

At an IAS Part of the Supreme Court
of the State of New York held in and
for the County of Bronx
at the Courthouse located at 360
Adams Street, Brooklyn, NY 11201
_____ on the _____
day of _____

P R E S E N T: HON. _____

In the Matter of the Application of

a d _____,

Petitioner

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

awdf asdf _____,

A Person Alleged to be Incapacitated.

**ORDER TO SHOW
CAUSE**

Index No.: _____

IMPORTANT

AN APPLICATION HAS BEEN FILED IN COURT BY a d

_____, **WHO BELIEVES YOU MAY**

BE UNABLE TO TAKE CARE OF YOUR PERSONAL NEEDS OR FINANCIAL

AFFAIRS. a d _____ IS ASKING THAT

_____ **BE APPOINTED TO MAKE**

DECISIONS FOR YOU. WITH THIS PAPER IS A COPY OF THE

APPLICATION TO THE COURT SHOWING WHY a d

_____ **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 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 ARE:

sadf _____
360 Adams Street, Brooklyn, NY 11201

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

person agrees to the appointment, or that person is incapacitated as defined in subdivision (b) of Section 81.02 of the Mental Hygiene Law; and it appearing that the Alleged

Incapacitated Person owns or possesses certain property within the State of New York,

LET awdf asdf, the Alleged

Incapacitated Person, and those persons entitled to service pursuant to Mental Hygiene Law Section 81.07(e) and (g), including the Court Evaluator appointed herein,

SHOW CAUSE before me or the Justice presiding at I.A.S. Part ____ of this court, to be held in the Bronx County Supreme Court, located at

_____ on the ____ day of _____, at _____

AM or PM of that day, or as soon thereafter as counsel can be heard,

WHY a Guardian should not be appointed for the personal needs and/or property management of awdf asdf an Alleged Incapacitated Person, upon the Guardian qualifying in accordance with the statutes of the State of New York in such cases made and provided; and

WHY a guardian of the personal needs and/or property management should not be authorized to exercise the following powers, and any other power the court may deem appropriate on behalf of the Alleged Incapacitated Person, if the relief sought in the petition is granted:

Personal Needs Powers

- A. Determine who shall provide personal care or assistance;
- B. Make decisions regarding social environment and other social aspects of life;
- C. Determine whether the incapacitated person should travel;

- D. Authorize access to or release of confidential records;
- E. For decisions in hospitals as defined by Public Health Law 2994-a (18), act as the patient's surrogate pursuant to and subject to Public Health Law article 29-CC, and in all other circumstances, consent to or refuse generally accepted routine or major medical or dental treatment, subject to the decision-making standard in Public Health Law § 2994-d (4); and
- F. Choose place of abode, including place in an appropriate nursing home or residential care facility if it is not reasonable to maintain the person in the community.

Property Management Powers

- A. Make gifts;
- B. Provide support for persons dependent upon the Alleged Incapacitated Person for support, whether or not the person is legally obligated to provide that support;
- C. Enter into contracts;
- D. Marshall and manage income and assets;
- E. Pay reasonable and necessary bills and expenses;
- F. Pay funeral and burial expenses;
- G. Apply for and obtain financing for real property from financial institutions;
- H. Retain and pay counsel subject to prior court approval;
- I. Retain and pay accountants and similar professionals, subject to prior court approval;
- J. Exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value;

- K. Exercise any right to an elective share in the estate of the Alleged Incapacitated Person's deceased spouse;
- L. Apply for and maintain government and private benefits;
- M. Sign tax returns and deal with all federal, state and local tax authorities on all claims litigation, settlements and other matters;
- N. Claim, negotiate, obtain and settle claims and actions for government entitlements and benefits of all kinds with government administrations and agencies;
- O. Submit an application for Medical Assistance and prepare, request, and attend a fair hearing before the Department of Social Services or other government or private entities and take whatever steps are necessary for the purpose of acquiring Medicaid and other social services assistance, including but not limited to, a request for judicial review;
- P. Engage in Medicaid planning including, but not limited to, reallocating income and assets through the use of trusts or spend down options to qualify for Medicaid;
- Q. Establish, if necessary, a bank account up to the amount that constitutes an exempt resource for Medicaid eligibility purposes, and/or if necessary, a burial account or an irrevocable, prepaid funeral contract, which is an exempt resource for Medicaid eligibility purposes;
- R. Pay bills after the death of the Alleged Incapacitated Person, provided the authority existed to pay bills prior to death, until a temporary administrator or executor is appointed; and
- S. Defend or maintain any civil judicial proceedings to a conclusion until an

executor or administrator is appointed.

SUFFICIENT REASON APPEARING THEREFORE, IT IS HEREBY:

ORDERED, that _____ of

is hereby appointed Court Evaluator herein to investigate the claims made in the petition, to determine whether Counsel should be appointed by the Court, to report to the Court, and to investigate the functional abilities and limitations of the Alleged Incapacitated Person in this proceeding; and it is further

ORDERED, that _____ of

is hereby appointed Counsel to represent the Alleged Incapacitated Person in this proceeding, and it is further

ORDERED, that service pursuant to MHL § 81.07 (e)(2)(i) of a copy of this Order and of the papers upon which it is granted upon awdf asdf _____

_____, the Alleged Incapacitated Person, by personal delivery, on or before the _____ day of _____

be deemed good and sufficient service, and it is further

ORDERED, that this Order to Show Cause and the papers upon which it is based shall be served personally, by overnight delivery or by fax, pursuant to MHL § 81.07

(e)(2)(ii) upon _____, the Court Evaluator, and _____, the court appointed attorney, on or

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF Bronx

In the Matter of the Application of

a d,

Petitioner

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

**NOTICE OF
GUARDIANSHIP
PROCEEDING**

Index No.: _____

awdf asdf,

A Person Alleged to be Incapacitated.

PLEASE TAKE NOTICE that a proceeding for the appointment of a personal
needs and property management guardian of awdf asdf
has been commenced by a d, and is now
pending in the New York State Supreme Court, Bronx County, and
you are being served as an interested party with the attached Order to Show Cause and
this Notice of Guardianship Proceeding.

1. Name and Address of Person Alleged to Need a Guardian

awdf asdf

2. Name and Address of Petitioner

a d
dasd dasd

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF Bronx

In the Matter of the Application of

a d,

Petitioner

PETITION

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

Index No.: _____

awdf asdf,

A Person Alleged to be Incapacitated.

a d, being duly sworn,

respectfully alleges the following:

1. I am the Child of awdf asdf

and am authorized by Section 81.06(a)(2) of the Mental Hygiene Law to bring this
proceeding. I reside at dasd dasd, and

my telephone number is 12323123. I am asking the court that

a d be appointed Guardian of the

property management and/or personal needs of awdf asdf

THE ALLEGED INCAPACITATED PERSON

2. awdf asdf, the Alleged Incapacitated

Person ("AIP"), is 3 years of age and resides at asdf

asdf _____ . The AIP's telephone number is 12312311 _____. The AIP is currently: not married, or married to _____, who resides at _____.

3. As described in this petition, the AIP needs a guardian because the AIP is unable to provide for: property management and/or personal needs and cannot adequately understand and appreciate the nature and consequences of such inability or consents to the appointment of a guardian.

FUNCTIONALITY OF THE PERSON

4. The AIP needs a guardian because of the following:

asdf _____

_____.

5. The functional level of the AIP is limited, including the ability to independently manage activities of daily living, because of the following limitations

(only applicable limitations are selected):

- Cannot walk without assistance;
- Cannot travel without assistance;
- Cannot shop for food without assistance;
- Cannot prepare meals without assistance;
- Cannot eat without assistance;
- Unable to do laundry;
- Unable to groom, bathe, toilet, or perform other basic hygienic activities without assistance;
- Unable to schedule doctor's appointments and arrange transportation;
- Unable to administer and take medication without assistance;
- Unable to make decisions about health care and medical treatment;
- Unable to pay bills and manage finances;
- Other (describe) _____

6. The AIP is unable to consistently provide for his/her own personal needs and is likely to suffer harm in the following areas (only applicable areas are selected):

- Proper nutrition;
- Health care and hygiene;
- Safety measures;
- Living environment;
- Other (describe) _____

_____.

7. The AIP is unable to consistently provide for his/her own property needs and is likely to suffer harm in the following areas (only applicable areas are selected):

- Managing bank accounts and other resources.
- Paying bills.
- Managing Social Security and other income.
- Budgeting and allocating resources.
- Maintaining government benefits.
- Other (describe) _____
_____.

AVAILABLE RESOURCES

8. I have been able to determine to the best of my knowledge and belief that the AIP has executed the following (only applicable documents are selected):

- Will.
- Durable Power of Attorney.
- Health Care Proxy.
- Living Will.
- Do Not Resuscitate Order.
- Appointment of Agent to Control Disposition of Remains.

PERSONAL NEEDS OF THE PERSON

9. Due to the functional limitations listed above, I believe that the AIP is likely to suffer harm and that the least restrictive form of intervention is the appointment of a guardian of the person with the following powers (only applicable powers are selected):

- Determine who shall provide personal care or assistance.
- Make decisions regarding social environment and other social aspects of life.
- Determine whether the incapacitated person should travel.

- Authorize access to or release of confidential records;
- For decisions in hospitals as defined by Public Health Law 2994-a (18), act as the patient's surrogate pursuant to and subject to Public Health Law article 29-CC, and in all other circumstances, consent to or refuse generally accepted routine or major medical or dental treatment, subject to the decision-making standard in Public Health Law § 2994-d (4); and
- Choose place of abode, including place in an appropriate nursing home or residential care facility if it is not reasonable to maintain the person in the community.
- Other (describe) _____

 _____.

PROPERTY MANAGEMENT POWERS

10. Due to the functional limitations listed above, I believe that the AIP is likely to suffer harm and that the least restrictive form of intervention is the appointment of a guardian of the property with the following powers (only applicable powers are selected):

- Make gifts.
- Provide support for persons dependent upon the Alleged Incapacitated Person for support, whether or not the person is legally obligated to

provide that support.

- Enter into contracts.
- Marshall and manage income and assets.
- Pay reasonable and necessary bills and expenses.
- Pay funeral and burial expenses.
- Apply for and obtain financing for real property from financial institutions.
- Retain and pay counsel subject to prior court approval.
- Retain and pay accountants and similar professionals, subject to prior court approval.
- Exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value.
- Exercise any right to an elective share in the estate of the Alleged Incapacitated Person's deceased spouse.
- Apply for and maintain government and private benefits.
- Sign tax returns and deal with all federal, state and local tax authorities on all claims litigation, settlements and other matters.
- Claim, negotiate, obtain and settle claims and actions for government entitlements and benefits of all kinds with government administrations and agencies.
- Submit an application for Medical Assistance and prepare, request, and attend a fair hearing before the Department of Social Services or other

government or private entities and take whatever steps are necessary for the purpose of acquiring Medicaid and other social services assistance, including but not limited to, a request for judicial review.

Engage in Medicaid planning including, but not limited to, reallocating income and assets through the use of trusts or spend down options to qualify for Medicaid.

Establish, if necessary, a bank account up to the amount that constitutes an exempt resource for Medicaid eligibility purposes, and/or if necessary, a burial account or an irrevocable, prepaid funeral contract, which is an exempt resource for Medicaid eligibility purposes.

Pay bills after the death of the Alleged Incapacitated Person, provided the authority existed to pay bills prior to death, until a temporary administrator or executor is appointed.

Defend or maintain any civil judicial proceedings to a conclusion until an executor or administrator is appointed.

Other (describe) _____

_____.

FINANCIAL RESOURCES

11. To the best of my knowledge, the AIP's monthly income consists of the following:

Social Security income in the amount of \$_____ per month.

Pension from _____
in the amount of \$_____ per month.

Other (describe) _____

_____.

12. To the best of my knowledge, the AIP's assets include the following cash and personal property:

None.

Bank account at _____
in the amount of \$ _____.

Retirement account at _____
in the amount of \$ _____.

Cooperative apartment located at _____
_____ and valued at \$ _____.

Other (describe) _____

_____.

13. Upon information and belief, the AIP has an interest in the following real property:

- None.
- Ownership of real property located at _____
_____ and valued at approximately \$ _____.
- Other (describe) _____

_____.

14. Upon information and belief, the nature and amount of any debts or obligations of the AIP consist of the following, and it is requested that the guardian have the authority to pay these obligations:

- Credit card debts in the amount of approximately \$ _____.
- Loans in the amount of approximately \$ _____.
- Mortgage on the property listed in paragraph 12 or 13 above in the amount of \$ _____ with _____.
- Payment of taxes in the amount of \$ _____.
- Payment of other expenses in the amount of \$ _____
owed to _____.
- Other (describe) _____

_____.

AIP.

18. I have discussed the choice of guardian with the AIP who has agreed to have ad _____ serve as guardian.

I have not discussed the choice of guardian with the AIP.

19. It is anticipated that during the pendency of this proceeding, the Medicaid program may pay for care, treatment, and services for the AIP. It is proposed that the guardian appointed herein be ordered to repay the Medicaid program for funds so expended to the extent that the income and resources of the AIP exceeded the Medicaid eligibility level at the time such assistance was granted.

20. The duration of the powers being sought is for: an indefinite period, or the following period of time: _____.

21. No previous application has been made for the relief requested herein.

WHEREFORE, your petitioner respectfully requests that:

- A. The annexed Order to Show Cause be signed by the court;
- B. A Court Evaluator be appointed;
- C. Service of the Order to Show Cause and Verified Petition be given to those entitled to service pursuant to Mental Hygiene Law Section 81.07(d);
- D. This court find the AIP to be an incapacitated person or alternatively a person in need of a guardian;
- E. The court appoint a Guardian with the powers requested herein to meet the needs of the AIP; and
- F. Such other, further or different relief as may be just.

DATED: _____

a d _____
Petitioner

VERIFICATION

STATE OF NEW YORK)
 ss:
COUNTY OF Bronx)

_____ a d _____, being duly sworn, says that
he or she is the petitioner in the above-named proceeding and that the foregoing petition
is true to petitioner's knowledge except as to the matters therein stated to be alleged on
information and belief and as to those matters petitioner believes it to be true.

Petitioner

Sworn to before me this
_____ day of _____

NOTARY PUBLIC

asdf