

PRESENT: HON. J. EMMETT MURPHY, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

(10/03/16)

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. ALLEGED INCAPACITATED PERSON'S NAME and ADDRESS/PHONE:

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 FAX AND EMAIL** NUMBER:

_____	Email: _____
_____	Fax: _____
_____	Phone: _____

PRESENT: HON. J. EMMETT MURPHY, J.S.C.
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FOR:

A PERSON ALLEGED TO BE INCAPACITATED

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:**

**Timothy Hugelmeyer
111 Dr. Martin Luther King Jr. Blvd., 14th Floor
WHITE PLAINS, NEW YORK 10601
(914) 824-5372**

**THE COURT HAS APPOINTED AN ATTORNEY TO REPRESENT YOU AND/OR
COURT EVALUATOR TO EXPLAIN THIS PROCEEDING TO YOU AND TO
INVESTIGATE THE CLAIMS MADE IN THE APPLICATION. YOU ARE ENTITLED
TO HAVE A LAWYER OF YOUR CHOICE REPRESENT YOU. IF YOU WANT USE THE
LAWYER THE COURT APPOINTED FOR YOU, YOU WILL BE REQUIRED TO PAY
THAT LAWYER, UNLESS YOU DO NOT HAVE THE MONEY TO DO SO. 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:**

**If a Court Evaluator is appointed, 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. The Report of the Court Evaluator shall have an attached separate addendum
as to highly sensitive material, including medical information, if any. In order to protect the
privacy of the alleged incapacitated person, the Court does not allow the Report outside of**

the Guardianship Part. The Report shall be available to all counsel solely at the Guardianship Part upon receipt by the Court to review and to use during the hearing.

1. A HEARING ON THIS APPLICATION SHALL BE HELD AT THE SUPREME COURT, GUARDIANSHIP PART, Courtroom 1400 (14th Floor), 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York on the _____ DAY of _____, 2013 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] AUTHORIZE 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 NOTICE OF PROCEEDING, ORDER TO SHOW CAUSE, A COPY OF THE PETITION AND ALL 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 ALSO BE LEFT AT HIS / HER RESIDENCE.

5. THIS NOTICE OF PROCEEDING, ORDER TO SHOW CAUSE, A COPY OF THE PETITION AND ANY SUPPORTING PAPERS SHALL BE SERVED BY CERTIFIED / 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 A COPY OF THE PETITION, WITHOUT SUPPORTING PAPERS, SHALL BE SERVED UPON THE WESTCHESTER COUNTY ATTORNEY'S OFFICE ON OR BEFORE _____.

7. THIS NOTICE OF PROCEEDING, ORDER TO SHOW CAUSE AND NOTICE ONLY (NOT PETITION AND SUPPORTING PAPERS) SHALL BE PERSONALLY SERVED OR SERVED BY CERTIFIED MAIL UPON ANY NEXT OF KIN OR DISTRIBUTEES AND UPON THE CHIEF EXECUTIVE OFFICER OF THE FACILITY WHERE THE ALLEGED INCAPACITATED PERSON RESIDES, IF ANY, AND UPON THE WESTCHESTER COUNTY DEPARTMENT OF SOCIAL SERVICES 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.

SERVICE MUST BE COMPLETED AS SPECIFICALLY ORDERED IN THIS ORDER TO SHOW CAUSE OR THE ORDER TO SHOW CAUSE SHALL BE RENDERED A NULLITY.

DATED: _____
WHITE PLAINS, NEW YORK

HON. J. EMMETT MURPHY, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

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, _____ (ALLEGED INCAPACITATED PERSON),

whose date of birth is _____ and Social Security # is _____.

He / she resides at _____

_____, telephone number _____.

The alleged incapacitated person _____ is _____ is not a Veteran of the Armed Forces.

4. The name, address and telephone number of the spouse of the ALLEGED

INCAPACITATED PERSON is: _____

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

5. **Functional Incapacity** (*Be specific*) _____

_____.

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 _____.

7. **Medical Insurance:** (state name of insurance provider; monthly premium amount, if any)

8. **Government Benefits:** Social Security: ___No ___Yes \$ _____ Amount per month

Medicaid ___Yes ___No \$ _____ SSI ___Yes ___No \$ _____ SSD ___Yes ___No

BACKGROUND

9. **Assets and Property:** _____

_____.

10. **Monthly Income:** _____
_____.

11. **Cost of Care:** _____

12. **List any and all “joint” accounts in which the alleged incapacitated person has an interest**

NAMES ON ACCOUNT	NAME/ADDRESS OF BANK	BALANCE
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Joint accounts with an incapacitated person are typically not permitted; however, very limited exceptions may be allowed. Counsel should seek specific ruling(s) during the hearing from the Court as to any joint account(s).

13. **List any and all current and past court matters in which the alleged incapacitated person was a party or had a substantial interest (state all known information)**

CAPTION OF MATTER	COURT	DOCKET/INDEX #	DISPOSITION
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NEED FOR PROPERTY MANAGEMENT POWERS

14. **Inability to Manage Affairs:** Owing to _____ inadequacies.
(Alleged incapacitated person),
(state alleged incapacitated person’s purported incapacity as to property management)

he / she is incapable of managing his / her affairs and cannot adequately understand the nature and consequences of such inability.

15. **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.

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

17. **Plan for Property Management:** _____

NEED FOR PERSONAL NEEDS POWERS

18. **Need for Personal Powers:** Owing to _____ (ALLEGED INCAPACITATED PERSON) medical condition, (state alleged incapacitated person's purported incapacity as to personal needs) _____.

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 _____ (ALLEGED INCAPACITATED PERSON) personal needs guardian as well as her property guardian.

19. **Medications:** _____ (ALLEGED INCAPACITATED PERSON) is taking the following medications:

Name of Medication

Dosage

Frequency

POWERS BEING SOUGHT AND DURATION OF POWERS

20. **Specific Property Management Powers Sought:** Based on alleged incapacitated person's 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 an 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. Open the safety deposit box, if any, in the presence of a bank representative and there shall be a certification of the contents by the Guardian and bank representative;
 - c. Pay such bills as may be reasonably necessary for his / her maintenance and care;
 - d. Pay her obligations;
 - e. Enter into contracts (including contracts for the sale of real property, provided that prior to the closing of title the Court approves the terms of sale, upon submission of a copy of the fully executed Contract of Sale and a written appraisal of the value of the property;
 - f. 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 \$_____, 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;

g. Obtain and retain government and private benefits;

h. Legal capacity to sue on behalf of the incapacitated person, which would include the authority to hire counsel, to prosecute and defend civil proceedings, including administrative proceedings, and settle and compromise all matters related to such proceedings;

i. 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;

j. Authorize access to or release of confidential records;

k. Retain an attorney or an accountant, or other professional (e.g. a geriatric care manager, financial adviser), subject to **PRIOR** 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).

l. 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; and pay estimated estate and income tax charges, as well as other charges of an emergent nature, if there is no duly appointed representative of the estate;

m. Pay such bills after death if incurred prior thereto and if authority to pay same would have otherwise existed;

n. Exercise or release powers held by the incapacitated person as trustee, personal

representative, including Executor, beneficiary, guardian for a minor, guardian, or done of a power of appointment;

o. Collect and open all of the incapacitated person's mail; to have full authority to direct, forward or stop the delivery of mail and to take all lawful actions with regard to the incapacitated person's mail, including the establishment of a post office box in the Guardian's name for the incapacitated person for the delivery of mail, if necessary;

p. Other: _____

21. **Specific Personal Needs Powers Sought:** Based on alleged incapacitated person's 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.

22. **Safe Deposit Box:** _____.

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

WILL AND PRESUMPTIVE DISTRIBUTEES

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

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

AVAILABLE RESOURCES

25. **Other Available Resources:** _____.

INTERESTED PARTIES

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

PROPOSED GUARDIAN AND STANDBY GUARDIAN

The Petitioner affirms that the proposed Guardian(s) have not at any time, been convicted of a felony or of a misdemeanor within the last 5 years, and/or never been adjudicated bankrupt.

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

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

29. **Qualifications of Guardians:** The reasons why the proposed guardian and standby Guardian (if any) are suitable to exercise the powers necessary to assist alleged incapacitated person are: _____

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

OTHER INFORMATION

31. **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).

32. **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 _____ (ALLEGED INCAPACITATED PERSON), 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 has the relief requested in this petition and such other, further or different relief in the premises as may be just.

Dated: White Plains, New York

_____ 20 _____

(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 those matters therein stated to be alleged upon information and belief, and as to those matters he/she believes them to be true.

Petitioner

Sworn to before me this

_____ day of _____ 20_____

Notary Public