

Mental Hygiene Law §§ 81.30-81.32:
Reporting and Examination of Required Reports

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Court Examiner
Rensselaer County

BIOGRAPHICAL DATA SHEET

Name: MICHAEL PHILIP, JR., ATTORNEY AT LAW

Current practice: November 24, 2010 – present - Private practice of law with concentration on assisting other attorneys and law firms as a consultant in law practice management and ethics issues.

January 2013 – Present - Court Examiner for Rensselaer County

Law School: Western New England, Springfield, MA **Graduation:** 1981

Admission: 1982 - Third Department; US District Court - Northern District.

Undergraduate: American University, Washington, D.C., BS Administration of Justice 1975

Previous Work History: Deputy Chief Attorney, New York State Committee on Professional Standards, Third Judicial Department, Albany, August 1987 to November 2010. (Retired) Investigated and prosecuted alleged misconduct by attorneys in the Third Judicial Department.

New York State Division of Criminal Justice Services April 1977 to August 1987, various positions with the last position as a Staff Attorney from 1982.

Membership in Associations, Committees, etc.: New York State Bar Association:
Committee on Professional Discipline
Committee on Law Practice Management
Committee on Mass Disaster Response

Appellate Division Third Department
Committee on Character and Fitness

Past President, New York State Association
of Disciplinary Attorneys

Mental Hygiene Law §§ 81.30-81.32:
Reporting and Examination of Required Reports

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Section 81.30 INITIAL REPORT

The guardian must file an initial report with the court within ninety days of receiving his/her commission. The report is to state what steps the guardian has taken to fulfill his/her responsibilities. Regarding Property Management the report must contain the information on the following schedules and summary:

SECTION III PROPERTY MANAGEMENT

SCHEDULE A

The guardian is to provide a complete inventory of the property of the incapacitated person over which the guardian has control and list all guardianship assets as of the date of appointment.

I. PERSONAL PROPERTY

1. Bank accounts and cash - list the name and address of the institution, account numbers and balance at the time of appointment. 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. List and describe all present or future interests (e.g. interests in partnerships, trusts, litigation, settlement funds or pensions) - the incapacitated person has in property which has not been transferred to the guardian's control and indicate estimated value.
4. List other personal property (e.g., furniture, jewelry, artwork) - indicate estimated value.

II. REAL PROPERTY the address, description and approximate value of any real property. 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).

SCHEDULE A SUMMARY

Assets on hand at date of appointment

1. Personal property \$

11. Real property \$

TOTAL SCHEDULE A \$

SCHEDULE B

A complete inventory and identification of all sources of income the incapacitated person is entitled to receive, including: interest, dividends, pension plans, social security benefits, trust income, etc. as well as rental income.

Total Monthly Income \$

Section 81.31- ANNUAL REPORT

The guardian must file a yearly accounting by **calendar year** to the court of the status of the incapacitated person which is always due in May and covers **the previous calendar year from January 1 through December 31** pursuant to MHL §81.31. The **first Annual Report** should cover from the date of appointment through the end of that calendar year December 31. Regarding Property Management the report must include an accounting of all property and finances (this includes statements of all income received and monies paid out) and must be specific eg: 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. **Note: The instructions tell the guardian to list Gains or losses in Schedule B- Assets Received or C- Income, whichever applies. However there is Schedule D (Losses) which has confused some of my guardians.** I respectfully submit Schedules B and C are for gains only and not losses. Regarding Property Management the report must contain the information on the following schedules and summary

SECTION IV PROPERTY MANAGEMENT

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

All assets of the incapacitated person over which the guardian had **sole** control as of the beginning of the accounting period. If it is the first annual report, the beginning of the accounting period is at the time of appointment or if not, then as listed at the end of the prior year's report. Do not include 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 - list the name and address of the institution, account numbers and balance at the **Beginning** of the accounting period. Also list any cash on hand not in bank accounts. Special Note re Guardians who are attorneys: Funds ARE NOT to be placed in Attorney Escrow Account. Rule 1.15 of the NY Rules of Professional Conduct.
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) - list and describe all present or future interests the incapacitated person has in property which has not been transferred to the guardian's control and indicate estimated value.

4. List other personal property (e.g., furniture, jewelry, artwork) - indicate estimated value.
5. REAL PROPERTY - describe location and type of real property, type of interest and market value.

NOTE: SCHEDULE A MUST EQUAL THE CLOSING BALANCE ON THE SUMMARY FROM THE PRIOR YEAR'S REPORT AND THE SPECIFIC AMOUNTS SHOULD BE THE SAME AS THE PRIOR YEARS SCHEDULE F.

SCHEDULE B - Assets Received During Accounting Period

1. 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

1. 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

1. 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

1. 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

1. 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)

Section 81.32- EXAMINATION OF INITIAL AND ANNUAL REPORTS

EXAMINER'S INITIAL REPORT

I - PROPERTY MANAGEMENT

1. Present Value of Estate.
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?

EXAMINER'S ANNUAL REPORT

II - PROPERTY MANAGEMENT

1. 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?
2. 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 \$
3. 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, canceled checks and the like?

Section 81.32

a) Examination of reports generally.

1. Initial report. Within thirty days of the filing of the initial report, the initial report filed by a guardian under this article shall be examined.

2. Annual examination. Within thirty days after the filing of the annual report of the preceding year, the annual reports filed by guardians under this article shall be examined to determine the condition and care of the incapacitated person, the finances of the incapacitated person, and the manner in which the guardian has carried out his or her duties and exercised his or her powers.

(c) Failure to report.

1. If a guardian fails to file his or her initial or annual report, the person authorized to examine the report shall demand that the guardian file the report within fifteen days after the service of the demand upon him or her. A copy of the demand shall be served upon the guardian or his or her resident agent by certified mail.

2. Upon failure to comply with such demand, the court, may upon the motion of the court examiner, enter an order requiring compliance with the demand and may deny or reduce the amount of the compensation of the guardian, or remove the guardian pursuant to section 81.35 of this article absent a showing that the guardian has acted in good faith.

(d) Incomplete report.

1. If the person authorized to examine the report is of the opinion that a more complete or satisfactory report should be filed, the person authorized to examine the report shall demand that the guardian file a revised report or proof of any item in the report. A copy of the demand shall be served upon the guardian or his or her resident agent by certified mail.

2. Upon failure to comply with such demand, the court, may upon the [fig 1] motion of the court examiner, enter an order requiring compliance with the demand and may deny or reduce the amount of the compensation of the guardian, or remove the guardian pursuant to section 81.35 of this article absent a showing that the guardian has acted in good faith.

(e) Duty of examiners. The person examining the report may examine the guardian and other witnesses under oath and reduce their testimony to writing. The person examining the report, on five days notice to the guardian, shall file a report in the form and manner prescribed by the order appointing the examiner.

(f) Expenses of examination. The expenses of the examination shall be payable out of the estate of the incapacitated person examined if the estate amounts to five thousand dollars or

more, or, if the estate amounts to less than this sum, by the county treasurer of the county or, within the city of New York by the comptroller of the city of New York, out of any court funds in his or her hands.

22 NYCRR Part 806.17(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 or annual report of a guardian, within 60 days after the filing of such report. 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(c) 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.

EXAMPLES

EXAMPLE 1

As Court Examiner I am to certify that the accounting is accurate and complete and that all items of income and disbursement have been satisfactorily verified by bank statements, bills, receipts, canceled checks and the like. Accordingly, please provide supporting documentation to address the following.

It appears the \$26,100 listed on schedule B1 Property Received into Key Bank were funds transferred from Trustco. However, the corresponding sum you have listed as disbursements from Trustco to Key Bank total \$28,600. Please explain the discrepancy. Please also explain the nature of the disbursements to Mr. Smith from Key Bank, why they are not made from Trustco and why a service fee is charged by Key Bank.

Further, please explain why no treatment is listed under item 2 Treatment yet you made disbursements to Kingston Hospital and the Medical Association of the Hudson Valley. Please also explain the fluctuating payments to Colonial Village Apartments, and the fluctuating payments to Willcare.

EXAMPLE 2

Thank you for providing the Trustco documents. Having reviewed the documents I note there were deposits into Trustco regularly of \$6500 and an additional \$1000 deposit in May. I also note there were two more accounts at King Wealth Management. I assume the extra deposits came from those funds? Please provide those statements as well. You cite \$19,800 in pension and SS income but the statements indicate \$23,676.18. I note the Social Security deposit increased in January 2013. You also did not apparently include \$6.76 in interest and a \$173 tax refund. You cite disbursements of \$97,475.15 but the statements total \$132,000.23. Please advise the source of your figure. Finally you state the trustco account had a balance of \$16,666.02 at the end of your accounting period but the bank statement indicates the balance was \$8,213.48. Please provide the source for your figure.

Based on your records you began the reporting period with \$167,608.72 in the accounts assuming the figures for King Wealth Management are accurate in your initial report. You received income of \$23,676.18 from pension and SS plus \$6.76 in interest on the trustco account plus any interest you made on the King Wealth accounts. You also deposited a \$173 tax refund in March which you apparently did not include in income. The disbursements actually total \$132,000.23 including the insufficient fund fees, check order fee, and a few small unexplained debit memos in May.

Based on these figures I come up with:

- | | | |
|----|---------------------------------------|--|
| a. | Value of estate as of initial report: | \$167,608.72 |
| b. | Income received: | \$23,855.94 (plus interest from King Wealth account) |
| c. | Disbursements paid: | \$132,000.23 |

d. Closing balance of estate: \$59,464.43 (note the Trustco balance was \$8213.48 suggesting the balance for King Wealth was only \$51,250.95)

Assuming the \$6500 deposits and an additional \$1,000 deposit into Trustco totaling \$72,500 were from King management, if you deduct that sum from a total beginning balance for King Wealth of \$123,750.95 based on your initial report, then the balance is exactly \$51,250.95, not the \$73,767.55 you cite in your annual report. Unfortunately, a revised report is necessary as none of your figures agree with the records. I would suggest you use the form I previously provided.”

EXAMPLE 3

I received the initial report today that you previously filed but was not in the file from my predecessor. Unfortunately, I must first note the numbers do not jive with your annual report. Your initial report states the estate was valued at \$243,747.18 in cash/bank accounts which should match the amount on Schedule A on your annual report but that amount totals \$232,317.22, an \$11,429.96 discrepancy. In other words the amount on your initial report should be your opening balance on your annual report in Schedule A. Your closing balance on this Annual report then becomes your opening balance on the next annual report. The amount you used for your initial report should have been as of the date you became guardian. Note the initial report has no schedule for disbursements. Therefore, your first annual report should cover all funds received and disbursements made from the time you became guardian NOT when you filed your initial report. Please call me as it appears the discrepancy relates to funds received and disbursements made in the interim and the annual report needs to be redone.

EXAMPLE 4

As we discussed, I reviewed the 2012 annual report you submitted on behalf of your client and there are several issues and missing information that need to be addressed as follows:

1. On Schedule A -Bank Accounts and Cash- there appears to be \$5000 missing for John Hancock that was previously listed on Schedule F of the 2011 report which of course should also be included on Schedule A of the 2012 report. Despite the fact this sum is missing on Schedule A your client correctly used the same total Schedule A figure as was listed on Schedule F for 2011. Accordingly the math need not be adjusted only the \$5000 added to Schedule A under Bank Accounts and Cash.
2. I note that in reviewing the 2012 report I skimmed the 2011 report. Similarly on the 2011 report your client listed a \$24,835.10 MetLife control account on Schedule A – Bank Accounts and Cash that was not included on Schedule F for 2011 and was not accounted for as far as I can see in the 2011 report at all. An explanation is needed.
3. On Schedule F in the 2012 main report under Bank Accounts and Cash your client states “see attached Schedule F” however there is no attached Schedule F.
4. The total listed on the 2012 main report for Schedule F Bank Accounts and Cash is only \$40,720.73. I note there is no indication that IRAs were cashed in yet Schedule A lists two IRAs at over \$88,000 which of course should be included in Schedule F.
5. Under Schedule D your client shows a \$2285.12 loss for sale of 104 shares of Verizon

stock originally valued at \$6866.08 but there is no indication as to what happened to the \$4580.96 proceeds from that sale.

- 6. Accordingly in addition to providing the aforementioned explanations, information and corrected schedules please provide the supporting records including bank statements, check ledgers, and documentation regarding the sale of assets and what happened to the proceeds from the sale of those assets.**

22NYCRR Part 1200 RULE 1.15

Preserving Identity of Funds and Property of Others; Fiduciary Responsibility; Commingling and Misappropriation of Client Funds or Property; Maintenance of Bank Accounts; Record Keeping; Examination of Records

(a) Prohibition Against Commingling and Misappropriation of Client Funds or Property.

A lawyer in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law, is a fiduciary, and must not misappropriate such funds or property or commingle such funds or property with his or her own.

(b) Separate Accounts.

(1) A lawyer who is in possession of funds belonging to another person incident to the lawyer's practice of law shall maintain such funds in a banking institution within New York State that agrees to provide dishonored check reports in accordance with the provisions of 22 N.Y.C.R.R. Part 1300. "Banking institution" means a state or national bank, trust company, savings bank, savings and loan association or credit union. Such funds shall be maintained, in the lawyer's own name, or in the name of a firm of lawyers of which the lawyer is a member, or in the name of the lawyer or firm of lawyers by whom the lawyer is employed, in a special account or accounts, separate from any business or personal accounts of the lawyer or lawyer's firm, and **separate from any accounts that the lawyer may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity;** into such special account or accounts all funds held in escrow or otherwise entrusted to the lawyer or firm shall be deposited; provided, however, that such funds may be maintained in a banking institution located outside New York State if such banking institution complies with 22 N.Y.C.R.R. Part 1300 and the lawyer has obtained the prior written approval of the person to whom such funds belong specifying the name and address of the office or branch of the banking institution where such funds are to be maintained.

INITIAL REPORT OF GUARDIAN

_____ COURT OF STATE OF NEW YORK

COUNTY OF _____

in the Matter of the Initial Report of _____
As Guardian for _____
An Incapacitated Person

Index No. _____

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):

_____ State: Zip: -

Telephone no.: () - _____

3. **INCAPACITATED PERSON-**

Name: _____

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

_____ State: Zip: -

Telephone no.: () - _____

4. **APPOINTMENT:**

Date of order _____

Court: _____

Name of Judge/Justice: _____

5. **BOND:**

Bonding company name: _____

Bonding company address:

State: Zip: -

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. Please 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.

Institution	Account Number	Balance

Total Value \$ _____

2. **Corporate and government securities** (e.g., corporate stocks and bonds; Federal, State or municipal bonds and notes).

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

1. Personal property \$ _____

11. Real property \$ _____

TOTAL SCHEDULE A \$ _____

SCHEDULE B

Please provide a complete inventory and identification of all sources of income 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	Amount per month

Total Monthly Income

\$ _____

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

_____ State:

--	--

Zip:

--	--	--	--	--	--

-

--	--	--	--

Phone Number: () _____

(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".

5. The original annual report should be filed in 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 office 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
41 Madison Ave., 26th Floor
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
286 Washington Avenue Extension
Suite 205
Albany, NY 12203

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):

City _____ ST _____ ZIP _____
Telephone no.: _____

3. APPOINTMENT:

Date of order: _____
Name of Judge/Justice: _____

4. **BOND:**

Bonding company name: _____

Bonding company address:

City _____ ST _____ ZIP _____

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:

City _____ ST _____ ZIP _____

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):

City _____ ST _____ ZIP _____

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.

Bank/Financial Institution	Address	Account #	Balance

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).

Date Received	Source	Amount/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).

Date Received	Source	Amount/Value

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.

Date	Asset	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.

Date	Payee	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,	\$
	<hr/>
Total additional assets, as shown on Schedule B,	\$
	<hr/>
Total income received during accounting period, as shown on Schedule C	\$
	<hr/>
TOTAL PART I:	\$ 0.00
	<hr/>

PART II.

Total losses during accounting period, as shown on Schedule D	\$
	<hr/>
Total moneys paid out during accounting period, as shown on Schedule E	\$
	<hr/>
TOTAL PART II:	\$ 0.00
	<hr/>

BALANCE ON HAND AT END OF ACCOUNTING PERIOD	
(Total Part I minus Total Part II)	\$ 0.00
(This amount should be the same as Schedule F)	<hr/>

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: _____

City: _____

State: _____ Zip: _____

Name and address of Guardian: _____

City: _____

State: _____ Zip: _____

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? Yes No

I - PROPERTY MANAGEMENT *

2. Does report contain an inventory of the property and financial resources over which the guardian has control? Yes No
3. Does report indicate the location of any will executed by the incapacitated person? Yes No
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? Yes No
5. Does report indicate any need for any change in the power authorized by the Court with respect to property management? Yes No
If so, explain briefly.

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

II -PERSONAL NEEDS *

6. Does report contain a report of the guardian's personal visits with the incapacitated person? Yes No
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?
Yes No
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)?
Yes No
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? Yes No
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? Yes No
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 § 81.3 0 (d)? If application has not been made, please explain briefly.

Yes No

Date of this Report

(your signature)

City: _____

State: _____ Zip: _____

(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]).

Print

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

- 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)? Yes No
If not, in what respect is the report deficient?

-
- Has guardian discharged the duty to visit the incapacitated person at least four times a year as required by MHL § 81.20 (5) (a)? Yes No
If not, please explain.

II - PROPERTY MANAGEMENT

- 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? Yes No

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

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, canceled checks and the like? Yes No
- 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? Yes No
 - b. summary of professional medical treatment given to the incapacitated person in preceding year. Yes No
 - c. plan for medical, dental and mental health treatment, and related services for coming year. Yes No
 - d. information concerning the social condition of the incapacitated person (see MHL § 81.31 [b] [6] [iv]). Yes No

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? Yes No

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 § 81.3 1 (e)? Yes No

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)

City:

State: _____ Zip: _____

(your name and address)