EXAMINERS OF REPORTS OF GUARDIANS, COMMITTEES AND CONSERVATORS

2005 EDUCATIONAL SEMINAR

Sponsored by

NEW YORK STATE SUPREME COURT
APPELLATE DIVISION, THIRD DEPARTMENT

HON. ANTHONY V. CARDONA
PRESIDING JUSTICE

COURT EXAMINERS IN THE THIRD DEPARTMENT

ADMINISTRATIVE PROCEDURES

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EXAMINERS OF REPORTS OF GUARDIANS, COMMITTEES AND CONSERVATORS PURSUANT TO MENTAL HYGIENE LAW ARTICLE 81

APPOINTMENT

A. Examiners are appointed annually in the month of December for a one-year term in accordance with Mental Hygiene Law § 81.32(b) and section 806.17(a) of this Court's rules (22 NYCRR 806.17[a]).

B. Mental Hygiene Law § 81.32(b)

1. The Presiding Justice or a Supreme Court Justice or special referee designated by a majority of the Appellate Division Justices at the request of the Presiding Justice
2. Shall examine or cause to be examined by examiners designated by the Presiding Justice or the Justices
3. Initial and annual guardian reports

C. In the Third Department, the Presiding Justice appoints an examiner in each of the 28 Counties comprising the Department. A current list of examiners in the Third Department is reproduced in the appendix.

D. Upon appointment, each examiner is provided with a copy of the order of appointment, a copy of the Third Department rule regarding examiners, suggested initial and annual guardian report forms and initial and annual examiner report forms, prior CLE materials, and a notice of appointment pursuant to Part 36 of the rules of the Chief Judge (USC 872). The Third Department rule is reproduced in the appendix.

E. All of these materials may also be found on the recently introduced webpage for examiners on the Appellate Division, Third Judicial Department website. The website can be found at www.nycourts.gov/ad3. To access the webpage, under programs click on MHL Article 81 Examiners. The webpage contains reference materials, the applicable rule, and forms. A facsimile of the website and the examiner webpage is reproduced in the appendix.

The webpage also contains a link to the website of the Office of Guardian Fiduciary Services. This office was established by the Office of Court Administration to "coordinate education, training and information services for New York Fiduciaries", including guardians and examiners. This site is an invaluable source for such information.

The site may also be used to re-register as an examiner for purposes of Part 36 of the Rules of the Chief Judge.

As a part of this CLE program, this office is providing these materials to examiners in the form of software for use on your computer system.

F. The Presiding Justice has requested all Administrative Judges to advise Judges and Justices in their Districts to forward a copy of any order appointing a guardian to the Appellate Division and the examiner for the County of appointment. Accordingly, upon appointment, the examiner should notify the judges and justices in his or her County of the appointment and request that copies of any orders appointing guardians be sent to their office. The examiner should also contact the appropriate clerks in the County.

G. In the case of a conflict, the examiner may make a letter application to the Appellate Division for appointment of a special examiner to examine a guardian's report in specific instances. The Presiding Justice may appoint a special examiner or direct that the report be examined by an examiner in another County.

PART 36 OF THE RULES OF THE CHIEF JUDGE

A. On November 15, 2002 Chief Judge Kaye issued an administrative order repealing former Part 36 of the Rules of the Chief Judge and adopting a new Part 36 effective June 1, 2003. Pursuant to this part, court examiners are required to comply with various application procedures and reporting requirements (22 NYCRR 36.1[a][6]). A copy of Part 36 is reproduced in the appendix.

B. Appointment as examiner must be made from a list of applicants established by the Chief Administrator of the Courts (22 NYCRR 36.2[b][1]). For examiners in the Third Department, the list of applicants is approved by the Presiding Justice. The procedure to follow in order to be placed on the list is to complete and submit the application for appointment (UCS-870). This can be done by hard copy and mailed to the New York State Office of Court Administration or on line at

www.nycourts.gov/gfs. Once the application is processed, it is submitted to the Presiding Justice for approval. Upon approval, the name is placed on the approved list for appointment. Applicants must reregister every two years to remain on the list (22 NYCRR 36.3[d]).

C. Filing requirements

1. An examiner must file, within 30 days of appointment, a Notice of Appointment and Certificate of Compliance (UCS 872) with the Examiner Office in the Third Department (22 NYCRR 36.4[a][1]). A copy of UCS 872 is reproduced in the appendix.

2. An examiner does not have to file Statements of Approval of Compensation (UCS 875) (22 NYCRR 36.4[b][1]). Examiner compensation is reported annually to the Office of Court Administration by the Judge approving the compensation (Judiciary Law §35-a; 22 NYCRR 26.1)

D. Pursuant to 22 NYCRR 36.3(b), as well as Mental Hygiene Law §81.41, examiners are required to fulfill an education requirement approved by the Chief Administrator. This requirement is met by attendance at the Third Department training program.

E. Eligibility

1. Examiners must meet the eligibility requirements of 22 NYCRR 36.2(c).

2. Examiners must comply with the limitations regarding compensation set forth in 22 NYCRR 36.2(d).

   a. 22 NYCRR 36.2(d)(2) prohibits compensated appointments by a Court as a fiduciary under this Part if a person or entity was awarded more than an aggregate of $50,000 under this Part the previous calendar year. It should be noted that this aggregate amounts includes fees awarded as examiner as well as any other fees awarded to you as a fiduciary subject to Part 36.

   b. 22 NYCRR 36.2(d)(1) prohibits more than one appointment within a calendar year for which compensation in any calendar year is anticipated to be more than $15,000. For the purposes of an examiner in the Third Department, each individual guardianship examined is considered to be one appointment.

DUTIES- FIDUCIARIES

A. Pursuant to Laws of 1992 (ch 698 § 4[a]), all conservators and committees appointed prior to the effective date of Mental Hygiene Law article 81 are

governed by the reporting requirements of Mental Hygiene Law §§ 81.31, 81.32 as of May 1, 1994. In some cases, the order appointing the guardian directs that a guardian's report need only be filed at the termination of the guardianship or when ordered by the Court. Mental Hygiene Law § 81.31(a) mandates that a report be filed annually in May. Consequently, the statute supercedes any prior order, and the examiner should discuss with the appropriate Court how to rectify this situation. The issue may be resolved by requesting a report, or the order may have to be modified to fulfill the requirements of the statute.

B. Pursuant to Mental Hygiene Law article 81, the court may also appoint special guardians (Mental Hygiene Law § 81.16 [b]) and temporary guardians (Mental Hygiene Law § 81.23[a]). The examiner does not examine reports of either of these guardians. Although this is not expressly set forth in the statute, Mental Hygiene Law § 81.32(b) authorizes examiners to examine "all such reports", referring to initial and annual reports described in Mental Hygiene Law § 81.32 (a)(1),(2). Special and temporary guardians do not file these reports.

1 .Special guardians may be appointed to accomplish a protective arrangement or a single transaction or series of transactions (Mental Hygiene Law § 81.16[b]; see e.g. Matter of Janczak, 167 Misc2d 766).

Authority is set forth in the order of appointment, and the special guardian reports to the court. The special guardian therefore does not have to comply with the reporting requirements of Mental Hygiene Law § 81.33 (Bailey, 1998 Supp Practice Commentaries, McKinneys Cons Laws of NY, Book 34B, Mental Hygiene Law § 81.16, at 135).

2. Temporary guardians may be appointed during the pendency of the guardianship proceeding to prevent waste of assets or harm to the alleged incapacitated person. (Mental Hygiene Law § 81.23[a]; see e.g. Matter of Rochester Gen Hosp, 158 Misc2d 522). As with the special guardian, the temporary guardian reports to the court and powers are set forth in the order of appointment.

C. Examiners are responsible for the examination of the accounts of guardians appointed for adult incompetents pursuant to Mental Hygiene Law article 79 (Mental Hygiene Law § 79.17[b]).

1. The report in such cases is to be filed with the court annually on the anniversary date of appointment (Mental Hygiene Law §79.17[a],[c]).

2. If the guardian holds property other than benefits from the Veteran's Administration or income therefrom, the report must meet the requirements

of Mental Hygiene Law article 81 and SCPA 1719. If only Veteran's Administration benefits and income therefrom are involved, the report must meet the requirements of SCPA 1719 (Mental Hygiene Law §79.17[c]).

DUTIES- REPORTS

Examiners are to examine initial and annual guardian reports within the times and in the manner required by Mental Hygiene Law § 81.32(a) (22 NYCRR 806.17[b][1]).

A. Examiners are not responsible for the examination of intermediate or final reports - such reports are judicially approved by the appointing court upon that court's determination or a motion for the confirmation of a report of a referee appointed by that court (Mental Hygiene Law §81.33[e]).

1. It has become an increasing concern that once an incapacitated person dies the guardianship is no longer monitored. Under the statute, upon the death of the incapacitated person, the court shall discharge the guardian (Mental Hygiene Law § 81.36[a][3]). As a part of the discharge process, a final report is ordered by the court, which is to contain the same information as in the annual report, less the personal care information required by Mental Hygiene Law § 81.31(b)(5),(6) if the case deals with a deceased

incapacitated person. (Mental Hygiene Law § 81.33[b]). Under the statute, the examiner is not responsible for the examination of final reports. Currently, there is no set time after death by which the guardian is required to move for such discharge, nor is it required that the guardian advise the court or examiner of the death. In many cases, the death of the incapacitated person is discovered upon the failure of the guardian to file an annual report. It has been recommended that the statute or the rules of the Chief Judge be amended to require the notification of the court and the examiner, and the filing of a final report to be reviewed by the examiner, within a set time frame of death (Report of the Commission on Fiduciary Appointments , pp 26-27 [Feb. 2005]).

2. Given these circumstances, upon the determination that an incapacitated person has died, the examiner should advise the guardian and the appointing court of the need to have a final report filed and to discharge the guardian. Additionally, although the examiner cannot act as examiner in these cases, the examiner should advise the court that the court may appoint the examiner as referee to review the report and report to the court pursuant to Mental Hygiene Law §81.33(d). In this capacity, the examiner acting as

referee is to be compensated by order of the appointing court by the estate or by voucher (Mental Hygiene Law § 81.33[e]). It should be noted that the examiner functions in this capacity as a referee acting in a quasi-judicial capacity to hear and report, and Part 36 of the Rules of the Chief Judge is not applicable to this function (22 NYCRR 36.1[a][9]). The examiner should follow up in these cases to ensure that the guardian is properly discharged.

B. In some instances, guardianships have become inactive and either the guardian and/or incapacitated person cannot be located. Examiners may move to discharge guardians pursuant to Mental Hygiene Law §§ 81.06(a[6]), 81.35, and § 81.36(b). In such situations, the examiner should consult with the appropriate court to determine if the guardianship should be closed. In the Second Department, Kings County is implementing an abandoned case calendar for such cases. Some examiners in the Third Department have initiated similar proceedings on an ad hoc basis.

1. While the procedures in each case will have to be tailored to the unique circumstances of the case, certain guidelines should be considered:

a. Notice of the proceeding should be given as directed by the court, to include the executor or administrator of the estate of a deceased incapacitated person (Mental Hygiene Law § 81.33[c]) and persons entitled to notice pursuant to Mental Hygiene Law § 81.16(c)(3) (see Mental Hygiene Law § 81.36[c]). The examiner may also consider requesting that, if possible, notice be given to presumptive distributees and beneficiaries (cf. Mental Hygiene Law §81.21[c]).

b. Any bond which exists should not be discharged.

c. The order closing the guardianship should be without prejudice to the rights of any distributee or interested party to seek an accounting or appointment of a new guardian.

C. Mental Hygiene Law article 81 authorizes the appointing court to grant the guardian authority to create a supplemental needs trust (SNT) (Mental Hygiene Law §81.21[a][6]; see EPTL 7-1.12; Social Services Law §366[2][b][2][iii]; Matter of Rubin, 4 Misc 3d 634; Matter of Pace, 182 Misc 2d 618; Matter of Moretti, 159 Misc2d 654). With increasing frequency, guardians appointed pursuant to the Mental Hygiene Law establish such trusts.

1. The reporting requirements of the trustee are determined by the order establishing the trust. Courts often require annual accountings in such cases similar to those required by Mental Hygiene Law § 81.31 so that the protections of Mental Hygiene Law article 81 are not circumvented (Matter of Greenstein, 195 Misc2d 628, at 631-632; Matter of Morales, NYLJ, July 28, 1995, at 25, col 1). Some courts, however, do not require accountings by the trustees (see e.g. Matter of Kaidirmaoglou, NYLJ, Nov. 5, 2004, at 28, col 2).

2. In cases in which the SNT is established by the guardian or as a part of the guardianship proceeding, the examiner's report should include the assets of the SNT in the estate assets. If the guardian is also the trustee, the order should require that reports for both be submitted to the examiner. If the guardian and trustee are not the same person, the order establishing the trust should require that the trustee serve a copy of an annual report upon the guardian to be included in the guardian's report to the examiner (see Robert and Robert, Practical Issues When Serving as a Trustee of a Supplemental Needs Trust, at A-12).

3. In some cases, a SNT is established separately from the establishment of the guardianship. In these cases, the assets of the SNT may not be considered part of the guardianship. It should be noted, however, that in many instances a court will require that a trustee of a SNT file an annual report in the manner required by Mental Hygiene Law § 81.31, and may indicate that the report is to be reviewed by the examiner. In such cases, any examination of the report should be compensated by order or voucher of the court which established the SNT.

D. Pursuant to Mental Hygiene Law§81.30 (a), and § 81.31 (b), the form of guardian reports are to be "prescribed by the [appointing] court". Currently, there are no official forms for State-wide use. The Office of Court Administration is working to produce a handbook for guardians and examiners which will presumably include standard forms.

1. In the absence of an official form, the Third Department has promulgated forms which have been distributed to you and which are available on the court's site. These forms are reproduced in the appendix. Given the language of the statute, however, it should be understood that these forms are not meant to replace forms in use in local courts which meet the

requirements of Article 81, but are available only as suggested forms in those counties in which no applicable forms are available. Other forms are available which may be acceptable to a local court (see e.g. McKinney's Selected Cons Forms, Mental Hygiene Law §81.31-F 1, Annual Report of Guardian; 18 Carmody-Wait 2d, Proceedings for Appointment of Guardian for Personal Needs and Property Management §109:109)

E. Initial and Annual reports of guardians are to be examined within thirty days of filing. (Mental Hygiene Law §81.32[a][1],[2]).

In the Third Department, the report of the examiner for initial reports is to be filed within 60 days of the filing of the guardian report (22 NYCRR 806.17[b][2]). Within 30 days of the due date for the examiner's initial report, the Appellate Division Examiner Office will send a letter to the examiner advising of that the examiner's initial report is due.

The report of the examiner for an annual report is to be filed by September 15 for guardian reports filed in May and otherwise within 90 days of the filing of the guardian report (22 NYCRR 806.17[b][2]). Each year the Examiner Office will provide the examiner with a printout of the guardianships listed as active in the

Examiner Office database to assist in monitoring guardian compliance with reporting requirements.

1. Appointing courts in the Third Department have been asked to send copies of appointments pursuant to Article 81 to the examiner for the County and to the Examiner Office. Upon receipt, the Examiner's Office sends a letter to the examiner advising of receipt of the order and setting forth the time requirements for the filing of guardian and examiner reports.

2. The original examiner report is filed on five days' notice to the guardian in the office of the clerk of the Court which appointed the guardian. For Supreme and County Courts, this is the County Clerk (see County Law § 525; CPLR 9702). For Surrogate's Court, this is the Clerk of Surrogate's Court (see SCPA 2605).

3. Within five days of the filing of the original report, a copy of the report is to be filed with the Clerk of the Appellate Division (22 NYCRR 806.17 [b][3]). The Court now offers examiners the option of electronic filing by accessing the OmniForm documents on the examiner website. These forms can be saved to your personal computer, completed and mailed as an email attachment to:

AD3Examiner@courts.state.ny.us.

Confirmation of receipt will be sent by e-mail to the sender.

4. Examiner reports are to be in the form prescribed by the order appointing the examiner (Mental Hygiene Law§ 81.32[e]; 22 NYCRR 806.17[b][2]). Pursuant to the Rules of the Chief Administrator of the Courts, reports submitted to the courts must be signed by the attorney with the name of the attorney printed or typed directly below (22 NYCRR 130-1.1a). Generally, the form of report has not been prescribed in the appointing orders, and this office has developed forms to be used for examiner reports. These forms are available from the Appellate Division or online on the website for examiners. Copies of these forms are reproduced in the appendix.

ENFORCEMENT

A. 22 NYCRR 806.17 (b)(4) states that, upon the failure of a guardian to file a timely or sufficient report, the examiner shall serve a demand or follow other steps pursuant to Mental Hygiene Law § 81.32 (c), (d).

1. Demands are to be served by certified mail upon the guardian or resident agent (Mental Hygiene Law § 81.32[c][1]; [d][1]).

2. When no report is filed, an examiner is to demand a report within 15 days. No time frame is set forth when a demand is made for a revised report or proof of an item .

B. Upon failure to comply with a demand, the examiner may move in the appointing court for an order requiring compliance, reducing or denying compensation for the guardian, or removing the guardian (Mental Hygiene Law § 81.32[c][2];[d][2]; § 81.35).

1. Pursuant to Mental Hygiene Law § 81.35, a motion to remove the guardian is to be served on the guardian and all persons entitled to notice pursuant to Mental Hygiene Law § 81.16(c)(3). \

2. The guardian may be removed "absent a showing of good faith" (Mental Hygiene Law §81.32[c][2];[d][2]).

C. Courts have indicated that the fees required by CPLR 8020 for the filing of a motion are not applicable to examiners, as they are public officers acting as an arm of the court (see Matter of Ficalora, 1 Misc3d 602; Matter of Masi, 1 Misc3d 599). The appointing Court will fix the compensation for the examiner on such a motion.

A more in-depth treatment of motion practice is presented in another section of the materials.

COMPENSATION

A. Fees for examiners are governed by 22 NYCRR 806.17(c).

1. The fee for examination of an initial report is $100 (22NYCRR 806.17[c][1]).
2. The fee for examination of an annual report is determined by a sliding scale with a minimum of $150 for estates under $5000 and a maximum of $1000 for estates over $1,000,000 (22 NYCRR 806.17[c][2]).
3. The fee is based upon the net value of the estate at the end of the calendar year for which the guardian's report has been submitted (22 NYCRR 806.17[c][2]). This includes real estate and trust assets if the trust is incidental to the guardianship.

B. The examiner is also entitled to reimbursement for necessary and reasonable disbursements (22 NYCRR 806.17[c]).

C. A fee is allowed based upon the examination of a report. Consequently, there is generally no additional payment for work which is done in the normal course of events to obtain compliance with the statutory requirements, i.e., identifying and communicating with the guardian to obtain a report.

D. The rule does allow for payments in excess of the scheduled amounts for extraordinary circumstances (22 NYCRR 806.17[c][2]). These may include actions such as a conference with a judge to obtain compliance or a case in which extra time is necessary because of some unique legal aspect regarding the guardianship. The fact that extra time is expended on a particular estate is itself not sufficient to justify a payment above that allowed by the fee schedule. Any requests for such payment should be accompanied by an affirmation setting forth the time expended and a description of the work done. If these actions result in an order by the appointing court, the examiner should request that payment of the examiner's fee and disbursements be provided for in the order or by voucher approved by that court.

E. The rule also allows for payment for examination of annual reports filed for previous years on a quantum merit basis (22 NYCRR 806.17[c][3]). When reports

for multiple years are filed, they should be accompanied by an affidavit setting forth the time spent on the reports for previous years and a description of the work done.

F. For estates of less than $5000, a State voucher (available on the Third Department website under "Forms - standard voucher") is approved by the Presiding Justice or his or her designee, and forwarded to the appropriate Judicial District Administrative Office for processing (22 NYCRR 806.17[c][4]). Vouchers should include a description of the report examined, setting forth the index number of the guardianship and the year of each report examined.

G. For estates over $5000, the fee is paid by order of the Presiding Justice (22 NYCRR 806.17[c][4]). Three certified copies of the order fixing the compensation are issued to the examiner; one copy should be filed with the appropriate clerk's office, one copy served upon the guardian for payment, and one copy kept for the examiner's records.

H. If a guardian wishes to dispute a fee, the guardian must, within 15 days after service of an order directing payment by the estate of the fee, apply to the Presiding Justice in writing on notice to the examiner for review and reconsideration of the amount disputed (22 NYCRR 806.17[c][5]).

APPENDIX

2005 Examiners of Initial and Annual Reports of Guardians of Incapacitated Persons

THIRD JUDICIAL DISTRICT

Albany County:	Murray S. Carr, Esq. 1683 Western Avenue Albany, NY 12203 (518) 862-0662
Columbia County:	James Carlucci, Esq. 21 North 7th Street Hudson, NY 12534 (518) 822-1435
Greene County:	Eugenia Brennan, Esq. P.O. Box 217 21 Reed Street Coxsackie, NY 12051-0217 (518) 731-7230
Rensselaer County:	James R. Reilly, Esq. 22 1st Street Troy, NY 12180-3811 (518) 266-1002
Schoharie County:	J. Russell Langwig III, Esq. 132 Grand Street Box 118 Schoharie, NY 12157 (518) 295-7989
Sullivan County:	Clifford Gordon, Esq. 541 Broadway PO Box 803 Monticello, NY 12701 (845) 794-4043
Ulster County:	Stephanie M. Whidden, Esq. 25 Lucas Avenue Kingston, NY 12401 (914) 338-6500

FOURTH JUDICIAL DISTRICT

Clinton County:	Joseph Lavorando, Esq. 30 Clinton Street Plattsburgh, NY 12901 (518) 561-8657
Essex County:	John T. Manning, Esq. 13 Lake Shore Road P.O. Box 309 Willsboro, NY 12996 (518) 963-4510
Franklin County:	John R. Coughlin, Esq. PO Box 554 Malone, NY 12953 (518) 483-5187
Hamilton/Fulton Counties:	Peter K. Smith, Esq. 37 East Fulton Street Gloversville, NY 12078 (518) 725-7195
Montgomery County:	Joseph D. Giannetti, Esq. 49 E. Main Street Amsterdam, NY 12010-4505 (518) 843-0043
Saint Lawrence County :	Michael Levato, Esq. PO Box 252 Canton, NY 13617 (315) 386-4305
Saratoga County:	Eleanor K. Mullaney, Esq. 480 Broadway Box M Saratoga Springs, NY 12866 (518) 584-8000

Schenectady County:	Anthony B. Sgarlata, Esq. 170 Lafayette Street Schenectady, NY 12305 (518) 370-1443
Warren County:	Rose T. Place, Esq. 93 Bay Street Glens Falls, NY 12801 (518) 798- 7981
Washington County:	D. Alan Wrigley, Esq. 27 West Main Street Box 255 Cambridge, NY 12816 (518) 677-8819

SIXTH JUDICIAL DISTRICT

Broome County:	Robert S. Beehm, Esq. 145 Washington Avenue Box 119 Endicott, NY 13761-0119 (607) 748-7481
Chemung/Schuyler Counties:	Paul R. Corradini, Esq. 1 West Church Street Elmira, NY 14901 (607) 734-2271
Chenango County:	Michael D. Ferrarese, Esq. 35 West Main Street PO Box 711 Norwich, NY 13815 (607) 334-2247
Cortland County:	Karen Howe, Esq. PO Box 5462 Cortland, NY 13045 (607) 756-6021

Delaware County:	Gary J. Grayson, Esq. 137 Delaware Street Walton, NY 13856-1129 (607) 865-6571
Madison County :	James T. Stokes, Esq. 23 Cedar Street Box 960 Morrisville, NY 13408 (315) 684-3731
Otsego County:	Robert B. Schlather, Esq. 192 Main St., Box 391 Cooperstown, NY 13326-0391 (607) 547-5253
Tioga County:	Lee Hartjen, Esq. 15 Ozalid Road Johnson City, NY 13790 (607) 797-9476
Tompkins County:	Mahlon R. Perkins, Esq. 11 South Street PO Box 27 Dryden, NY 13053 (607) 844-9111

806.17

Examiners of Reports of Guardians,
Committees and Conservators
Pursuant to Article 81 of the Mental Hygiene Law

(a) Appointment. Annually in the month of December, the presiding justice shall appoint examiners of the reports of guardians, as well as of committees and conservators appointed prior to April 1, 1993, in accordance with section 81.32(b) of the Mental Hygiene Law.

(b) Duties of examiners.

(1) The examiner appointed by the presiding justice shall examine initial and annual reports within the times and in the manner required by section 81.32(a) of the Mental Hygiene Law.

(2) The examiner shall file a report, with regard to an initial report of a guardian, within 60 days after the filing of such report. With respect to an annual report filed in the month of May, the examiner's report shall be filed on or before September 15th of the same year. When a court has authorized the filing of an annual report at any other time, the examiner's report shall be filed within 90 days thereafter. Examiner's reports shall be in the form prescribed by the order appointing the examiner.

(3) Examiner's reports shall, on five days notice to the guardian, committee or conservator, be filed in the office of the clerk of the court which appointed the guardian, committee or conservator. A copy of the examiner's report shall, within five days of the date of such filing, also be filed with the office of the Clerk of the Appellate Division, Third Department.

(4) If a guardian, committee or conservator shall fail to file a report within the time specified by law, or shall file an incomplete report, the examiner shall serve a demand and take the other steps necessary to insure compliance as set forth in section 81.32© and (d) of the Mental Hygiene Law.

(5) In his or her discretion, the examiner may examine the guardian, committee or conservator and other witnesses under oath and reduce their testimony to writing.

(c) Compensation.

1) For examination of an initial report, an examiner shall be entitled to a fee of $100 and to reimbursement for necessary and reasonable disbursements.

2) For examination of an annual report, an examiner shall be entitled to reimbursement for necessary and reasonable disbursements and to a fee fixed in accordance with the following schedule:

Closing balance of estate examined:	Fee
Under $5,000	$150.00
5,001 - 25,000	$200.00
25,001 - 50,000	$250.00
50,001 - 100,000	$350.00
100,001 - 150,000	$400.00
150,001 - 225,000	$500.00
225,001 - 350,000	$600.00
350,001 - 500,000	$700.00
500,001 - 750,000	$800.00
750,001 - 1,000,000	$900.00
Over 1,000,000	$1,000.00

The fee shall be computed on the net value of the estate at the end of the calendar year for which the guardian's report has been submitted. A fee in excess of the amount set forth in the above schedule may be awarded upon a showing of extraordinary circumstances.

3) The fee for examination of annual reports filed for previous years shall be fixed on a quantum merit basis.

4) The examiner's claim for a fee and disbursements in estates of less than $5,000 shall be made by standard state voucher and shall be approved by the Presiding Justice or his or her designee.

In estates of $5,000 or more, the examiner's claim for a fee and disbursements shall be set forth in the examiner's report and shall be approved by order of the Presiding Justice for payment by the estate.

5) Within 15 days after receipt of an order directing payment by the estate of the examiner's fee and disbursements, the guardian, committee or conservator may, by written request, upon notice to the examiner, apply to the Presiding Justice for review and reconsideration of any allowance deemed excessive.

State of New York
Supreme Court, Appellate Division
Third Judicial Department

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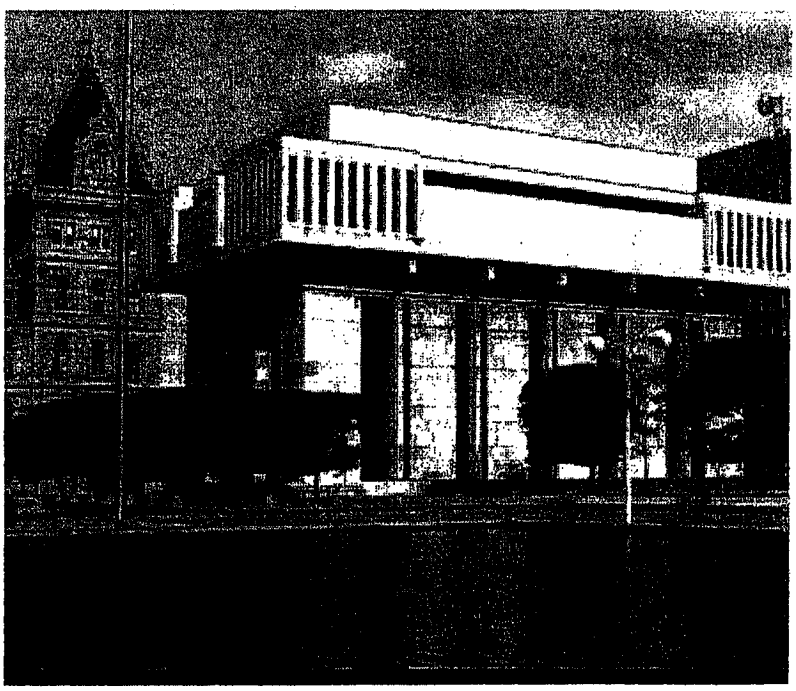

The Supreme Court, Appellate Division, Third Judicial De located in Albany, is one of four Appellate Division Depart Department exercises appellate jurisdiction in a separate g region. There are 28 counties within the Third Judicial D

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Mental Hygiene Law Article 81 Examiners

Home

PART 36. APPOINTMENTS BY THE COURT

§ 36.0 PREAMBLE

Public trust in the judicial process demands that appointments by judges be fair, impartial and beyond reproach. Accordingly, these rules are intended to ensure that appointees are selected on the basis of merit, without favoritism, nepotism, politics or other factors unrelated to the qualifications of the appointee or the requirements of the case.

The rules cannot be written in a way that foresees every situation in which they should be applied. Therefore, the appointment of trained and competent persons, and the avoidance of factors unrelated to the merit of the appointments or the value of the work performed are the fundamental objectives that should guide all appointments made, and orders issued, pursuant to this Part.

§ 36.1 APPLICATION

(a) Except as set forth in subdivision (b), this Part shall apply to the following appointments made by any judge or justice of the Unified Court System:

(1) guardians;
(2) guardians ad litem, including guardians ad litem appointed to investigate and report to the court on particular issues, and their counsel and assistants;
(3) law guardians who are not paid from public funds, in those judicial departments where their appointments are authorized;
(4) court evaluators;
(5) attorneys for alleged incapacitated persons;
(6) court examiners;
(7) supplemental needs trustees;
(8) receivers;
(9) referees (other than special masters and those otherwise performing judicial functions in a quasi-judicial capacity);
(10) the following persons or entities performing services for guardians or receivers:
  (i) counsel
  (ii) accountants
  (iii) auctioneers
  (iv) appraisers
  (v) property managers
  (vi) real estate brokers

(b) Except for sections 36.2(c)(6) and 36.2(c)(7), this Part shall not apply to:

(1) appointments of law guardians pursuant to section 243 of the Family Court Act, guardians ad litem pursuant to section 403-a of the Surrogate's Court Procedure Act, or the Mental Hygiene Legal Service;
(2) the appointment of, or the appointment of any persons or entities performing services for, any of the following:
  (i) a guardian who is a relative of (A) the subject of the guardianship proceeding or (B) the beneficiary of a proceeding to create a supplemental needs trust; a person or entity nominated as guardian by the subject of the proceeding or proposed as guardian by a party to the proceeding; a supplemental needs trustee nominated by the beneficiary of a supplemental needs trust or proposed by a proponent of the trust; or a person or entity having a legally recognized duty or interest with respect to the subject of the proceeding;
  (ii) a guardian ad litem nominated by an infant of 14 years of age or over;
  (iii) a nonprofit institution performing property management or personal needs services, or acting as court evaluator;
  (iv) a bank or trust company as a depository for funds or as a supplemental needs trustee;
  (v) a public administrator or public official vested with the powers of an administrator;
  (vi) a person or institution whose appointment is required by law;
  (vii) a physician whose appointment as a guardian ad litem is necessary where emergency medical or surgical procedures are required.
(3) an appointment other than above without compensation, except that the appointee must file a notice of appointment pursuant to section 36.4(a) of this Part.

§ 36.2 APPOINTMENTS

(a) Appointments by the judge. All appointments of the persons or entities set forth in section 36.1, including those persons or entities set forth in section 36.1(a)(10) who perform services for guardians or receivers, shall be made by the judge authorized by law to make the appointment. In making appointments of persons or entities to perform services for guardians or receivers, the appointing judge may consider the recommendation of the guardian or receiver.

(b) Use of lists.

(1) All appointments pursuant to this Part shall be made by the appointing judge from the appropriate list of applicants established by the Chief Administrator of the Courts pursuant to section 36.3 of this Part.
(2) An appointing judge may appoint a person or entity not on the appropriate list of applicants upon a finding of good cause, which shall be set forth in writing and shall be filed with the fiduciary clerk at the time of the making of the appointment. The appointing judge shall send a copy of such writing to the Chief Administrator. A judge may not appoint a person or entity that has been removed from a list pursuant to section 36.3(e).
(3) Appointments made from outside the lists shall remain subject to all of the requirements and limitations set forth in this Part, except that the appointing judge may waive any education and training requirements where completion of these requirements would be impractical.

(c) Disqualifications from appointment.

(1) No person shall be appointed who is a judge or housing judge of the Unified Court System of the State of New York, or who is a relative of, or related by marriage to, a judge or housing judge of the Unified Court System within the sixth degree of relationship.
(2) No person serving as a judicial hearing officer pursuant to Part 122 of the Rules of the Chief Administrator shall be appointed in actions or proceedings in a court in a county where he or she serves on a judicial hearing officer panel for such court.
(3) No person shall be appointed who is a full-time or part-time employee of the Unified Court System. No person who is the spouse, sibling, parent or child of an employee who holds a position at salary grade JG24 or above, or its equivalent, shall be appointed by a court within the judicial district where the employee is employed or, with respect to an employee with statewide responsibilities, by any court in the state.
(4) (i) No person who is the chair or executive director, or their equivalent, of a state or county political party, or the spouse, sibling, parent or child of that official, shall be appointed while that official serves in that position and for a period of two years after that official no longer holds that position. This prohibition shall apply to the members, associates, counsel and employees of any law firms or entities while the official is associated with that firm or entity.
  (ii) No person who has served as a campaign chair, coordinator, manager, treasurer or finance chair for a candidate for judicial office, or the spouse, sibling, parent or child of that person, or anyone associated with the law firm of that person, shall be appointed by the judge for whom that service was performed for a period of two years following the judicial election. If the candidate is a sitting judge, the disqualifications shall apply as well from the time the person assumes any of the above roles during the campaign for judicial office.
(5) No former judge or housing judge of the Unified Court System, or the spouse, sibling, parent or child of such judge, shall be appointed, within two years from the date the judge left judicial office, by a court within the jurisdiction where the judge served. Jurisdiction is defined as follows:
  (i) The jurisdiction of a judge of the Court of Appeals shall be statewide.
  (ii) The jurisdiction of a justice of an Appellate Division shall be the judicial department within which the justice served.
  (iii) The jurisdiction of a justice of the Supreme Court and a judge of the Court of Claims shall be the principal judicial district within which the justice or judge served.

(iv) With respect to all other judges, the jurisdiction shall be the principal county within which the judge served.

(6) No attorney who has been disbarred or suspended from the practice of law shall be appointed during the period of disbarment or suspension.

(7) No person convicted of a felony, or for five years following the date of sentencing after conviction of a misdemeanor (unless otherwise waived by the Chief Administrator upon application), shall be appointed unless that person receives a certificate of relief from disabilities.

(8) No receiver or guardian shall be appointed as his or her own counsel, and no person associated with a law firm of that receiver or guardian shall be appointed as counsel to that receiver or guardian, unless there is a compelling reason to do so.

(9) No attorney for an alleged incapacitated person shall be appointed as guardian to that person, or as counsel to the guardian of that person.

(10) No person serving as a court evaluator shall be appointed as guardian for the incapacitated person except under extenuating circumstances that are set forth in writing and filed with the fiduciary clerk at the time of the appointment.

(d) **Limitations on appointments based upon compensation.**

(1) No person or entity shall be eligible to receive more than one appointment within a calendar year for which the compensation anticipated to be awarded to the appointee in any calendar year exceeds the sum of $15,000.

(2) If a person or entity has been awarded more than an aggregate of $50,000 in compensation by all courts during any calendar year, the person or entity shall not be eligible for compensated appointments by any court during the next calendar year.

(3) For purposes of this Part, the term "compensation" shall mean awards by a court of fees, commissions, allowances or other compensation, excluding costs and disbursements.

(4) These limitations shall not apply where the appointment is necessary to maintain continuity of representation of or service to the same person or entity in further or subsequent proceedings.

§ 36.3 PROCEDURE FOR APPOINTMENT

(a) **Application for appointment.** The Chief Administrator shall provide for the application by persons or entities seeking appointments pursuant to this Part on such forms as shall be promulgated by the Chief Administrator. The forms shall contain such information as is necessary to establish that the applicant meets the qualifications for the appointments covered by this Part and to apprise the appointing judge of the applicant's background.

(b) **Qualifications for appointment.** The Chief Administrator shall establish requirements of education and training for placement on the list of available applicants. These requirements shall consist, as appropriate, of substantive issues pertaining to each category of appointment — including applicable law, procedures, and ethics — as well as explications of the rules and procedures implementing the process established by this Part. Education and training courses and programs shall meet the requirements of these rules only if certified by the Chief Administrator. Attorney participants in these education and training courses and programs may be eligible for continuing legal education credit in accordance with the requirements of the Continuing Legal Education Board.

(c) **Establishment of lists.** The Chief Administrator shall establish separate lists of qualified applicants for each category of appointment, and shall make available such information as will enable the appointing judge to be apprised of the background of each applicant. The Chief Administrator may establish more than one list for the same appointment category where appropriate to apprise the appointing judge of applicants who have substantial experience in that category. Pursuant to section 81.32(b) of the Mental Hygiene Law, the Presiding Justice of the appropriate Appellate Division shall designate the qualified applicants on the lists of court examiners established by the Chief Administrator.

(d) **Reregistration.** The Chief Administrator shall establish a procedure requiring that each person or entity on a list reregister every two years in order to remain on the list.

(e) **Removal from list.** The Chief Administrator may remove any person or entity from any list for unsatisfactory performance or any conduct incompatible with appointment from that list, or if disqualified from appointment pursuant to this Part. A person or entity may not be removed except upon receipt of a written statement of reasons for the removal and an opportunity to provide an explanation and to submit facts in opposition to the removal.

§ 36.4 PROCEDURE AFTER APPOINTMENT

(a) **Notice of appointment and certification of compliance.**

(1) Every person or entity appointed pursuant to this Part shall file with the fiduciary clerk of the court from which the appointment is made, within 30 days of the making of the appointment, (i) a notice of appointment and (ii) a certification of compliance with this Part, on such form as promulgated by the Chief Administrator. Copies of this form shall be made available at the office of the fiduciary clerk and shall be transmitted by that clerk to the appointee immediately after the making of the appointment by the appointing judge. An appointee who accepts an appointment without compensation need not complete the certification of compliance portion of the form.

(2) The notice of appointment shall contain the date of the appointment and the nature of the appointment.

(3) The certification of compliance shall include:
(i) a statement that the appointment is in compliance with sections 36.2(c) and (d); and (ii) a list of all appointments received, or for which compensation has been awarded, during the current calendar year and the year immediately preceding the current calendar year, which shall contain (A) the name of the judge who made each appointment, (B) the compensation awarded, and (C) where compensation remains to be awarded, (I) the compensation anticipated to be awarded and (ii) separate identification of those appointments for which compensation of $15000 or more is anticipated to be awarded during any calendar year. The list shall include the appointment for which the filing is made.

(4) A person or entity who is required to complete the certification of compliance, but who is unable to certify that the appointment is in compliance with this Part, shall immediately so inform the appointing judge.

(b) **Approval of compensation.**

(1) Upon seeking approval of compensation of more than $500, an appointee must file with the fiduciary clerk, on such form as is promulgated by the Chief Administrator, a statement of approval of compensation, which shall contain a confirmation to be signed by the fiduciary clerk that the appointee has filed the notice of appointment and certification of compliance.

(2) A judge shall not approve compensation of more than $500, and no compensation shall be awarded, unless the appointee has filed the notice of appointment and certification of compliance form required by this Part and the fiduciary clerk has confirmed to the appointing judge the filing of that form.

(3) Each approval of compensation of $5,000 or more to appointees pursuant to this section shall be accompanied by a statement, in writing, of the reasons therefor by the judge. The judge shall file a copy of the order approving compensation and the statement with the fiduciary clerk at the time of the signing of the order.

(4) Compensation to appointees shall not exceed the fair value of services rendered. Appointees who serve as counsel to a guardian or receiver shall not be compensated as counsel for services that should have been performed by the guardian or receiver.

(c) **Reporting of compensation received by law firms.** A law firm whose members, associates and employees have had a total of $50,000 or more in compensation approved in a single calendar year for appointments made pursuant to this Part shall report such amounts on a form promulgated by the Chief Administrator.

(d) **Exception.** The procedure set forth in this section shall not apply to the appointment of a referee to sell real property and a referee to compute whose compensation for such appointments is not anticipated to exceed $550.

§ 36.5 PUBLICATION OF APPOINTMENTS.

(a) All forms filed pursuant to section 36.4 shall be public records.

(b) The Chief Administrator shall arrange for the periodic publication of the names of all persons and entities appointed by each appointing judge, and the compensation approved for each appointee.

UCS- 872- Effective January 1, 2004

NOA # ☐☐☐☐☐☐☐☐☐

Notice of Appointment and Certification of Compliance

(Pursuant to 22 NYCRR § 36.4)

DATE OF APPOINTMENT: _____ / _____ / _____
Month Day Year

☐ **Non-List**

PART A — Notice of Appointment

1. Appointee's Name and Fiduciary Identification Number:

FID # ☐☐☐☐☐☐

Name:
First Middle Last Suffix (Jr., Sr., III)

2. Address/Phone/FAX/Email:
Business Name (if any)

Street City/Town/Village State Zip

Phone Fax E-Mail

3. Type of Appointment:

4. Index/File No.:

Number / Year

5. Court:

6. County:

7. Title of Action/Proceeding:

8. Case Type:

9. Appointing Judge:
First Middle Last Suffix (Jr., Sr., III)

INSTRUCTIONS TO APPOINTEE

- Review the information in items 1 and 2 of Part A (Notice of Appointment) for accuracy; circle errors and enter corrections on form.
- If Fiduciary Identification Number does not appear in Part A, an appointed individual must enter Social Security Number; an appointed entity must enter Tax Identification Number:

SS/TID# ☐☐☐-☐☐-☐☐ ☐☐

(Social Security/Tax Identification Number is required in order to administer the disbursement of moneys that may constitute taxable income. 42 U.S.C. § 405(c)(2)(C)(I). Social Security/Tax Identification Number will not be made public.)

- Appointment WITH compensation: Complete Part B (Certification of Compliance); date and sign item 3 of Part B.

- Appointment WITHOUT compensation: do NOT complete Part B (Certification of Compliance); date and sign here:

_____ _____

Date Signature

- Return completed form as soon as possible, but no later than 30 days after appointment, to the Fiduciary Clerk for the court of appointment

IF UNABLE TO ACCEPT APPOINTMENT FOR ANY REASON, NOTIFY FIDUCIARY CLERK IMMEDIATELY.

PART B — Certification of Compliance

1. Appointment in Part A: If the compensation anticipated to be awarded in *any* single calendar year (current or future) is $15,000 or more, mark "X" in the box in Column E.

A Index/File No. (Number/year)	B Court	C County	D Appointing Judge	E Anticipated Compensation of $15,000 or more
_____/_____	_____	_____	_____	☐

2. Part 36 appointments RECEIVED during CURRENT calendar year:

a) Review information for current calendar year appointments provided below from the records of the Office of Court Administration; circle errors and enter corrections on this form. b) In the blank spaces below, provide information for all current calendar year appointments not pre-recorded on this form. c) Mark "X" in the box in Column E for any appointment (including pre-recorded appointments) for which compensation of $15,000 or more is anticipated to be awarded in *any* single calendar year (current or future). Include compensation already awarded in calculating anticipated compensation for the current calendar year.

A Index/File No. (Number/year)	B Court	C County	D Appointing Judge	E Anticipated Compensation of $15,000 or more
____/____	_____	_____	Judge_____	☐
____/____	_____	_____	Judge_____	☐
____/____	_____	_____	Judge_____	☐
____/____	_____	_____	Judge_____	☐
____/____	_____	_____	Judge_____	☐
____/____	_____	_____	Judge_____	☐
____/____	_____	_____	Judge_____	☐
____/____	_____	_____	Judge_____	☐
____/____	_____	_____	Judge_____	☐
____/____	_____	_____	Judge_____	☐

3. Part 36 appointments for which compensation was AWARDED during PRIOR calendar year: [redacted]

a) Review information for prior calendar year compensation provided below from the records of the Office of Court Administration; circle errors and enter corrections on this form. b) In the blank spaces below, provide information for all appointments not pre-recorded on this form for which compensation was awarded during the prior calendar year. c) Total all amounts of compensation entered in Column E (including pre-recorded amounts) in the space provided at the bottom of the column.

A Index/File No. (Number/year)	B Court	C County	D Appointing Judge	E Compensation Awarded
_____/_____	_____	_____	Judge_____	$_____
_____/_____	_____	_____	Judge_____	$_____
_____/_____	_____	_____	Judge_____	$_____
_____/_____	_____	_____	Judge_____	$_____
_____/_____	_____	_____	Judge_____	$_____
_____/_____	_____	_____	Judge_____	$_____
_____/_____	_____	_____	Judge_____	$_____
_____/_____	_____	_____	Judge_____	$_____
_____/_____	_____	_____	Judge_____	$_____

- Total compensation awarded during prior calendar year [redacted] from Column E: $_____

4. I certify that I am in compliance with sections 36.2(c) and (d) of the Rules of the Chief Judge (22 NYCRR) for the appointment in Part A of this form.

Date: _____ Signature: _____

Fiduciary Clerk should submit all completed statements to: *Appointment Processing Unit, 25 Beaver Street, Room 840, New York, NY 10004*

INITIAL REPORT OF GUARDIAN

_____ COURT OF STATE OF NEW YORK

COUNTY OF _____

In the Matter of the Initial Report of _____,

As Guardian for _____, Index No._____
An Incapacitated Person

General Instructions

1. All guardians must complete **Section I**.

2. All guardians must attach a copy of the order of appointment.

3. If you have been appointed guardian for the personal needs of the incapacitated person, please complete **Section II**.

4. If you have been appointed guardian for the property management of the incapacitated person, please complete **Section III, the summary and attached schedules** pertaining to the guardianship assets and financial resources.

   (a) When listing property on a schedule, please be specific. For instance - with bank accounts, list name and address of bank, number of account and balance; with stocks, list number of shares, name of stock, type and value.

   (b) If a schedule does not provide enough space, attach additional sheets with a reference to the schedule to which the information applies.

   (c) In any schedule, when there is nothing to list, state "NONE".

5. The initial report must be filed no later than ninety (90) days after the issuance of your commission as guardian. File the initial report with the court that appointed you as guardian. A copy of the initial report must be sent to the incapacitated person by mail, the court evaluator and counsel for the incapacitated person, unless the court has ordered otherwise. If the incapacitated person resides in a facility, send a duplicate of the initial report to the chief executive officer of that facility. If the incapacitated person resides in a mental hygiene facility, send a duplicate of the initial report to the Mental Hygiene Legal Service of the Judicial Department in which the residence is located. A copy of the report must also be sent to the examiner for your county. The name and address of the examiner for your county may be obtained from County Court or the Appellate Division of State Supreme Court, Third Department.

SECTION I GENERAL INFORMATION (all guardians must complete this section).

1. **DATE OF THIS REPORT**:

2. **GUARDIAN**:

   Name:

   Address (include mailing address, if different):

   Telephone no.:

3. **INCAPACITATED PERSON**:

   Name:

   Address (if a residential facility, include name of director or person responsible for person's care):

   Telephone no.:

4. **APPOINTMENT**:

Date of order:

Court:

Name of Judge/Justice:

5. **BOND**:

Bonding company name:

Bonding company address:

Value of bond (If the bonding requirement has been waived, so state):

6. **EDUCATIONAL REQUIREMENTS**:

Have you fulfilled the educational requirements set forth in Mental Hygiene Law § 81.30(a) by completing a training program approved by the chief administrator?

Yes ___ No ___

Have the educational requirements been waived by the court?

Yes ___ No ___

If you have not fulfilled the educational requirements and the requirements have not been waived by the court, please explain:

7. **VISITS**: (guardians are required to visit the incapacitated person at least four [4] times a year or more frequently as specified by court order).

Have you visited the incapacitated person?

Yes ____ No ___

If yes, please provide the date and location of such visits:

Date	Location

If no, please explain:

8. **TYPE OF GUARDIANSHIP**:

Have you been granted powers over the personal needs of the incapacitated person?

Yes ___ No ___

If yes, please complete **Section II**.

Have you been granted powers regarding property management of the incapacitated person?

Yes ___ No ___

If yes, please complete **Section III**.

9. **CHANGE IN POWERS:**

Is there any reason for any alterations in your powers as guardian as authorized by the order appointing you?

Yes ___ No ___

If yes, please specify change requested:

If you want to change your authorized powers, you must make an application within TEN (10) days of filing this report and provide notice to the persons specified in your order of appointment as entitled to such notice. If you fail to comply with this provision, any person entitled to commence a proceeding under this article may petition the court for a change in the powers on notice to you, the guardian, and the persons entitled to such notice as stated in the order of appointment.

SECTION II PERSONAL NEEDS

If you have been granted powers with respect to personal needs of the incapacitated person, please provide the following information, consistent with the order appointing you:

1. Please explain the steps you have taken, consistent with the order appointing you, to provide for the personal needs of the incapacitated person.

2. Please describe the plan for providing for the personal needs of the incapacitated person by setting forth information regarding:

(a) Provisions for medical, dental, mental health, or related services:

(b) Provisions for any personal and social services:

(c) Medical, dental and mental health examinations necessary to determine the health needs of the incapacitated person:

Date	Type of Examination	Diagnosis/Treatment

(d) Utilization of health and accident insurance and any other private or government benefits to which the incapacitated person may be entitled:

(e) Any additional provisions of the plan for providing for the personal needs of the incapacitated person:

3. Pleasee indicate whether the incapacitated person has any of the following. If so, attach a copy to this report:

(a) living will Yes __ No __

(b) health care proxy Yes __ No __

(c) surrogate decision-making directive Yes __ No __

(d) any other advance directive Yes __ No __

SECTION III PROPERTY MANAGEMENT

If you have been granted powers regarding the property management of the incapacitated person, please provide the following information, consistent with the order which appointed you, pertaining to the fulfillment of your responsibilities to the incapacitated person to provide for property management.

1. Please describe the plan for the management of the property and financial resources of the incapacitated person.

2. Has the incapacitated person executed a will?

Yes ___ No ___

If yes, please provide location of will.

3. Please complete the following schedules and summary. If you have nothing to list on a schedule, state "NONE".

SCHEDULE A

Please provide a complete inventory of the property of the incapacitated person over which you have control. List all guardianship assets you had on the first day of the accounting period.

I. PERSONAL PROPERTY

1. Bank accounts and cash - please list the name and address of the institution, account numbers and balance at the time of your appointment. Please also list any cash on hand not in bank accounts.

Total Value $ _____

2. Corporate and government securities (e.g., corporate stocks and bonds; Federal, State or municipal bonds and notes) - please list and identify by (a) par value, (b) name, (c) interest rate, (d) due date and (e) cost or inventory value.

Total Value $_____

3. Present or future interests (e.g., interests in partnerships, trusts, litigation settlement funds or pensions) - please list and describe all present or future interests the incapacitated person has in property which has not been transferred to your control and indicate estimated value.

Total Value $_____

4. Other personal property (e.g., furniture, jewelry, artwork) - please list and describe other personal property and indicate estimated value.

Total Value $_____

TOTAL VALUE OF ALL PERSONAL PROPERTY $_____

II. **REAL PROPERTY** - please give the address, description and approximate value of any real property. Please also provide the date of filing of statement identifying real property with the County Clerk as required by Mental Hygiene Law § 81.20(a)(6)(vi).

Address	Description	Value	Date of filing

TOTAL VALUE OF REAL PROPERTY $_____

SCHEDULE A SUMMARY

Assets on hand at date of appointment

I. Personal property..... $_____

II. Real property..... $_____

TOTAL SCHEDULE A ..... $_____

SCHEDULE B

Please provide a complete inventory and identification of all sources of income or periodic payments the incapacitated person is entitled to receive, including: interest, dividends, pension plans, social security benefits, trust income, etc.. Please also include any rental income.

Type of income or payment	Amount per month
Total Monthly Income/Payment	$_____

VERIFICATION

STATE OF NEW YORK)
ss:
COUNTY OF_____)

_____, being duly sworn, state that I am the guardian of the within named incapacitated person and that the attached initial report and schedule(s) contain, to the best of my knowledge and belief, a complete and true statement of my activities as such guardian; receipts and payments on behalf of such incapacitated person; money and other property which has come into by possession or has been received by other persons by my order or authority since the date of my appointment; and the value of such property. I do not know of any error or omission in this report to the prejudice of such incapacitated person.

_____
Guardian

_____
_____
_____
_____
(Your name, address and telephone number)

Sworn to before me this ___ day

of _____, 20___.

Notary Public

ANNUAL REPORT OF GUARDIAN

_____ COURT OF STATE OF NEW YORK

COUNTY OF _____

In the Matter of the Annual Report of

_____,

As Guardian for _____, Index No. _____

An Incapacitated Person.

Accounting Period:
_____ _____ to
_____ _____.

General Instructions

1. All guardians must complete **Sections I and II**

2. All guardians must attach a copy of the order of appointment.

3. If you have been appointed guardian for the personal needs of the incapacitated person, please complete **Section III.**

4. If you have been appointed guardian for the property management of the incapacitated person, please complete **Section IV, the summary and the attached schedules.**

   (a) When listing property on a schedule, please be specific. For instance -with bank accounts, list name and address of bank, number of account and balance; with stocks, list number of shares, name of stock, type and value.

   (b) Gains or losses should be listed in Schedule B or C, whichever applies. If a schedule does not supply enough space, attach additional sheets with reference to the schedule to which the information applies.

   (c) In any schedule, if there is nothing to list, state "NONE".

Revised 6/05

5. The original annual report should be filed n the office of the Clerk of the Court which appointed you as guardian.

6. Send a copy of the annual report to the incapacitated person by mail, unless the court has ordered otherwise. If the incapacitated person resides in a facility, send a duplicate of the annual report to the chief executive officer of the facility. If the incapacitated person resides in a mental hygiene facility, send a duplicate of the annual report to the Mental Hygiene Legal Service of the Judicial Department in which the residence is located. If the Mental Hygiene Legal Service was appointed as the court evaluator or counsel for the incapacitated person, send a duplicate of the annual report to the Mental Hygiene Legal Service of the Judicial Department that was the venue of the guardianship proceeding, if so ordered by the Court.

Mental Hygiene Legal Services has offices at the following locations:

First Department
Mental Hygiene Legal Service
60 Madison Ave.
New York, New York 10010

Second Department
Mental Hygiene Legal Service
170 Old Country Rd.
Mineola, New York 11501

Third Department
Mental Hygiene Legal Service
40 Steuben Street, Suite 501
Albany, New York 12207

Fourth Department
Mental Hygiene Legal Services
M. Dolores Denman Courthouse
50 East Avenue - Suite 402
Rochester, New York 14604

Also send a copy of the annual report to the examiner for your County. The name and address of the examiner for your county may be obtained from County Court or the Appellate Division of State Supreme Court, Third Department.

SECTION I INFORMATION PERTAINING TO THE GUARDIAN (all guardians must complete this section).

1. **REPORT**:

Date of initial report:

Date of last annual report:

Date of this report:

Period covered by this report: _____, _____ through _____, _____. (INSTRUCTIONS: except for the first and last year of guardianship, the accounting covers the period from January until the end of December of the year preceding the report, or any other period upon order of the court).

2. **GUARDIAN**:

Name:

Address (include mailing address, if different):

Telephone no.:

3. **APPOINTMENT**:

Date of order:

Court:

Name of Judge/Justice:

4. **BOND**:

Bonding company name:

Bonding company address:

Value of bond (If the bonding requirement was waived, so state):

5. **VISITS**: (guardians are required to visit the incapacitated person at least four [4] times a year or more frequently as specified by court order).

Have you visited the incapacitated person?

Yes ___ No ___

If yes, please provide the date and place of such visits:

Date	Place

If no, please explain:

6. **EARNINGS**:

Have you used or employed the services of the incapacitated person?

Yes ___ No ___

Have any moneys been earned by or received on behalf of the incapacitated person based upon such services?

Yes ___ No ___

If yes, please set forth date, source and amount of moneys earned or derived from such services:

Date	Source	Amount

7. **WILL:**

To your knowledge, has the incapacitated person executed a will?

Yes ___ No ___

If yes, please provide location of the will:

8. **POWER OF ATTORNEY:**

To your knowledge, has the incapacitated person executed a Power of Attorney?

Yes ___ No ___

If yes, please provide the name and address of the person with the Power of Attorney:

9. **ADDITIONAL INFORMATION:**

Please provide any additional information which is required by your order of appointment as guardian (In addition to information provided in Sections I, II, III, and IV of this report).

10. **TYPE OF GUARDIANSHIP**:

Have you been granted powers over the personal needs of the incapacitated person?

Yes ___ No ___

If yes, please complete Sections II and III

Have you been granted powers regarding property management of the incapacitated person?

Yes ___ No ___

If yes, please complete Sections II and IV

11. **CHANGE IN POWERS**:

Is there any reason for any alteration of your powers as guardian?

Yes ___ No ___

If yes, please specify change requested:

If you want to change your authorized powers, you must make an application within TEN (10) days of filing this annual report and provide notice to the persons specified in your order of appointment as entitled to such notice. If you fail to comply with this provision, any person entitled to commence a proceeding under this article may petition the court for a change in the powers on notice to you and the persons entitled to such notice as specified in the order of appointment.

SECTION II INFORMATION PERTAINING TO THE INCAPACITATED PERSON
(all guardians must complete this section)

1. **INCAPACITATED PERSON:**

Name:

Address (If residential facility, include name of the Director or person responsible for care):

Telephone no.:

Has there been any substantial change in the incapacitated person's mental or physical condition?

Yes ___ No ___

If yes, please explain:

Has there been any substantial change in the incapacitated person's medication?

Yes ___ No ___

If yes, please explain:

2. **EXAMINATION:**

Please state the date and place the incapacitated person was last examined or otherwise seen by a physician and the purpose of such visit:

Date	Physician	Purpose

Please attach a statement by a physician, psychologist, nurse clinician or social worker, or other person who has evaluated or examined the incapacitated person within three (3) months prior to the filing of this report, regarding an evaluation of the incapacitated person's condition and current functional level.

SECTION III PERSONAL NEEDS

If you have been granted powers with respect to the personal needs of the incapacitated person, please provide the following information:

1. **RESIDENTIAL SETTING**:

Is the current residential setting suitable to the needs of the incapacitated person?

Yes ___ No ___

If no, please explain:

2. **TREATMENT**:

What professional medical treatment, if any, has been given to the incapacitated person during the preceding year?

Date	Treatment

3. **TREATMENT PLAN**:

Describe the treatment plan for the coming year for the incapacitated person regarding:

(a) Medical treatment

(b) Dental treatment

(c) Mental health treatment

(d) Additional related services

4. **SOCIAL SKILLS**:

Please provide information concerning the social condition of the incapacitated person, such as the incapacitated person's social skills and needs and the social and personal services used by the incapacitated person.

SECTION IV PROPERTY MANAGEMENT

If you have been granted powers regarding the property management of the incapacitated person, please provide the following information, consistent with your order of appointment, pertaining to your fulfillment of your responsibilities to the incapacitated person to provide for property management:

1. Have you identified, traced and collected assets of the incapacitated person since your appointment?

   Yes ___ No ___

   If no, please explain:

2. Have all of the incapacitated person's past and current income tax returns and payments been brought up to date?

   Yes ___ No ___

   If no, please explain:

3. Please complete the following schedules and summary. If you have nothing to list on a schedule, state "NONE".

SCHEDULE A
Assets on Hand at the Beginning of the Accounting Period

Please list all assets of the incapacitated person over which you had sole control as guardian as of the beginning of the accounting period. Do not include in this schedule trust principal in which the incapacitated person has an income interest, property under joint control of any court or real property not transferred to the guardian.

1. **BANK ACCOUNTS AND CASH** - please list the name and address of institutions, account numbers and balance deposited in banks or other financial institutions. Please also list any cash on hand not in bank accounts.

2. **CORPORATE AND GOVERNMENT SECURITIES (e.g., CORPORATE STOCKS AND BONDS; FEDERAL, STATE OR MUNICIPAL BONDS AND NOTES)**

3. **PRESENT OR FUTURE INTERESTS (e.g., INTERESTS IN PARTNERSHIPS, TRUSTS, LITIGATION SETTLEMENT FUNDS OR PENSIONS)** - please list the estimated values of all present and future interests the incapacitated person has in property that has not been transferred to your control.

4. **OTHER PERSONAL PROPERTY - (e.g., FURNITURE, JEWELRY, ARTWORK)** - please list and describe other personal property and indicate estimated value.

5. **REAL PROPERTY** - please describe location and type of real property, type of interest and market value. Please also provide the date of filing of a statement identifying the real property with the County Clerk as required by Mental Hygiene Law § 81.20(a)(6)(vi).

SCHEDULE B

Assets Received During Accounting Period

Please list all principal assets received during the period of this report (show date received, source and amount or value).

SCHEDULE C

Income Received During Accounting Period

Please list all income received during the period from property interests listed in Schedules A and B (show date received, source and amount).

SCHEDULE D
Losses Incurred During Accounting Period

Please list all realized losses incurred on principal assets, whether due to sale or liquidation, indicating the asset involved, the date and amount of loss.

SCHEDULE E
Moneys Paid Out During Accounting Period

Please list all disbursements, excluding investments, during the period, including date of payment, payee and amount.

SCHEDULE F
Assets On Hand At End Of The Accounting Period

Please list assets of the type listed in Schedule A on hand at the end of the period and value thereof (see Schedule A for further instructions)

1. **BANK ACCOUNTS AND CASH.**

2. **CORPORATION AND GOVERNMENT SECURITIES.**

3. **PRESENT OR FUTURE INTERESTS.**

4. **OTHER PERSONAL PROPERTY.**

5. **REAL PROPERTY.**

SUMMARY

PART I.

Total beginning balance, as shown on Schedule A, $

Total additional assets, as shown on Schedule B, $

Total income received during accounting period,
as shown on Schedule C $

TOTAL PART I: $____

PART II.

Total losses during accounting period,
as shown on Schedule D $

Total moneys paid out during accounting period,
as shown on Schedule E $

TOTAL PART II: $____

BALANCE ON HAND AT END OF ACCOUNTING PERIOD
(Total Part I minus Total Part II) $____

(This amount should be the same as Schedule F)

VERIFICATION

STATE OF NEW YORK)
ss:

COUNTY OF ____)

_____, being duly sworn, states that I am the Guardian of the within named incapacitated person and that the attached annual report and schedule(s) are, to the best of my knowledge and belief, a complete and true statement of my activities as such Guardian; receipts and payments on behalf of such incapacitated person; money and other property which has come into my possession or has been received by others pursuant to my order or authority since the date of my appointment or last report; and the value of such property. I do not know of any error or omission in the report or schedule(s) to the prejudice of such incapacitated person.

_____
Guardian

_____
_____
_____
_____

(Your name, address and telephone number)

Sworn to before me this ____ day

of _____, 20__.

Notary Public

EXAMINER'S REPORT
ON GUARDIAN'S INITIAL REPORT
(MHL §§81.30, 81.32 [a] [1])

Name and address of Incapacitated Person: _____

Name and address of Guardian: _____

Index No.: _____

Name of Judge or Justice Appointing Guardian: _____

Date of Order/Judgment Appointing Guardian: _____

Date of Guardian's Initial Report: _____

Present Value of Estate: _____

1. Was proof of completion of guardian education requirements under MHL § 81.39 filed with initial report?

I - PROPERTY MANAGEMENT *

2. Does report contain an inventory of the property and financial resources over which the guardian has control?

3. Does report indicate the location of any will executed by the incapacitated person?

4. Does report set forth the guardian's plan, consistent with the court's order, for management of the property and financial resources of the incapacitated person?

5. Does report indicate any need for any change in the power authorized by the Court with respect to property management?
   If so, explain briefly.

***Complete only if guardian has been granted power s with respect to property management.**

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II - PERSONAL NEEDS *

6. Does report contain a report of the guardian's personal visits with the incapacitated person?

7. Does report set forth the steps the guardian has taken, consistent with the court's order, to provide for the personal needs of the incapacitated person?

8. Does report set forth the guardian's plan, consistent with the court's order, for providing for the personal needs of the incapacitated person, including the information set forth in MHL § 81.30 (c) (1-4)?

9. Does report attach a copy of any directive pursuant to Public Health Law § 2965 (Do Not Resuscitate Order) or PHL § 2981 (Health Care Proxy), any living will, or any other advance directive?
If so, explain briefly.

10. Does report indicate any need for any changes in the powers authorized by the court with respect to personal needs?
If so, explain briefly.

***Complete only if guardian has been granted powers regarding personal needs.**

III - APPLICATION FOR CHANGE IN POWERS

If report indicates any reasons for a change in the powers authorized by the court, has guardian made application within 10 ten days of filing of report as required by MHL § 81.30 (d)?
If application has not been made, please explain briefly.

_____ _____
Date of this Report (your signature)

_____

_____
(your name and address)

EXAMINERS' COMPENSATION IS FIXED AT $75 WHICH SHALL BE ORDERED PAID BY THE ESTATE IN ESTATES OF $5000 OR MORE. IN ESTATES OF LESS THAN $5000, EXAMINER SHALL SUBMIT STANDARD STATE VOUCHER (see 22 NYCRR 806.17 [c]).

EXAMINER'S REPORT ON ANNUAL REPORT OF GUARDIAN, COMMITTEE OR CONSERVATOR*

(MHL § 81.31)

Name of Incapacitated Person: _____

Name of Guardian: _____

Index No.: _____

Name of Judge or Justice Appointing Guardian: _____

Date of Order/Judgment Appointing Guardian: _____

Date of filing of Guardian's Annual Report: _____

Date of filing of Guardian's Last Annual Report: _____

I - GENERAL

1. Does the annual report provide all of the information concerning the incapacitated person required by § 81.31 (b) (1) - (5) of the Mental Hygiene Law (MHL)?

   If not, in what respect is the report deficient?

2. Has guardian discharged the duty to visit the incapacitated person at least four times a year as required by MHL § 81.20 (5) (a)?

   If not, please explain.

II - PROPERTY MANAGEMENT

3. To the extent the guardian is charged with property management, does report contain an accounting of the property of the incapacitated person as required by § 81.31 (b) (7) of the MHL?

*** As used in this report, the term "guardian" shall also be deemed to refer to committees or conservators appointed prior to April 1, 1993.**

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4. Provide the following figures from the guardian's accounting:

a. Value of estate as of date of last report $ _____

b. Income received $ _____

c. Disbursements paid $ _____

d. Closing balance of estate $ _____

5. Is the examiner satisfied that the accounting is accurate and complete and have all items of income and disbursement been satisfactorily verified by bank statements, bills, receipts, cancelled checks and the like?

If not, please explain

III - PERSONAL NEEDS

6. To the extent that the guardian is charged with providing for personal needs, does the report contain each of the following items required by § 81.31 (b) (6) of the MHL?

a. statement as to whether current residential setting is best suited to the current needs of the incapacitated person?

b. summary of professional medical treatment given to the incapacitated person in preceding year.

c. plan for medical, dental and mental health treatment, and related services for coming year.

d. information concerning the social condition of the incapacitated person (see MHL § 81.31 [b] [6] [iv]).

If not, in what respects is the report deficient?

IV - TERMINATION OR ALTERATION OF POWERS

7. Does the report contain any facts indicating the need to terminate the guardian's appointment or to alter the guardian's power?

If yes, please explain

8. If report indicates any reason for a change in powers authorized by the Court, has guardian made application within 10 days of filing of report as required by MHL § 81.31 (e)?

If application has not been made, please explain briefly.

COMPENSATION

9. Examiner's compensation is governed by 22 NYCRR 806.17 (c). In estates of $5000 or more, attach claim for examiner's fee, together with reasonable and necessary disbursements. In estates of less than $5000, submit standard state voucher.

_____ _____

Date of this Report (your signature)

_____

_____

_____

(your name and address)