

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

In the Matter of

**Nathaniel Reid Lamar**

A Person in Need of a Guardian,

Index No. 100442-2015

**NOTICE OF MOTION  
TO REARGUE/RECONSIDER  
DECISION AND ORDER ON ALL  
AFFIDAVITS OF SERVICES**

Mot  
Seg  
#2

MOTION BY: RENEE OPPENHEIMER, Guardian of NATHANIEL REID LAMAR.

DATE, TIME & PLACE OF HEARING: **February 3, 2017**, at 9:30 a.m. or as soon thereafter as counsel can be heard, at I.A.S Part 76M of the Supreme Court of the State of New York before the **Hon. Michael L. Pesce** held in and for the County of Kings at the Supreme Court, 360 Adams Street, Brooklyn, NY, 11201

SUPPORTING PAPERS: Affidavit In Support by the Guardian

RELIEF REQUESTED: An Amended Order of this Court authorizing additional fees to awarded to the Guardian in the amount originally requested in the Affidavit of Legal Services filed February 18, 2016 and another dated May 17, 2016.

ANSWERING PAPERS: Pursuant to CPLR 2214(b), answering papers, if any, are to be served upon the undersigned at least days before the return date of this motion, and any reply affidavits will be due one (1) day before the return date.

KINGS COUNTY CLERK  
FILED  
2017 MAR -3 AM 11:45

NB

Dated: January 18, 2017

*Renee Oppenheimer*

Renee Oppenheimer  
1862 East 26<sup>th</sup> Street  
Brooklyn, New York 11229  
(347) 268-2177

KINGS COUNTY CLERK  
FEE PD \$ 45.00  
*John Oppenheimer*

TO:

Ariella T. Gasner, Esq.  
Salem Shor and Saperstein LLP  
3000 Marcus Avenue, Ste 1E6  
New Hyde Park, NY 11042-1004

Jerald Rosenbloom, Esq.  
Rosenbloom & Hofflich, LLP  
15 Maiden Lane, Suite 600  
New York, New York 10038

**KINGS COUNTY  
SUPREME COURT**

JAN 18 2017

**GUARDIANSHIP  
APPROVED**

2017 JAN 18 PM 2:48

NYSBA MHL 81 (6/03)

①

Angelo M. Grasso, Esq.  
Greenfield Stein & Senior, LLP  
600 Third Avenue  
New York, New York 10016

Thomas Sciacca, Esq  
Law Office of Thomas Sciacca, PLLC  
44 Wall Street – 10<sup>th</sup> Floor  
New York, NY 10005

NYSBA MHL 81 (6/03)

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS**

-----X  
In the Matter of

**AFFIDAVIT IN SUPPORT**

For the Appointment of a Guardian of

NATHANIEL REID LAMAR

Index No. 100442/2015

A Person In Need of a Guardian  
-----X

2017 MAR -3 AM 11:46  
KINGS COUNTY CLERK  
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RENEE OPPENHEIMER, being duly sworn, deposes and says:

1. I am the Guardian for NATHANIEL REID LAMAR, the PING (or "Person in Need of a Guardian" or "PING") of this case.
2. I submit this affidavit in support of petitioner's application for a Motion to Reargue under C.P.L.R. § 2221(d) the Court's Decision and Order On All Affidavits of Services.

**STATEMENT OF FACTS**

3. I was appointed Court Evaluator in this MHL Article 81 Guardianship proceeding by Order of the Honorable Leon Ruchelsman on December 16, 2015.
4. A hearing was held on February 11, 2016 in which Mr. Lamar expressed desire that I be appointed as his Guardian. In the interim between the hearing and the actual signing of the formal Order and Judgement, the Court advised via email on April 15, 2016 that all parties seeking legal fees for the proceeding should submit their affirmations of legal services, on notices to the other parties and can be sent to chambers via email.
5. "Affidavit of Legal Services" for the role of Court Evaluator was provided by myself on February 18, 2016 and another for the role of Guardian dated May 17, 2016. "Affirmation of

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②

Legal Services” was provided by Ariella T. Gasner, Esq., Court Appointed Attorney for Nathaniel Reid Lamar dated March 29, 2016; “Affidavit of Legal Services” by Angelo M. Grasso, Esq., attorney retained by Nathaniel Reid Lamar dated April 25, 2016; “Affirmation of Legal Services Rendered” by Jerald Rosenbloom, Esq., petitioner, dated April 20, 2016 and another dated May 17, 2016

6. On June 6, 2016 by Order and Judgment of the Honorable Michael L. Pesce, Justice of the Supreme Court, Kings County, I was appointed as Guardian for the Person and Property of Nathaniel Reid Lamar, a Person in Need of a Guardian
7. The Courts awarded fees to all that were significantly reduced as compared to what was originally requested, most punitive to deponent. The July 21, 2016 decision is annexed hereto as Exhibit “A”.

#### ARGUMENT 1

#### **THIS COURT SHOULD GRANT LEAVE TO REARGUE UNDER CPLR § 2221(d)**

8. Pursuant to CPLR 2221, courts have broad discretion to grant leave to reargue a motion based on matters of fact or law that were overlooked or misapprehended by the court on the prior motion (see CPLR 2221(d)).
9. The Court should reconsider its position that there was an “excessive amount of time billed and an impermissible, improper labeling of “legal services.” The Court further stated that the matter was uncomplicated in terms of the items that were required to be performed for Mr. Lamar. The Court failed to recognize that large amounts of time were expended by the Guardian for the following items including but not limited to:

- Arranging for Mr. Lamar to leave the nursing home

- Arranging for a special gel mattress to be installed in Mr. Lamar's residence. Much challenge presented itself in terms of vendor selection, availability and delivery. ✓
- Upgrading Mr. Lamar's home care to 24 hours vs. the 12 hours that was originally in place. ✓
- Resolving a great deal of issues related to staff not getting along with each other. ✓  
This entailed a constant barrage of calls from Mr. Lamar and his (former) staff.
- Arranging for Mr. Lamar's medication to be provided, a task that was later taken over by the Geriatric Care Manager. ✓
- Mr. Giles ("Larry") involvement in the Court proceeding in which he interjected the way he felt things should be done, which resulted in a lot of expended time on matters that would normally not take as much effort to complete. ✓
- Despite much discussion on the topic in and out of Court, the "Garden" ownership issue took up a lot of time with respect to the fact that Mr. Lamar was very upset to "give it away," which was not in alignment with what many parties including the Court believed were his wishes. ✓
- Mr. Lamar had no oven in his residence. An appropriate model had to be ordered which was very specific to the space constraints within his residence. The selection, ordering, delivered was required to be completed prior to Mr. Lamar's return home from the nursing home. ✓
- Mr. Lamar's aides were at one point not on talking terms with each other which made it significantly more difficult to ascertain particular bits of information with regards to his care, not limited to the medications he was on. It took a number of weeks for the

Geriatric Care Manager to be able to ameliorate the situation and install new aides as replacement workers.

- Mr. Lamar did not have heat working in his apartment. Prior to the Guardianship proceeding, nothing was done to remediate the situation
- Mr. Lamar's was in need of special orthopedic shoes. This may not have been listed specifically in the time log reviewed by the Court
- Landlord-Tenant statuses. Extensive conversations with Mr. Rosenbloom were had to understand the dynamics as it pertained to Mr. Lamar's leases, renewals and tenant agreements including the understanding as to whether rental fees were within current market parameters.
- Significant research with secondary insurance providers to understand and subsequently determine that there was no coverage for home attendants which was in opposition to what was previously believed to be the case.
- Coordination with supermarkets in Mr. Lamar's area had to be performed to allow aides assigned to Mr. Lamar's care to perform shopping without necessitating their personal "lay out" of money with subsequent reimbursement by Mr. Rosenbloom. A more refined, efficient process had to be put into place to avoid this redundant and dependent behavior.

10. During the proceeding, Mr. Lamar was very aware of the situation involved and was very concerned that all matters requiring attention would be addressed in a timely matter. He clearly stated to deponent many times that he "did not want a repeat of Jerry (Rosenbloom)." The Court took significant time prior to signing the Order and Judgment Appointing Guardian. This contributed to the time required to achieve many tasks for Mr. Lamar during

the interim period. This was due to the fact that the Guardian had no documented legal basis to act on Mr. Lamar's behalf necessitating Mr. Lamar be conferenced in on phone calls with banks and other germane matters.

11. Mr. Lamar is a very nervous person at times with the Court referencing his need for "hand-holding." The deponent felt responsible to do her best to assuage Mr. Lamar's fears especially in light of the Court's direction on the matter. Naturally, this effort involved time, something that the Guardian felt was compelled to perform and believed to be in the spirit of acting in the best interest of her ward.

### ARGUMENT 2

**THIS COURT SHOULD TAKE INTO ACCOUNT THE COURT EVALUATOR /GUARDIAN IS NOT AN ATTORNEY, RATHER A FINANCE AND SPECIAL EDUCATION PROFESSIONAL AND SHOULD BE GIVEN SOME LEEWAY IN TERMS OF FOLLOWING REQUISITE PROCEDURE**

12. This Court in its decision discusses at least in part that the Court Evaluator/Guardian submitted affidavits that "were improperly labeled." It was further stated that such was "lacking a required statement of qualifications." The Court is reminded however that deponent's resume was provided to the Court per its request which clearly showed the areas of professionalism that can be directly applied to the tasks of being a Guardian. Furthermore, Article 81 makes no requirement that attorneys serve as Court Evaluators and/or Guardians. The Court is kindly requested to reconsider its position on this matter in light of these points.
13. The Court cited Ms. Oppenheimer's (Court Evaluator's) affidavit as not describing the connection between the person interviewed and Mr. Lamar, the reason for the conversation

and the meeting. In the attached "Affidavit of Legal Services" (Exhibit "B") submitted by deponent, the bulk of the parties listed did in fact have some form of description associated with it., Ms. Oppenheimer The Court Evaluator is/was unaware of any Article 81 requirement to provide a full description for the conversations provided in said Affidavit. Further, it is common and accepted practice for the Court Evaluator to speak to all relevant parties of the case as to help the Court understand the particulars of the proceeding. There were a great number of parties that contributed to this case's dynamic. The requisite detail was provided in the Court Evaluator report proper which fully described the role, purpose and relevance to the time submitted by the Court Evaluator in said affidavit.

14. The Court made reference to the fact that the Court Evaluator failed to name "attorneys" and "therapists" on instances "12/31/15" and "2/1/16." The Court is reminded that Mr. Lamar had multiple therapists, each whose name was contained in the Court Evaluator report. The fact that the therapist specific names were not repeated in the affidavit should not suggest that the associated time of meeting with them was not performed by the Court Evaluator. Similarly, the reference to "Meeting with Nat and his Attorneys" neglected to mention Mr. Grasso and Ms. Gasner by name, but was believed to be a fact very well known by the Court. Again, the inability to mention attorneys names in the Affidavit of (Legal) Services should not suggest in any way these discussions/meetings did not occur and most important, that these hours were not correctly part of the time invested by the Court Evaluator.
15. The Court made further reference to the fact that there were "nearly 15 hours of interviews and telephone conversations without explanation." The Court Evaluator is/was unaware of any specific explanation that is formally required to be incorporated into the "Affidavit of



(Legal) Services” in relation to the information contained in the Court Evaluator report proper.

16. The Court made reference to the affirmation from May 17, 2016 “which contains an absurd breakdown of hours (some to the billionth of an hour – an imperceptible amount of time.” The Court is advised that the time listed in said breakdown was expressed in fractions of an hour which can amount to some very interesting numerical results
17. The Court seems puzzled as to why on “2/17/16” there were instances where a set of individuals relevant to the AIP were seen on consecutive days. This notion is based on the premise that this case was/is “uncomplicated” which is most certainly a point deponent strongly disagrees with. In fact, for a case with the particulars previously described, it makes complete sense as to why meetings would take place consecutively on a daily basis, or at least at times be normative.
18. On “2/18/16 – 1.75 hours”, the Court comments the entry to be “an incomplete descriptions as well as seemingly excessive.” The Guardian did not believe this to be excessive since, a fact that would’ve been easily provide to the Court by the Guardian upon query.
19. On “2/19/16”, the entry of “Visit Jerry in Manhattan – 2 Hours” with no purpose given was to discuss Mr. Lamar’s real estate holdings and Land Trust issue, a detail the Guardian would’ve been pleased to provide the Court upon being asked. OK
20. The reference to “3/19/16 – 1.6667 hours for Angelina” was discussion with Mr. Lamar’s (former) aide on his care. OK
21. The Court also makes mention on “3/16/16” log of “45 minutes writing email land trust,” implying there was no need for Ms. Oppenheimer’s involvement in this matter. Deponent is very well aware of her status of “not being an attorney and that there are other attorneys were

already involved in this issue.” Regardless, this in no way negates the fact that it was Ms. Oppenheimer who had spent many hours with Mr. Lamar who himself made it clear to her that he in fact did not want to donate the “Garden” to the Land Trust until his passing. The fact that Ms. Oppenheimer brought this to attorney’s attention does not make the email unnecessary or in any way unjustifiable in nature.

22. The Court made reference on “3/10” that logs “5 hours visited Nat” with a footnote stating “This Court, in 12 years of handling thousands Guardianships has not known a Court Evaluator to spend five hours in one sitting with a Person in Need of a Guardian.” The Court is reminded that at least for this date, Ms. Oppenheimer was serving as Guardian and not in the role of Court Evaluator whose entry of services concluded on 2/11/16. The idea of spending 5 hours in one sitting as Guardian is not excessive considering the particulars of the case and the dynamics previously described therein.

### ARGUMENT 3

**THIS COURT SHOULD RECONSIDER ITS POSITION THAT MS.**

**OPPENHEIMER ACTED WITH AN “UNFETTERED AND EXTRAVAGANT  
HOLDING OF HANDS”**

23. The Court ordered Ms. Oppenheimer to “visit Mr. Lamar once a week and to keep in touch on a daily basis.” By its own admission, The Court was “well aware that Mr. Lamar tends to be needy and gregarious and certainly has the financial means to satisfy that need.” Given that being the case and the fact that Mr. Lamar was in need of multiple items which has been referenced earlier, the Court should not have expected Ms. Oppenheimer to be as concerned with the amount of time that she was putting in to assist Mr. Lamar. In fact, if there was

concern on the number of hours Ms. Oppenheimer was to put in for this case, the Court had the option to impose a cap on hours. It stands to reason from the aforementioned that the Court should be consistent with its directive to Ms. Oppenheimer and its subsequent awarding of fees.

24. The Court further expressed that the "holding of the hands" ...is "unconscionable" especially when in practicality all those instances a Geriatric Care Manager are (was) in place and being paid on a monthly basis to supervise and manage the staff he hired on behalf of Mr. Lamar. The Court should be alerted to the fact that functions and actual work performed by the Guardian is for the most part vastly different than that of the Geriatric Care Manager. The items described relate to the personal needs and financial matters at the beginning of the actual Guardianship where there was a great deal of work to be done. The parties to this case would most certainly attest to the fact that deponent did in fact put in countless hours for Mr. Lamar and more importantly, such hours were necessary and unique to the particular circumstances of this case. It is a fact that the Geriatric Care Manager did install new staff for Mr. Lamar, but that it did not take place for some time. Finally, there were many items that Ms. Oppenheimer attended to that were completely independent of the Geriatric Care Manager's responsibilities.

#### ARGUMENT 4

**THIS COURT SHOULD RECONSIDER THE AMOUNT OF HOURS AND THE ACCOMPANYING CHARGES MADE BY THE COURT EVALUATOR AND/OR GUARDIAN AS THIS CASE WAS NOT "UNCOMPLICATED."**

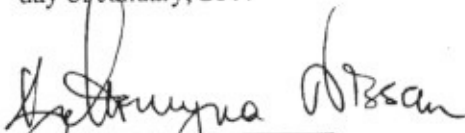
25. The Courts allowance for 18 hours should be reconsidered in light of the complexities of the case not previously considered.
26. The Court in deciding the appropriate bill rate for Ms. Oppenheimer noted that she "is not an attorney, has a limited background in the field, there was a lack of difficulty, lack of any serious dispute." The Court overlooked that Ms. Oppenheimer is a finance professional that has worked on Wall Street for many years of her career. She further obtained a Master's in Special Education which is directly applicable to the Guardianship line of work. Ms. Oppenheimer's given billable rate is well within the range of what the Court stated as typical hourly fees for this purpose(s). To reduce the requested total amount from \$26,836.73 to \$8,550 is rather drastic and harsh considering the vast amount of time and effort put into Mr. Lamar's behalf and provided this Court the necessary information.

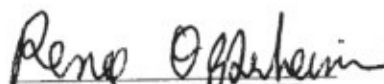
### CONCLUSION

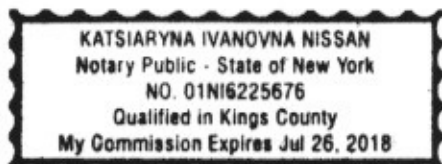
WHEREFORE, based on the foregoing, deponent prays that this Court exercise its discretion to grant leave to reargue pursuant to CPLR 2221 such that the Court reconsiders the amount of hours and the rate at which Ms. Oppenheimer was awarded fees for the aforementioned proceeding and awards her the original amount requested for fees of \$26,836.73 or whatever the Court deems just and proper.

Dated: Kings County, New York  
January 17, 2017

Sworn to before me this 17<sup>th</sup>  
day of January, 2017

  
NOTARY PUBLIC

  
RENEE OPPENHEIMER  
1862 East 26<sup>th</sup> Street  
Brooklyn, NY 11229  
(347) 268-2177



# EXHIBIT A

KINGS COUNTY CLERK  
FILED

2016 JUL 26 PM 3: 11



At and for IAS Part 76M of the Supreme Court of the State of New York, County of Kings, 360 Adams Street, Brooklyn, New York, on this 21<sup>st</sup> day of July, 2016.

**P R E S E N T:**

**HON. MICHAEL PESCE, JSC**

-----X  
In the Matter of

DECISION AND ORDER  
ON ALL AFFIDAVITS OF  
SERVICES

Index No. 100442/2015

Nathaniel Reid Lamar

An Person in Need of Guardian.  
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This Court has reviewed each and every task performed on the affidavits and affirmations<sup>1</sup> submitted in this case and applied every standard enumerated in the *Matter of Tijuana M.* (303 A.D.2d 681, 756 N.Y.S. 2d 796 [2nd Dept 2003]) and all the factors conveniently listed by Angelo M. Grasso, Esq., in his "Affidavit of Legal Services" dated April 25<sup>th</sup>, 2016 (pp.8-9 ¶ 16 [a] to [g].) In addition, the Court has taken into account the relationship existing and/or evolving between Mr. Lamar and each affiant, and that the tasks performed by the affiants were shared and often unnecessarily overlapped.

The process of establishing the framework for Mr. Lamar's daily life in the future, based on finding him a person in need of a guardian, was time consuming but relatively uncomplicated

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<sup>1</sup> "Affidavit of Legal Services" of Renee Oppenheimer, Court Evaluator, filed February 18<sup>th</sup>, 2016 and another dated May 17<sup>th</sup>, 2016; "Affirmation of Legal Services" of Ariella T. Gasner, Esq., Court Appointed Attorney for Nathaniel Reid Lamar dated March 29<sup>th</sup>, 2016; "Affidavit of Legal Services" by Angelo M. Grasso, Esq., attorney retained by Nathaniel Reid Lamar dated April 25<sup>th</sup>, 2016; "Affirmation of Legal Services Rendered" by Jerald Rosenbloom, Esq., petitioner, dated April 20<sup>th</sup>, 2016 and another dated May 17<sup>th</sup>, 2016.

from a legal, practical, and administrative view. Ultimately, all was concluded on consent and to the substantial, if not total, satisfaction of all involved. It also stands to reason that at its inception, a rational view of this petition would lead anyone with an elementary knowledge of Article 81 of the Mental Hygiene Law to conclude that Mr. Lamar was not incapacitated but one who simply needed assistance in carrying out his wishes and in activities of daily living.

Renee Oppenheimer's affidavits are improperly labeled, lacking a required statement of qualifications, contain untenable enumeration of time spent on the tasks, are inordinately lacking in description of purpose, and most glaringly contain what is, to this Court, an excessive amount of time billed and impermissible, improper labeling of "legal services."

As an example, the February 18<sup>th</sup>, 2016 "affidavit" in many instances does not describe the connection between the person interviewed and Mr. Lamar (12/30/15); the reason for the conversation and the meetings (12/30/15); fails to name "attorneys" and "therapists" (see 12/31/15, 02/01/16), and lists nearly 15 hours of "interviews" and "telephone" without explanation. The May 17<sup>th</sup>, 2016 "affidavit" contains absurd breakdowns of hours (some to the billionth of an hour - an imperceptible amount of time.) All of the hours enumerated are devoid of explanation. Many give pause in being surprisingly long in duration:

02/17/16, 1 hour for 'aid<sup>2</sup> half hour, Nat for half hour'. Both one day after spending 1.25 hours with the same people.

02/18/16, 1.75 hours -incomplete description as well as seemingly excessive.

02/19/16, 'Visit Jerry in Manhattan', 2 hours with no purpose given.

02/23/16 and 02/29/16, 2.33 hours and '2.333' hours for 'minutes', no other description.

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<sup>2</sup> Assuming "aide".

03/09/16, '1.6667' hours for 'Angelina' - no other explanation.

03/10/16, '5 hours visited Nat.'<sup>3</sup>

03/16/16, another 3 hours with Mr. Lamar, then another 45 minutes 'writing email land trust.' It should be noted that Ms. Oppenheimer is not an attorney and three other attorneys were already involved in the issue.

03/17/16, 1.50 hours with Mr. Lamar.

03/18/16, includes 1 hour with Larry (neighbor), but no details as in other listings of "Larry". Ms. Oppenheimer shows a total of 4.75 hours speaking with Larry Gile. All without explanation and seemingly excessive.

03/29/16, 4 hours '40 min Fred, visited from 12:25-3:45.' In this entry, as with other entries, no explanation as to what was discussed for 40 minutes. As with '12:25-3:45', presumably it was a visit with Nat.

03/30/16, 4 hours with Mr. Lamar.

04/06/16, 4.25 hours with Mr. Lamar.

04/08/16, nearly another hour with Mr. Lamar.

04/14/16, 4 hours with Mr. Lamar.

04/19/16, 4 hours with Nat 'taking him to shoe store, picking up from doctor.'

05/16/16, another 1.50 hours with Mr. Lamar.

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<sup>3</sup> This Court, in 12 years of handling thousands of guardianships, has not known a Court Evaluator to spend 5 hours in one sitting with a Person in Need of a Guardian.



This Court is well aware that Mr. Lamar tends to be “needy” and gregarious, and certainly has the financial means to satisfy that need. Indeed the Court ordered Ms. Oppenheimer to visit once a week and keep in touch on a daily basis. However, the unfettered and extravagant “holding of the hands” on approximately 8 days at a cost averaging \$1000.00 per day is unconscionable, especially when in practically all those instances a Geriatric Care Manager, Fred Moskowitz, was in place and being paid on a monthly basis to supervise and manage the staff he hired to serve Mr. Lamar. It is beyond this Court’s imagination how a Court Evaluator can consume 40 hours with Mr. Lamar and bill 50.05 hours overall. All of this in a “consent” guardianship.

Generally in a guardianship petition involving an individual like Mr. Lamar, who understood quite well his situation, and involves various valuable assets, but is uncomplicated, and has no family dispute, 10-12 hours would be allowed for a Court Evaluator’s report. Ms. Oppenheimer submits 33.50 hours<sup>4</sup> with an affidavit providing little information that would justify those hours.

In closing, this Court will note that the above objections to both affidavits are not at all exhaustive but represent some of the more glaring entries. Ms. Oppenheimer requests a total fee of \$26,736.75 for approximately 119 hours at \$225.00 per hour - a staggering amount of hours never before encountered by this Court.

As for the hourly fee, the Court will note that Ms. Oppenheimer is not an attorney, has a limited background in this field, there was a lack of difficulty, lack of any serious dispute, the overwhelming activity being “interviews”, “telephone”, and various meetings. This Court’s

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<sup>4</sup> Including Court appearances - “affidavit” of 2/18/16

practice is to award for Court Evaluator reports an hourly fee of \$125.00-\$250.00. Given the circumstances explained above this Court will allow the following reduced hours at the corresponding reduced rate:

1. \$150.00 per hour for 18 hours for evaluator's report, for a total of \$2,700.00.
2. \$175.00 per hour for 12 hours for Court and attorney related matters, for a total of \$2,100.00.
3. For the remainder of the hours, this Court will reduce them to 30 hours at the rate of \$125.00 per hour for a total of \$3,750.00.

The total allowed is \$8,550.00.

As for the affidavit submitted by Ariella T. Gasner, Esq., the Court will note that Ms. Gasner's office is located in Lake Success, N.Y. and that she charges for travel. It is this Court's firm policy not to grant fees for travel. Since the entries which contain "travel" do not separate the travel time from actual "work" time this Court, having considered mileage for driving and the LIRR schedule, finds that an average trip from Lake Success to the Brooklyn Courthouse would be approximately 1 hour each way, door to door. Therefore on the entries for 12/29/16 (sic)<sup>5</sup>, 01/20/16, 02/01/16, 02/10/16, 02/11/16, 03/29/16, and 05/16/16 this Court will deduct 1.75 hours for a total of 12.25 hours. As for individual entries: 12/17/15, 1.35 hours to review petition; 12/23/15, 0.75 hours, which also included another review; 12/30/15, 1.20 hours which also included a review and other tasks. These reviews of the uncomplicated papers filed in this matter appear more time consuming than necessary. This Court will deduct them by 0.25, 0.15, and 0.60 hours for a total of 1 hour. In addition there are other questionable charges:

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<sup>5</sup> Court assumes it should be 2015.

12/17/15, 0.60 hour for 'telephone call with Zackary Whiting'; 12/30/15, again with Mr. Whiting; 01/04/16 0.50 hour for 'review of Email from Rebecca Adlington as per Mr. Whiting.' These involve an attorney in a firm representing Mr. Lamar's neighbor, Larry Gile. Mr. Whiting had a very limited involvement in this matter. These are reduced by 0.33 hour.

01/04/16, 1 hour for Court 'Conference - adjourned.' It should be noted that for this same occurrence Ms. Oppenheimer billed 0.25 hour. It should also be noted that Mr. Rosenbloom billed a total of 4 hours for all Court appearances and conferences (Ms. Gasner bills 10.50 hours for all Court appearances.) Thus this item is reduced by 0.50 hour.

01/20/16, 2.80 hours for "meeting at Cobble Hill Nursing Home" has no notation as to the purpose, the attendees, or the result.

02/01/16, 2.50 hours, again no information other than attendees. It should be noted that Ms. Oppenheimer billed 1 hour for this meeting.

02/03/16, 0.40 hour for 'telephone call with CE', while Ms. Oppenheimer's affidavit indicates 5 phone calls on 02/03/16 with 5 different individuals, Ms. Oppenheimer does not list this call with Ms. Gasner.

02/05/16, 0.90 hour for 'telephone call with Angelo, Jerry, and Renee.' While Ms. Oppenheimer's entry on 02/05/16 for 20 minutes lists 'various parties', Mr. Grasso's does not contain such a call on his affidavit. Reduced by 0.40 hours.

02/10/16, 4 hours for 'Hearing and travel.' This Court will note that Ms. Oppenheimer's affidavit has 2 hours for this event. Also on 02/10/16 there is a charge of 1.30 hours for 'Review of new documents' without description of what they were. This charge of 1.30 hours is reduced by 0.30 hour.

03/29/16, 3 hours 'meeting with Lamar (with travel)' has no description of purpose.

05/05/16, 0.75 hour 'Call with Guardian/Mr. Lamar' has no details and does not appear in Ms. Oppenheimer's affidavit. Reduced by 0.25 hour.

05/10/16, 0.25 hour 'Call with Guardian' is the same as the 05/05/16 call. Court will note that Ms. Oppenheimer's affidavit lists 3 other calls on that day but not this one. Reduced by 0.15 hour.

05/16/16, 3 hours for 'Appearance in Court for Conference with travel; conference with Mr. Lamar.' Ms. Oppenheimer's and Mr. Rosenbloom's affidavits have 1 hour charged for this activity.

05/17/16 and 05/18/16, 3.45 hours. It should be noted that the Order and Judgement had previously been drafted by Mr. Rosenbloom. 3.45 hours may justify the drafting of a completely new Order and Judgement but certainly appears more than should be needed in this instance. Reduced by 1 hour.

Ms. Gasner's work on this matter was purely time consuming with little, if any, research, writing, and complexities. Most of which, in any event, were done by Mr. Rosenbloom and Mr. Grasso. Indeed a sample of the Order and Judgement was supplied to Ms. Oppenheimer by Chambers.

Ms. Gasner asks for 36.90 hours at \$350.00 per hour for a total of \$12,915.00. According to the reductions enumerated above, 16.18 hours are deducted from the 36.90 hours billed. The Court's policy is to grant assigned counsel \$250.00-350.00 per hour depending on the circumstances of each case.

Grasso needed much counseling from Mr. Friedman in the matter which this Court, repeats over and over, was not complicated at all. Since all these 18 "conferences" lack a justifiable description, each of the 18 entries is reduced by 0.10 hour for a total of 1.80 hours.

In 7 entries communication with a "David" is included with no explanation or identification of who "David" is. In other entries a Dick Moore, Harvey E. Corn (another member of the firm), a Sam Leibowitz, Simpson Thacher, and a Margaret C. Sylvester are listed without explanation as to content, identification, or purpose (with the exception of Ms. Sylvester.) Thus 0.15 hour for each entry is deducted for a total of 1.05 hours. The 01/19/16, 01/28/16, 02/08/16, 02/17/16, 03/17/16, and 04/05/16 entries include communications with Ms. Oppenheimer which are not included in Ms. Oppenheimer's entries. Therefore 0.10 hour is deducted from each entry plus another third of an hour for the entries of 01/28/16, 02/08/16, and 03/09/16 for a total of 1.60 hours. Similarly for communication with Ms. Gasner entries on 01/19/16, 02/16/16, 02/19/16, 03/10/16, and 03/17/16 are not reflected as being recorded in Ms. Gasner's affidavit: 0.10 hour is deducted from each for a total of 0.50 hour. Travel time is charged on 01/15/16, 01/20/16, 01/25/16, 02/8/16, 03/29/16. Travel time is not included in the descriptions of 01/29/16, 02/01/16, 02/10/16, and 02/11/16, although travel was involved. It is not clear if it was included in the hours billed for those dates. It is noted that on 02/01/16 Mr. Grasso bills 3.80 hours albeit with other minor tasks, with travel, while for the same date Ms. Oppenheimer billed 1 hour and Ms. Gasner 2.50 hours; on 02/10/16 Mr. Grasso bills 4.80 hours while Ms. Oppenheimer billed 2 hours and Ms. Gasner billed 4 hours with travel; on 02/11/16 Mr. Grasso billed 4.50 hours, Ms. Oppenheimer billed 1.50 hours, and Ms. Gasner billed 2.50 hours with travel. Assuming that the travel time was included in all of Mr. Grasso's trips and that

according to the MTA (from [www.mta.info](http://www.mta.info)) the estimated travel time by train from Mr. Grasso's office to Kings Supreme Court is one half hour each way, this Court will deduct for travel 1 hour from each billing for a total of 9 hours. In addition these entries, as with most other entries, show a pattern wherein Mr. Grasso charged more than others did for the same activity thus this Court will reduce the time by an additional 4 hours.

The billing also includes 2 entries involving a John Guccione, Esq. of Mr. Grasso's firm. A conference on 02/18/16 for 0.20 hour (\$100.00) and another charge of \$270.00 on 02/19/16 for a 'trip to Kings County Supreme Court to pick up transcript.' The Court fails to perceive why the firm would spend \$270.00 to send an attorney to personally pick up a transcript on a Friday. The next activity on this case by Mr. Grasso was on Tuesday the 23<sup>rd</sup>, a simple mailing would have been just as effective to avoid such an expenditure on the minutes which total \$470.00 when adding the 02/16/16 entry. As such this Court will disallow the \$270.00.

Mr. Grasso was directed by the Court to draft a proposed Order and Judgment then proceeded to bill 4.30 hours on 5 different dates with 4 different charges for revision. The Court finds these charges excessive and will reduce them by 2 hours.

This Court's policy for hourly fees has been previously mentioned. In light of the fact that Mr. Lamar initially retained Mr. Friedman and his firm and formed a contractual obligation albeit in unusual and somewhat tenuous circumstances, this Court will allow an hourly fee of \$600.00 for Mr. Friedman and \$375.00 for Mr. Grasso.

Mr. Grasso submits an affidavit for 50 hours for a total of \$24,707.50 at various hourly rates. Said hours are reduced by 20.45 hours and paid \$375.00 per hour for 29.55 hours. \$300.00

is added for the billing by Mr. Friedman and \$270.00 deducted for the charge of picking up the minutes. The total is \$11,111.25.

Mr. Jerald Rosenbloom, Esq., longtime attorney of Mr. Lamar and petitioner in this matter submits a request for 15 hours at \$500.00 per hour for a total of \$7,500.00 in the affirmation dated May 20<sup>th</sup>, 2016. For the preparation and filing of the Petition (¶2[a]) a request of 4 hours is not detailed but appears reasonable. In 2(c) of the affirmation he lists 1 hour for filing. This is merely a clerical task and compensated at the rate of \$150.00 per hour for 0.50 hour equaling \$75.00. Thus in 2(a) of the 4 hours charged, 0.50 hour will be compensated at \$75.00 for filing. For 2(d), while the 3 hours are not described in detail, based on all other affidavits submitted and the Court record, this Court finds it to be reasonable, as with the remainder of all other hours listed.

This Court usually grants fees for legal service in the range of \$225.00 to \$350.00 per hour. In this matter in light of the fact that Mr. Rosenbloom was very familiar with Mr. Lamar, had previously performed legal tasks for him, and dealt with numerous individuals and the assets of Mr. Lamar, this Court will grant \$350.00 per hour for 14 hours and \$150.00 for 1 hour, for a total of \$5,050.00 plus disbursements of \$481.85.

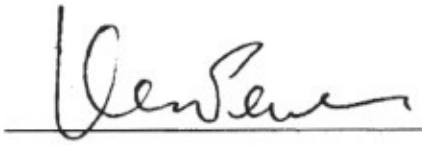
As for the April 20<sup>th</sup>, 2016 affirmation which deals exclusively with Mr. Lamar's wishes to transfer one of his properties to a land trust, Mr. Rosenbloom bills 6.90 hours at \$500.00 per hour. This Court finds the charges reasonable and will grant \$350.00 per hour for the 6.90 hours for a total of \$2,415.00. Thus Mr. Rosenbloom is to receive a grand total of \$8,021.85 which includes disbursements.

It is hereby, **ORDERED** that Ms. Renee Oppenheimer as Guardian of the Property from Mr. Lamar's funds, issue the following payments:

To herself the amount of \$8,550.00.

To Ariella T. Gasner, Esq. the amount of \$5,180.00.  
To Angelo M. Grasso, Esq. the amount of \$11,111.25.  
To Jerald Rosenbloom, Esq. the amount of \$8,021.85.

**ENTER:**



HON. MICHAEL PESCE, J.S.C.

2016 JUL 26 PM 3:11  
KINGS COUNTY CLERK  
FILED



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

\_\_\_\_\_ X  
In the Matter of the Application of  
JERALD ROSENBLOOM

Index No. 100442/15

Petitioner,

For the Appointment of a Guardian  
For

AFFIDAVIT OF LEGAL  
SERVICES

NATHANIEL REID LAMAR  
Respondent

An Alleged Incapacitated Person,

\_\_\_\_\_ X  
TO THE SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

Detailed below is the time I spent in connection with this proceeding.

12/27/15	Reviewed Order to Show Cause and Petition	1 hour
12/28/15	Interview with Jerald Rosenbloom, Petitioner	25 minutes
12/29/15	Interview with Andrea Hurtt, Relative	50 minutes
12/30/15	Interview with Nat Lamar, AIP	1 1/2 hours
12/30/15	Interview with Melissa Boone, Social Worker	15 minutes
12/30/15	Interview with Angelina Cazares, Companion	45 minutes
12/30/15	Reviewed Petition – Zachary Whiting	15 minutes
12/30/15	Telephone – Zachary Whiting, Rep Larry Gile	30 minutes
12/30/15	Telephone - Jerald Rosenbloom, Petitioner	20 minutes
12/31/15	Attended Healthcare Meeting with Therapists	1 hour
12/31/15	Interview with Nat Lamar, AIP	2 hours
1/4/16	Court Appearance	15 minutes
1/4/16	Interview with Nat Lamar, AIP	2 hours
1/8/16	Telephone – Larry Gile, Neighbor	1 1/2 hours
1/11/16	Interview with Marea Adams, Friend	1 hour
1/11/16	Telephone – Mr. Rosenbloom, Petitioner	45 minutes
1/12/16	Telephone – Tina Portelli, Neighbor	15 minutes
1/20/16	Telephone – A. Gasner, AIP Attorney	45 minutes
2/1/16	Meeting with Nat & His Attorneys	1 hour
2/1/16	Interview with Patricia Robinson, OT	15 minutes
2/1/16	Interview with Lesly Jacques, PT	15 minutes
2/1/16	Interview Melissa Boone, Social Worker	15 minutes
2/1/16	Interview Theresa, Companion	45 minutes

2/1/16	Started Writing Evaluator Report	3 hours
2/2/16	Continuing Evaluator Report	3 hours
2/3/16	Telephone – Larry Gile, Neighbor	30 minutes
2/3/16	Telephone – Melissa Boone, Social Worker	10 minutes
2/3/16	Telephone – Nat Lamar, AIP	20 minutes
2/3/16	Telephone – Angelina Cezares, Companion	20 minutes
2/3/16	Telephone – Marina Voller, Patient Acctg	10 minutes
2/3/16	Continuing Evaluator Report	3 hours
2/4/16	Finished Evaluators Report	1 hour
2/5/16	Court Hearing preparation	20 minutes
2/5/16	Telephone – Various Parties	20 minutes
2/10/16	Court Appearance	2 hours
2/11/16	Court Hearing	1 ½ hours

In performing my duties in this proceeding I spent 33 1/2 hours.

Based upon my customary hourly rate of \$225 I request a fee for my services in connection with this proceeding in the sum of \$7,537.50.

*Renee Apperheim*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

\_\_\_\_\_ X  
In the Matter of

Nathaniel Reid Lamar

Index No. 100442/2015

**AFFIDAVIT OF SERVICE  
BY MAIL**

A Person in Need of a Guardian,  
\_\_\_\_\_ X

STATE OF NEW YORK )  
COUNTY OF KINGS )ss.

STEVEN OPPENHEIMER, being duly sworn, deposes and says, that I am not a party to the action and I am over 18 years of age residing in Brooklyn, New York.

That on the 18th day of January, 2017 I served a NOTICE OF MOTION TO REARGUE DECISION AND ORDER ON ALL AFFIDAVITS OF SERVICES AND AFFIDAVIT IN SUPPORT upon the individuals/entities at the addresses designated by said individuals/entities for that purpose, by depositing true copies thereof enclose in registered post-paid mail, properly addressed wrappers, in an official depository under the exclusive care and custody of the United States Postal Service within State of New York.

**TO:**

Ariella T. Gasner, Esq.  
Salem Shor and Saperstein LLP  
3000 Marcus Avenue, Ste 1E6  
New Hyde Park, NY 11042-1004

Jerald Rosenbloom, Esq.  
Rosenbloom & Hofflich, LLP  
15 Maiden Lane, Suite 600  
New York, New York 10038

Angelo M. Grasso, Esq.  
Greenfield Stein & Senior, LLP  
600 Third Avenue  
New York, New York 10016

Sworn to before me this 18th

day of January, 2017

*[Signature]*  
NOTARY PUBLIC

*[Signature]*  
STEVEN OPPENHEIMER

