

**MEMORANDUM**

SUPREME COURT, QUEENS COUNTY

IA PART 20

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In the Matter of the Application of

BY: CHARLES J. THOMAS

JACQUELINE JACKSON and  
AUDREY RANDOLPH,

DATED: January 29, 2003

For the Appointment of a Guardian  
of the Personal Needs and  
Property Management of

INDEX NO: 31313/01

**JOHNNIE R. JACKSON,**

An Incapacitated Person

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This is a relatively routine Petition to appoint a guardian pursuant to Article 81 of the Mental Hygiene Law where this Court is now asked to appoint a new guardian and to approve legal fees.

Petitioners Jacqueline Jackson and Audrey Randolph commenced the proceeding requesting the appointment of a guardian for their father, Johnnie R. Jackson. They were represented by Tanya Hobson-Williams, Esq. Mr Jackson, the Alleged Incapacitated Person responded through counsel, Brian Heitner, Esq. and initially opposed the application. During the course of the proceeding Mr. Jackson admitted the need for some assistance in managing his affairs at the hearing before Justice Milano (newly retired effective December 31, 2002), and eventually Mr. Jackson consented to the appointment of a guardian.

An Order was signed on March 28, 2002 appointing  
Petitioners' brother Johnnie Jackson, Jr. as guardian of the

Person and Property. The order also contained a provision awarding fees as follows: Six thousand dollars (\$6,000) to Novick and Heitner, LLP as attorney for Johnnie R. Jackson, the alleged incapacitated person; fourteen hundred dollars (\$1,400) to Arthur N. Terranova, Esq. the Court Evaluator; and Five Thousand Dollars (\$5,000) to Tanya Hobson, Esq. for legal fees and disbursements incurred by the Petitioner.

On May 28, 2002 Petitioners brought an Order to Show Cause seeking the appointment of a new guardian as Johnnie Jackson, Jr. never qualified as the guardian of the property and seeking their appointment in his place. The Order to Show Cause was signed and on the return date the court, without objection, appointed Ms. Jackson as the Property Management Guardian.

Counsel for Ms. Jackson submitted an affidavit of Legal Fees but an order appointing her client as guardian or approving the fees was never signed by the Court and fees were not awarded.

On October 10, 2002 the Court signed an Order to Show Cause which was brought this time by the Incapacitated Person for, inter alia, the removal of his son Johnnie Jackson, Jr. and his daughter, Jacqueline Jackson as co-Guardians and for the appointment of an Independent Guardian in their place.

Opposition Papers consisting of three pages were submitted by Tanya Hobson-Williams on behalf of Ms. Jackson informing the court that Ms. Jackson had taken the course to qualify. On the October 31, 2002, return date, a sixteen sentence inquiry by the court resulted in Ms. Jackson being appointed as both the personal needs and property management guardian.

An order to that effect was submitted to the guardianship office and was reviewed by and signed on December 30, 2002 by this court in accordance with CPLR 9002. The order provided for the appointment of Ms. Jackson in accordance with the decision of Justice Milano. Additionally, the Court reviewed the requests by Mr. Heitner, Mr. Newman, counsel for Johnnie Jackson, Jr. and Ms. Hobson-Williams for legal services subsequent to the May 31, 2002 order.

The Court awarded the following fees for legal services: Mr. Heitner the sum of twenty five hundred dollars (\$2,500.00) for bringing the Order to Show Cause (May 30, 2002); Ms. Hobson-Williams an additional five hundred dollars (\$500.00). No fees were awarded to either Mr John Newman, Esq. as attorney for Johnnie R. Jackson, Jr. As his client never qualified or to Arthur Terranova, Esq. the Court Evaluator.

Shortly after the order was signed an inquiry was made by Tanya Hobson-Williams, Esq. counsel for Ms. Jackson regarding the fee which was awarded by the court. Ms. Hobson telephoned and irately claimed that "there must be a mistake". In order to enlighten counsel, the court renders this Memorandum decision.

The awarding of fees is not a ministerial act wherein the Court merely rubber stamps an order based on the statement by an attorney. If that was the case the order would be submitted to a clerk for entry. It is the responsibility and obligation of the court to scrutinize all requests to ensure the assets of an incapacitated person are not being dissipated by anyone who thinks they are entitled to funds from the estate by claim of

legal fees, expenses, or for any other reason.

Attorneys who do legitimate work are entitled to be paid. However, that does not mean all fees should come from the Incapacitated Person's assets. The court's position is that only legal services which directly benefit the Incapacitated Person, will be paid from the Incapacitated Person's assets. Attendance at hearings representing individuals, who seek a guardianship appointment or family members contesting proceedings does not ipso facto entitle an attorney to a fee from Incapacitated Person's assets.

An Incapacitated Person's assets may not be considered a big piggy bank to be raided by little piggies. There also comes a point when regardless of the amount of work one does (giving the benefit of the doubt that the work was necessary) the court will no longer award fees. This is a case where enough assets in an Incapacitated Person's estate have been used for expenses incurred in the appointment proceeding. In total Mr. Jackson has now paid over fifteen thousand dollars (\$15,000) for the appointment of a guardian to which he consented.

Pursuant to her Affidavit of Services Ms. Hobson-Williams charged \$5,075.00 representing twenty nine (29) hours at the rate of \$175.00 per hour. Ms. Hobson was awarded \$5000, nearly the entire amount she requested. Subsequent to the order, the guardian never qualified and further proceedings were necessary to put the guardian in place. Eventually the Incapacitated Person went back to his own attorney and filed an Order to Show

Cause to have a guardian appointed for him.

Ms. Hobson-Williams has submitted two affidavits for Legal Services. One for the Order to Show Cause of May 30 2002 in the amount of \$ 4,218.75 representing eighteen and three quarter (18.75) hours at \$225.00 per hour and \$ 155.40 for disbursements and a second for \$ 3,431.25 representing 15.25 hours at \$ 225.00 per hour.

While Ms. Hobson-Williams may have performed the services claimed the court finds that the hours expended are extraordinary for a person of her ability and the rate charged higher than reasonable for the services rendered.<sup>1</sup>

In total Ms. Hobson-Williams has received \$5500.00 for the appointment of Ms. Jackson as her father's guardian.

The court will not grant additional fees in this matter. First and most importantly, the sum of \$5500.00 is more than adequate compensation for the necessary services rendered in this case. Secondly, many of the services performed by Ms. Hobson Williams failed to result in moving this case forward. The Order to Show Cause submitted by her in May 30, 2002 never even resulted in an order removing her clients brother as Guardian of the Property. While Ms. Hobson-Williams can charge her clients any fee which they agree upon, the court will not make the Incapacitated Person foot their bill.

There was no mistake in the order as Ms. Hobson irately

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<sup>1</sup>The court notes that within a four month period Ms. Hobson-Williams increased her rate charged in this case approximately 20%.

insisted. There are simply limits to which this Court will permit an Incapacitated Person's assets to be raided by an attorney regardless of what they do. Fifty Five Hundred (\$5,500.00) Dollars for an uncomplicated guardianship, when the only issue is which sibling should be the guardian is by any stretch more than a reasonable fee.

DATED: January 29, 2003

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CHARLES J. THOMAS, J.S.C.

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