

## **1015.16 - EXAMINERS OF REPORTS OF GUARDIANS, COMMITTEES AND CONSERVATORS PURSUANT TO ARTICLE 81 OF THE MENTAL HYGIENE LAW**

### **(a) Appointment of Court Examiners.**

(1) Appointment. On or before January 1 of each year, the Presiding Justice shall appoint, for each County within the Appellate Division, Fourth Department, examiners of the reports of guardians, as well as the reports of committees and conservators appointed prior to April 1, 1993.

(2) Eligibility.

(i) Only persons who have satisfied training and education requirements approved by the Presiding Justice shall act as court examiners.

(ii) Court examiners shall maintain compliance with 22 NYCRR part 36.

### **(b) Duties of Court Examiners.**

(1) Generally. In examining the report of a guardian, committee or conservator, the court examiner shall ascertain whether a guardian, committee or conservator has completed a timely and complete report as required by article 81 of the Mental Hygiene Law; whether a guardian, committee or conservator has complied with the order of appointment; and whether a guardian, committee or conservator has satisfied the duties set forth in Mental Hygiene Law § 81.20.

(2) Initial Reports. With respect to an initial report of a guardian, the court examiner shall file a report within 30 days of the filing of the guardian's report.

(3) Annual Reports. With respect to an annual report of a guardian, committee or conservator, the court examiner shall file a report within 30 days of the filing of the report of the guardian, committee or conservator.

(4) Filing Requirements.

(i) The court examiner shall file the court examiner's report in the office of the clerk of the court that appointed the guardian, committee or conservator, with proof of service of the report on the guardian, committee or conservator.

(ii) Within 10 days of the filing of the court examiner's report, the court examiner shall send a time-stamped copy of the report to the guardianship office of the Appellate Division, Fourth Department.

(5) **Untimely and Incomplete Reports.** In the event that a guardian, committee or conservator fails to file a timely report or files an incomplete report, the court examiner shall serve the guardian, committee or conservator with a demand for the report and shall take such actions as are necessary to compel compliance, pursuant to Mental Hygiene Law § 81.32 (c) and (d).

(6) **Examination Under Oath.** The court examiner may examine a guardian, committee, conservator or other witness under oath and reduce the testimony to writing.

(7) **Forms.** For court examiner reports, the court examiner shall use forms designated by the Appellate Division, Fourth Department. The court examiner shall require guardians to use forms designated by the Appellate Division, Fourth Department.

(c) **Compensation.**

(1) **Initial Reports.** For the examination of an initial report, a court examiner is entitled to a fee of \$100 for an estate having a net value under \$5,000, and a fee of \$150 for an estate having a net value of \$5,000 or more, together with reimbursement for reasonable and necessary disbursements.

(2) **Annual Reports.** For the examination of an annual report, a court examiner is entitled to reimbursement for reasonable and necessary disbursements and a fee fixed pursuant to the following fee schedule:

<b>Closing balance of Estate examined</b>	<b>Fee</b>
under \$5,000	\$150
\$5,000 to \$25,000	\$250
\$25,001-\$50,000	\$300
\$50,001-\$100,000	\$500
\$100,001-\$150,000	\$650

\$150,001-\$225,000	\$800
\$225,001-\$350,000	\$950
\$350,001-\$500,000	\$1,100
\$500,001-\$750,000	\$1,250
\$750,001-\$1,000,000	\$1,400
Over \$1,000,000	Additional fee of \$30 for each \$25,000 in net value over \$1,000,000, with a maximum fee of \$5,000

(3) The fee shall be calculated on the net value of the estate at the close of the calendar year for which the annual report has been filed. Upon a showing of extraordinary circumstances, a fee in excess of the fee fixed by the schedule may be awarded.

(4) An application for a fee for an estate with a value under \$5000 shall be made by a claim for payment and shall be approved by the Presiding Justice or the designee of the Presiding Justice.

(5) An application for a fee for an estate with a value of \$5000 or more shall be set forth in the report of the court examiner and shall be approved by order of the Presiding Justice for payment by the estate. The court examiner shall serve a copy of the order approving payment on the guardian, committee or conservator, and shall file a copy of the order with the clerk of the court that appointed the guardian.

(6) A guardian, committee or conservator may apply to the Presiding Justice for review and reconsideration of any fee on the ground of excessiveness. Such application shall be in writing and shall be made within 20 days of service by the court examiner of the order directing payment of the fee from the estate.