of all documents **must** be attached to the Petition)

[] Last Will and Testament dated _____.

[] Power of Attorney dated _____ naming _____

as _____ Attorney-In-Fact.

[] Health Care Proxy dated _____ naming _____

as

_____ health care agent.

[] Living Will dated _____.

BACKGROUND

7. **Assets and Property:** _____

8. **Monthly Income:** _____

9. **Cost of Care:** _____

NEED FOR PROPERTY MANAGEMENT POWERS

8. **Inability to Manage Affairs:** Owing to _____ (AIP) _____ inadequacies, he/she is incapable of managing his / her affairs and cannot adequately understand the nature and consequences of such inability.

9. **Likely to Suffer Harm:** He / She is also likely to suffer harm because he / she cannot adequately understand and appreciate the nature of his / her inability to provide for his / her finances as a result of his/her functional limitations.

10. **Request of the Court:** I am asking the Court to appoint me, as the property guardian for _____ (AIP) _____, and to authorize me, among other things to take steps to protect and preserve her income and assets.

11. **Plan:** _____

_____.

NEED FOR PERSONAL NEEDS POWERS

12. **Need for Personal Powers:** Owing to _____ (AIP) _____ medical condition, he / she needs my assistance and support in analyzing the various medical and dental decisions (and other personal needs decisions, including her place of residence). Without my assistance, he / she would be unable to provide properly for his / her care and safety. Thus, I am asking that the Court appoint me as _____ (AIP) _____ personal needs guardian as well as her property guardian.

13. **Medications:** _____ (AIP) _____ is taking the following medications:

<u>Name of Medication</u>	<u>Dosage</u>	<u>Frequency</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

POWERS BEING SOUGHT AND DURATION OF POWERS

14. **Specific Property Management Powers Sought:** Based on _____ (AIP) _____

medical condition and his / her inability to handle his / her property affairs, I request that the following property management powers be granted to me by the Court for and indefinite period.

They are to:

a. Marshal his / her income and assets and establish bank, brokerage and other similar accounts in the name of the Guardian for him / her and endorse, collect, negotiate and deposit all negotiable instruments drawn to his / her order, including, but not limited to government entitlement checks; invest funds with the same authority as a trustee, pursuant to New York EPTL section 11-2.2; transfer or gift his / her assets in keeping with his / her will; inventory personal belongings, and store or dispose, as appropriate;

b. Pay such bills as may be reasonably necessary for his / her maintenance and care;

c. Pay her obligations;

d. Establish -

an irrevocable prepaid funeral trust;

a luxury account in accordance with Medicaid regulations;

a separate interest bearing, savings account in the guardian's name, as guardian, in the amount of \$20,000, and denominated in the "Comments" on the bank records "as and for administrative costs of the guardianship proceeding", and such separate account shall not be deemed an available Medicaid asset, unless and until all administrative costs are paid;

e. Obtain and retain government and private benefits;

f. Prosecute and defend civil proceedings, including administrative proceedings, and settle and compromise all matters related to such proceedings;

g. Sign and file income tax returns and all other tax documents for any and all tax obligations and appear before federal, state and local taxing authorities on all claims, litigation, settlements and other matters related thereto;

- h. Authorize access to or release of confidential records;
- i. Retain an attorney or an accountant, or other professional (e.g. a geriatric care manager, financial adviser), subject to court approval of fees, upon an affidavit of services submitted with the initial, annual or final reports (Mental Hygiene Law sections 81.30, 81.31 and 81.33).
- j. Pay the funeral expenses out of any funds remaining in the guardianship estate at death, to the extent that a prepaid funeral trust, if any, is insufficient to pay for same;
- k. Pay such bills after death if incurred prior thereto and if authority to pay same would have otherwise existed;

15. **Specific Personal Needs Powers Sought:** Based on _____ (AIP) _____ medical condition and his / her inability to handle his / her personal affairs, I request that the following personal needs powers be granted to the guardian by the Court for an indefinite period;

- a. Determine who shall provide personal care or assistance for him / her;
- b. Make decisions regarding social environment and other social aspects of his / her life;
- c. Determine whether he /she should travel;
- d. Authorize access to or release of confidential records;
- e. Apply for government and private benefits;
- f. Choose the place of abode;
- g. Consent to or refuse generally accepted routine or major medical or dental treatment, and to authorize, refuse, withhold, or withdraw life support and devices towards such ends, provided that treatment decisions are made consistent with the findings of Mental Hygiene Law section 81.15 and in accordance with the standards in Mental Hygiene Law section 81.22 (a) (8), all in keeping with the existing Living Will annexed as Exhibit C.

16. **(No) Safe Deposit Box:**
_____.

17. **No Known Debts:** Except _____.

WILL AND PRESUMPTIVE DISTRIBUTEES

18. **Presumptive Distributees:** The presumptive distributees are:

<u>NAME</u>	<u>ADDRESS</u>	<u>RELATIONSHIP</u>
_____	_____	_____
_____	_____	_____

AVAILABLE RESOURCES

19. **Other Available Resources:** _____.

INTERESTED PARTIES

20. **Interested Parties:** The names, addresses, and telephone numbers, and relationships of the interested parties are as follows:

PROPOSED GUARDIAN AND STANDBY GUARDIAN

21. **Proposed Guardian(s):** The name, address and telephone number, birth date and relationship of the of the proposed property management and personal needs guardian(s) is / are:

22. **Proposed Standby Guardian (if any):** The name, address, telephone number, birth date, and relationship of the proposed standby guardian is:

23. **Qualifications of Guardians:** The reasons why the proposed guardian and standby guardian (if any) are suitable to exercise the powers necessary to assist _____ (AIP) are: _____

24. **Dispensing with Presence:** (Give reasons if requested).

OTHER INFORMATION

25. **(No) Other Information:** (List any other information that would assist a Court Evaluator or Court Appointed Attorney in completing his or her investigation and report. If no other information so state).

26. **No Previous Application:** Except as described earlier in this petition, no previous application has ever been made to this Court or any other court of competent jurisdiction for the relief sought herein.

WHEREFORE, your petitioner requests:

1. That the annexed Order to Show Cause be signed by the Court;
2. That at the discretion of the Court, some proper person(s) be appointed as Court Evaluator and / or counsel for _____ (AIP) _____, an alleged incapacitated person, to protect his / her interests in this proceeding;
3. That the Court fix the payment of legal and other professional fees including the fee of any Court Evaluator or Court Appointed Attorney;
4. That the petitioner have the relief requested in this petition and such other, further or different relief in the premises as may be just.

Dated: Poughkeepsie, New York
_____, 20_____

(Petitioner)

VERIFICATION

STATE OF NEW YORK)
)SS:
COUNTY OF)

_____, being duly sworn deposes and says: that the deponent has read the foregoing petition and knows the contents thereof; that the said is true to deponent's own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters deponent believes it to be true.

(Petitioner)

Sworn to before me on this
day of _____, 20_____

Notary Public