FINAL REPORT
TO THE HONORABLE RUFUS G. KING, III, CHIEF JUDGE
BY THE PROBATE REVIEW TASK FORCE
2005

The Bar Association of the District of Columbia and the Council for Court Excellence jointly formed the Probate Review Committee, also known as the Forester Committee. Its purpose was to conduct a fact-finding mission relating to two newspaper articles concerning the Court and the Probate Bar. On February 25, 2004 the Probate Review Committee issued its report ("The Forester Report").

As a result, Chief Judge Rufus King, III, created the Probate Review Task Force ("the Task Force") pursuant to Administrative Order 04-08. Our task, which is fully stated in the order, tab 1, is to consider the Forester Report. More specifically, our mandate is to "review the report and make recommendations for implementing changes in probate division operations." We submitted a preliminary report on July 1, 2004. We have integrated that report into this one.

Our task has been greater than anticipated. We have undertaken to address not only the concerns expressed in the Forester Report but also issues raised during our discussions. The Task Force has met regularly, often on a weekly basis. As a result of our deliberations, we present this final report, which embodies a consensus among all members of the Task Force.

The Task Force made a deliberate and concerted effort to view the recommendations of the Forester Report from a forward-looking perspective. With this approach, we have concentrated on the significant goal of establishing what is needed today and tomorrow for the effective and efficient operation of the Probate Division.

An explanation of our process might be useful. In order to stay focused, for the initial agenda of the Task Force the chair diagrammed the Forester Report to establish an agenda (copy of our agenda at tab 2). This approach became a checklist to ensure that the Task Force covered every aspect of the Forester Report in an organized fashion. We identified general subject areas or sections: I) Guardian Reports; II) Conservator Reports, Audit and Investment

issues; III) Administrative Openness and Consistency; IV) Appointment of Fiduciaries; V) Fiduciary Fees; and VI) Conclusion and Additional Recommendations. After vigorous discussions of the recommendations, we reached consensus on the matters reported herein.

I. Guardians

The Forester Report made several recommendations regarding guardians, which we now address. Before doing so, however, we observe that, generally, an adult guardianship is pursued because an adult exhibits a lack of capacity and, because of that lack of capacity, is facing "risk" in his or her health or safety, which requires court intervention. Whether the risk is caused by exploitation, self-neglect, or an inability to make health care decisions, incapacitated individuals are often facing loss of utilities, severe health problems or eviction. Thus, the most critical time for intervention is often during the first 30 days of the appointment.

It is at this juncture that both the court-appointed guardians and the court need to act promptly to guarantee the protection of these vulnerable individuals.

A. Court Administration/Bench

In our preliminary report of July 1, 2004, we recommended that the court take steps to notify guardians and conservators promptly of their appointment, and that notification be sent by facsimile or other electronic means. We reiterate that recommendation. It is crucial that Orders of Appointment be sent out immediately, especially when there is an eviction or other health or safety risk faced by the subject. Systems must be put in place so the court appointed guardian is notified of his or her appointment upon docketing of the appointment order. The court should have the fax number and e-mail address of each appointed guardian and petitioner's counsel for this purpose.

These recommendations have already been implemented.

B. Appointed Guardians

Within thirty days of appointment, the guardian should put into place and file with the Court a “care plan” which should address the foreseeable short and long-term needs of the subject. A conservator is required by D.C. Code §21-2065(c) to file an individual conservatorship plan. While the statute does not require a guardian to file a care plan, the Task Force believes that a guardian should file a care plan for reasons similar to those underlying the requirement that a conservatorship plan be filed: a plan informs the subject and other interested persons of the issues requiring attention and the proposals for addressing them, and serves as a baseline for measuring performance in addressing those issues. Review of the guardian’s semi-annual report is more productive when it can be compared to the plan filed at the initiation of the guardianship. If the estate of the individual is important enough to include a mandatory plan, then it seems the subject’s care should be accorded the same degree of concern. Our preliminary report of July 1, 2004 suggested the need for requiring a guardianship care plan and our review and discussions since that date confirm our preliminary conclusion.

Our proposal cannot be implemented immediately on a system-wide basis since such a result could be accomplished only by rule change, or, possibly, legislation. However, the Task Force reached a consensus in principle that guardians should file care plans after appointment, and that guardianship reports – and the forms on which they are filed -- should be improved to provide for more information about the status of the subject, particularly in light of the objectives of the care plan. We note that existing statutes and rules do not appear to prevent a judge from requiring a care plan in an individual case. The Task Force agreed that the appropriate committees should be asked to study the issue further with respect to the necessity of any rule change and the timing and content of care plans and the content of guardianship reports.

A review was made of guardianship reports around the country. The D.C. Guardian Report is one of the most extensive and required more information than most other jurisdictions. However, as we suggested in our preliminary report, upon approval of the requirement of filing a care plan, the guardianship reports should be revised to

reflect more relevant information relating to the care plan of the subject.

For subjects that are residing in nursing homes, assisted living facilities and community residential facilities that conduct periodic individualized case plan meetings, the attendance of the guardian should be encouraged.

The Task Force has observed that some jurisdictions employ a public guardian program. The question of whether to establish such a program involves public policy issues beyond the scope of the Task Force's charge and can be addressed only by legislation.

C. Monitoring

The Task Force extensively discussed the court's role in adult guardianships after the appointment of a guardian for an incapacitated adult. The Forester Report suggested an enhanced role for the court in monitoring the performance of guardians,

primarily through an “investigation” of the six-month reports filed by guardians.

Our preliminary report contained a discussion of the Court’s supervision of guardians. After it issued its preliminary report, the Task Force revisited the issue of monitoring guardians, given its crucial importance. The Task Force reiterates the essential points made in the initial report. First, the court should have the responsibility to monitor a guardian once the appointment has been made in order to ensure that the guardian is properly meeting the ward’s personal care needs. Second, a program to monitor guardians should be implemented.

The Task Force emphasizes that the court’s efforts with respect to the monitoring of guardians should be supportive; a guardian should be assisted so that she can perform at the highest possible level, rather than be “caught” when the guardian’s performance falls short of a desired standard. The primary objective of effective monitoring is to improve the well-being of an incapacitated adult

through the court's appointing and monitoring the guardian; it is not to correct harm resulting from deficient conduct by a guardian.

The Task Force recommends that SCR-PD 328 be amended to provide that the court will review the guardianship reports when they are filed. (Rule 328 currently provides that guardian reports will be reviewed only if an exception, objection or petition to modify the report is filed.) The court's monitoring will be enhanced by its review of the guardian's performance in light of the care plan and the semi-annual report.

With respect to the specifics of a guardianship-monitoring program, the Task Force reviewed several models. One model is a court-based monitor, such as a social worker, who would review guardianship plans and reports and, either personally or through use of staff or volunteers, make contact with the ward and review the ward's status and care. Another model is a community partnership with other agencies and programs involved in elder care in the District of Columbia. We attach under tab 3 and 4 of this report two models for illustrative purposes. A member of this Task Force developed one

model. The other model summarizes the monitoring program in Tarrant County, Texas (Forth Worth). Both are among several alternatives that may be considered. The Task Force does not endorse a specific model.

The development and adoption of a guardianship-monitoring program implicates a number of issues, including budgetary considerations, which are beyond the scope of the Task Force's work. However, the Task Force strongly urges that the court promptly initiate an effort to develop an effective guardianship monitoring program; that effort should include participation by appropriate court personnel, the Bar, and community organizations involved in elder care issues.

II. Conservators

The Forester Report expressed concern about the effectiveness of the audit process. More specifically, it suggested that there is no effort to ensure that a conservator's expenditures achieve the purposes of the conservatorship, that there is no

oversight of a conservator's investments, and therefore that no consideration is given to whether investments are appropriate in light of the purposes of the conservatorship. The Forester Report suggested the development of a procedure under which the Court (and not the Register of Wills) would directly review the administration of a conservatorship. The Forester Report also suggested that an ombudsman position be created to address matters of communication between Register of Wills staff and practitioners on matters relating to accounts.

With respect to the supervision or audit of the administration of a conservatorship, the Task Force suggests that there is a tension between the Court's proper exercise of its oversight role and the need to leave the conservator considerable discretion in managing the subject's affairs. Also, it is suggested that, as a general rule, many conservatorships involve estates in which the subject's funds are generally being "spent down" for the ward's care and well-being. Cases in which there are large amounts of assets that are being managed and invested are less common. Therefore, it is questioned whether

an entirely new procedure or staff position need to be established to effect appropriate oversight of conservatorships.

Having said that, the Task Force recognizes the importance of the audit function in the overall objective of protecting incapacitated adults and the property of incapacitated adults, decedents' estates and minor children. While the Task Force does not endorse the specific recommendations of the Forester Report, there are some important improvements that can be made. The Task Force makes several recommendations with respect to the monitoring and audit process.

The Task Force suggests that the court's oversight of conservatorships include verifying that the conservatorship plan includes an investment strategy or plan if appropriate to that conservatorship (for example, large estates), that the conservatorship plan be reviewed by the Court when it is filed, and that questionable investment plans or investments be highlighted for court review. The Task Force also suggests that additional training on investment issues, available both to court auditors and attorneys, would be

useful. This training could include more specific training on the application of the Prudent Investor Act to conservatorships, the development of an investment plan, and the selection and use of investment advisors.

Probate Rule 329(c) currently provides that an interested person may file a petition for modification of the conservatorship plan or request other relief, but in the absence of a petition filed by an interested person, Rule 329(c) provides that a conservatorship plan is simply placed in the case file without court review or other action. The Task Force suggests that conservatorship plans, including an investment plan if appropriate, or if ordered for a specific conservatorship, should be reviewed by the Court when filed, regardless of whether an interested person files a petition. This will help ensure that the administration of a conservatorship is commenced in an appropriate manner. Probate Rule 329 should be amended accordingly.

The Task Force further suggests that conservatorship plans be reviewed as part of the audit of annual accounts to ensure that the

plan continues to meet the needs of the ward. Differences between a conservatorship plan and the actual administration of the conservatorship should be noted and, if appropriate and not already explained in the conservator's annual report, the conservator should be asked to explain the changes made in the conservatorship plan.

The Register of Wills reported that, as part of the audit process, expenditures are reviewed with the purpose of ensuring that they are appropriate in light of the conservatorship plan and the specific circumstances of the conservatorship. Also, auditors consider whether the conservator has planned appropriately for anticipated future needs of the ward; checking for burial set asides or prepaid funeral expenses is an example. The Task Force believes that the audit process now in place, as described above, and augmented by the recommendations herein, provides appropriate scrutiny of expenditures.

There is currently available to attorneys and members of the public the Inventory and Accounting Manual. This publication is intended to assist fiduciaries with the proper preparation of

inventories and accounts. The Task Force noted that the Manual is dated, and recommended that it be improved. The Register of Wills reported that the Manual is in the process of being updated and it has been submitted to outside organizations to ensure that it is readily understandable and useful to attorneys and to non-attorney conservators. The Register of Wills advised the Task Force that September 30, 2005 is the target date for publication of the revised Manual.

The issue of communications between the Probate Division audit staff and practicing attorneys was extensively discussed. The Task Force agrees that communication between the Probate Division audit staff and the Probate Bar can and should be improved, but the Task Force does not believe that there is a need for a new staff position to facilitate communications, as suggested by the Forester Report. Instead, the Task Force developed specific recommendations with respect to communications issues dealing with audits.

1. The Probate Bar and members of the public should be clearly informed that the manager of the audit branch and the

Register of Wills are available to resolve questions if an attorney or member of the public is having difficulty with an audit issue and attorneys and members of the public should be encouraged to seek out assistance from the upper level staff if a problem with a specific audit arises.

2. Audit requirements letters should be examined to see if they can be made clearer, and should include a statement advising fiduciaries and attorneys that issues or disputes over specific requirements may be raised with the supervisory audit staff or the Register of Wills. This will promote the court's policy that summary hearings to address audit requirement issues should be scheduled only after there has been a reasonable effort to resolve disputes or questions.

The recommendation to review and revise audit requirement letters has already been implemented by the Register of Wills.

3. The Task Force suggests that the audit process would be more efficient and effective if the audit staff, the practicing Bar and the public have a shared and clear understanding of the

audit process, and that the process occurs in a consistent manner pursuant to clearly understood standards. To achieve this objective, the Task Force recommends the following:

a. The Register of Wills should emphasize that accounts may be submitted for filing either in person or by mail.

b. The requirements for filing an account should be detailed by the Register of Wills, in checklist form. This will ensure that the intake review of accounts will be standardized and will effectively accomplish the intended purposes of an intake review, and will also enable fiduciaries to take steps to ensure that accounts will be in proper form to be accepted for filing. *This recommendation has been implemented, and the checklist is also being made available to the public.*

The general issue of communications between the Register of Wills, the bench and the bar is addressed more broadly in section III of the Task Force report. *Several steps to improve communication between the Register of Wills, the bench and the bar have already been implemented.*

In addition to these recommendations, the Register of Wills advised the Task Force that internal standard operating procedures for the Auditing Branch of the Probate Division are being revised and updated; this revision will incorporate changes associated with implementation of the new case management system, which was instituted in May 2004. The Task Force recommends that the updated standard operating procedures address issues of consistency to ensure that the audit process is completed in an efficient manner. The Task Force suggests that, upon completion of the revision of the standard operating procedures manual, the Register of Wills Office take appropriate action to inform the practicing bar and appointed fiduciaries of steps which can be taken to ensure that accounts are prepared and filed in a manner which will be consistent with the revised policies and procedures; this, too, will help make the audit process more efficient.

The Task Force discussed the time required to complete audits of accounts. The Register of Wills advised the Task Force that the Register of Wills has time goals for completion of audits. The task

Force recommends that, where appropriate, the Register of Wills strengthen the procedures for monitoring accounts so that goals for the timely processing and approval of accounts can be met.

III. Openness and Consistency

Section III of the Forester Report addressed the topic of administrative openness and consistency. As to these issues, the Task Force makes the following recommendations, which can be implemented immediately.

The Forester Report suggested that the court file should include transmittal slips to the Court from the Register of Wills regarding proposed orders to be signed in chambers. The practice was not discontinued as suggested by the Forester Report; rather, the slips may not have been placed in the court jacket in a timely manner. The Probate Division will continue to make transmittal slips available after the Court Order, which was the subject of the transmittal slip, has been signed. With the implementation of CourtView, this is no longer

an issue as the transmittal slips are imaged into the system along with the orders.

The Forester Report recommended that the judges assigned to the Probate Division, the staff of the Probate Division, members of the Bar who regularly practice in the Division and other participants in the system strive to work together as partners in an environment of openness and cooperation to improve communications between the Court and the Bar. In response to the recommendations of the Forester Report several developments have been placed into action:

? Semi-annual Bench-Bar meetings were held in the fall of 2004 and the spring of 2005, which utilized a question and answer format rather than a format of formal presentations and which provided opportunities for an exchange of ideas among the Judges, the Register of Wills and members of the Bar who practice in the Division. (Tab 5 contains the executive summary of the survey taken during the Bench-Bar meeting of October 28, 2004.)

? Representatives from the Court have begun meeting with the members of the Steering Committee of the Estates, Trusts, and

Probate Law Section of the D.C Bar on a regular basis and attending the Section monthly Brown Bag programs in order to establish a continuing dialogue between the Court and the Bar;

? The judges assigned to the Probate Division and the Register of Wills are continuing the practice of making recent trial court decisions available to the Editor of the D. C. Estates, Trusts and Probate Law Digest for publication in the Section Newsletter and for inclusion in the Digest.

The Task Force recommends that these practices be continued and enhanced and that other practices to improve communications between the Court and the Bar be considered on an on-going basis. In this regard it should openly be recognized that attorneys employed by the Probate Division of the Superior Court are not prohibited from participating in Bar activities. Additionally it will be of mutual benefit if the court, and the Register of Wills, as much as is practical consult with the organized Bar and the community when planning, and before implementing, important changes or new initiatives in the operation of the Probate Division.

The Task Force also recommends that the personnel in the Probate Division continue to be instructed to assist the public and members of the Bar who have business in that Division in a polite and courteous manner, and that the Court continue to emphasize to all staff of the Division that, as public servants, they are expected to perform the duties of their office in a polite and courteous manner. Serving the public in a courteous and polite manner should continue to be an integral part of all future staff training for all Division employees.

IV. Appointment of Fiduciaries

The Forester Report made several comments and recommendations regarding the appointment of fiduciaries, which we address in this section.

The Forester Report commented that the Bar has little understanding of how fiduciaries are appointed from the Panel. Superior Court judges appoint attorneys from the Probate Panel considering a variety of factors. While some judges make a limited effort to follow the list alphabetically, the duty and process of

appointing fiduciaries and counsel are far too complex and serious for strict adherence to this method. Some members of the panel, for example, limit themselves to decedent's estates, others to intervention proceedings. When a name is reached and the case is not within that person's practice area, that name will be skipped until that person's type of case comes up. One of the most important aspects of making appointments is the judge's ability to take advantage of the individualized information that is supplied through the attorney questionnaire. The answers to the questionnaire include information about the attorney's special skills, such as real estate licensure, foreign language capability, mental health expertise, and other specialized training and experience. A novice attorney will not be assigned a complex case, and where specialized skills are a factor, that too is taken into consideration. Many cases present interpersonal factors requiring that the special needs of the Subject in the proceedings match the personal style of the attorney. In these cases the Court’s sense of the Subject's personality and needs will dictate the attorney that is appointed. The exercise of judicial discretion is a vital component, and as the judge's experience expands, some attorneys engender more confidence than others do.

That will also have an impact on which attorney certain judges will appoint. Given the necessary discretion vested in judicial officers in making these judgments, the Task Force does not recommend any method that would limit that discretion. That said, the Task Force urges the court to attempt an equitable distribution of appointments, consistent with its duty to appoint only those who, in its judgment, can serve the interests of the ward or other interested person.

The Forester Report observed in part that there appears to be no standardized system for removing attorneys from the Panel who have attended the required training and submitted the required Certificate Concerning Discipline from Bar Counsel, but who have nevertheless performed inadequately or fraudulently in providing their services. The Forester Report also recommended that attorneys who seek appointment as fiduciaries be trained extensively before eligibility is confirmed, and that those attorneys who have been found to be seriously derelict in their duties be disqualified, or at least suspended for a period of time, from receiving further appointments.

In response to the Forrester Committee's observation and recommendation, the Task Force reviewed current practices in the

Probate Division and considered whether or not to change those practices.

Attorneys seeking placement on the Fiduciary Panel must apply for placement on the panel. In addition to biographical information, including information about experience in probate practice, the applicant must report any disciplinary actions against the applicant and certify that the applicant has completed six hours of training in probate law. The Presiding and Deputy Presiding Judges review the applications and decide whether the applicant should be placed on the panel. Ordinarily, the applicant will be placed on the panel if he or she has satisfied the required training. Even in that instance, the judges exercise their discretion not to place applicants in the event that their disciplinary record is such that they are unsuitable for placement. Placement on the panel is reviewed annually and it is a condition of continuing placement that the lawyer complete six hours of continuing education in probate practice per year in order to maintain placement on the list. A committee of the bench and Bar was appointed in January 2002 to consider and publish standards of practice to which fiduciaries, appointed from the panel, are expected

to adhere. The Task Force understands that the committee is nearing completion of its work.

Judges in the Probate Division retain, and exercise, the discretion to remove fiduciaries from the panel in the event of serious dereliction in their duties. If a judge removes a person from the panel, that judge decides whether and when to restore the person to the list. There is no systemic review of fiduciary's performance by any committee or other group of judges, nor are there any written criteria used in a decision whether or not to remove someone from the panel. The judge exercises his or her discretion given the particular circumstances presented when deciding whether to remove someone from the panel, or restore that person to it. Of course, suspension or removal of a lawyer from the bar results in automatic removal from the panel.

Having considered present practices and possible alternatives, the Task Force does not recommend a change in the Probate Division's practices. The Task Force is aware of the great responsibility placed on fiduciaries in protecting both the person and the assets of their wards, and of the judges' need to ensure that only competent people are appointed to protect the vulnerable. It is also

aware of the need to attract competent people to serve and stay on the fiduciary panel. Having in mind that a monitoring program, which we recommend in section I, will help the Division ensure protection of its wards, the Task Force believes that the required training, anticipated attorney practice standards, the threat not only of bar discipline but removal from the panel, as well as from the specific case, and the fiduciary's obligation to comply with fiduciary standards, go a long way toward ensuring that our wards are well served. In addition, the timely review of accounts and the enforcement of filing requirements will help ensure that the performance of appointed fiduciaries is properly monitored by the court. While a systemic review of performance, with written criteria, might add another protective mechanism, it would also add a layer of disciplinary process that would be an institutional burden and provide a disincentive for competent attorneys who might otherwise wish to be placed on the panel. The Task Force, however, recommends that the Chief Judge urge the judges in the division to monitor performance carefully and not hesitate to remove fiduciaries when they are made aware of serious derelictions or patterns of lesser violations of duty.

To avoid scheduling conflicts, the Forester Report recommended that the Court assure availability of counsel or a fiduciary before appointment is made. While the Task Force does not endorse this recommendation for all cases, it recommends that when the attorney is not present in court when the appointment is made, prompt notice should be given to the appointee by telephone, by facsimile transmission or by any other reliable means. *The Court has implemented that policy already.*

The Forester Report recommended that the Court publish semi-annual updates of the fiduciary panel. *The court has adopted this recommendation; the list is updated monthly and published semiannually.*

The Forester Report recommends that the court continue the policy of appointing particularly qualified attorneys not listed on the Fiduciary Panel of attorneys. Administrative Order 04-06 provides that a judicial officer is not prohibited from appointing a non-panel attorney in exceptional circumstances when the judicial officer determines that a uniquely qualified non-Panel attorney will best meet the specific needs for service in a particular case, provided that when a non-Panel attorney is appointed, the written order making the

appointment sets forth in detail the particular exceptional circumstances requiring the appointment of a non-Panel attorney.

This policy is being implemented and no change in this procedure is recommended provided the requirements for appointing a non-Panel attorney are strictly adhered to.

The Forester Report recommends that attorneys on the Fiduciary Panel should be required to carry malpractice insurance. The Task Force declines to endorse this recommendation. It is our reasoned understanding that legal malpractice insurance does not cover losses incurred to estates as the result of dishonesty or criminal acts on the part of attorneys who serve as fiduciaries. Moreover, the cost of legal malpractice insurance is high. If sole practitioners are required to incur this expense, they will have to pass it on to their customers through higher legal fees. This may very well negatively impact the availability of legal services to low and moderate-income members of the community. When the probable negative impact of requiring legal malpractice is balanced against the questionable benefits to estates, we do not deem it advisable to require the insurance. Moreover, statutorily required bonding of fiduciaries has been proven to sufficiently protect estates against dishonesty and

criminal acts in most instances. Finally, the Clients' Security Fund of the District of Columbia Bar provides assistance to persons who have sustained financial losses due to a lawyer's dishonest conduct to the extent the loss is not covered by a bond or insurance.

V. Fiduciary Fees

With respect to the issue of the manner in which requests for compensation are considered, the Task Force both reviewed the recommendations of the Forester Report and discussed extensively the entire issue. While the Task Force agrees that the manner in which compensation requests are reviewed and processed should be reformed, the Task Force suggests that the other recommendations of the Forester Report should not be adopted. Instead, it suggests the following reforms in the processing of requests for compensation.

1. The intake function for requests for compensation should be limited to the type of review given to any pleading filed with any clerk's office in the Superior Court:

   - Is the pleading signed and verified?
   - Is there a signed certificate of service?
   - Is there a proposed order attached?

- Does the pleading have mailing labels attached?

- Is the Administrative Order 04-06 Certification attached?

2. The “audit” process for a request for compensation should be limited to:

- ensuring that all interested persons are included on the certificate of service

- ensuring that prior compensation orders are fully and accurately stated, if required for that petition for compensation

- if the petitioner includes a detailed statement of time incurred for services, ensuring that the time incurred by the petitioner is accurately stated. (i.e., confirm the totals on the time sheet)

- if the request is for payment from the guardianship fund, ensuring that the rate of compensation does not exceed the rate set by the court

- if appropriate, ensuring that the income and assets of the minor child, ward, estate or trust are accurately stated, if such information is available.

In addition to the foregoing audit review, the Register of Wills should advise the judges of prior decisions on specific issues in an effort to promote consistent determinations.

The overall basis of these recommendations is to have the Register of Wills staff provide necessary administrative review of requests for compensation, but have the substantive decision about fiduciary compensation made by a judge. Auditors and other Register of Wills staff will not be expected to evaluate or make recommendations with respect to the reasonableness of requested compensation.

The foregoing recommendations have been implemented.

There are few appellate decisions governing fiduciary compensation, and specific decisions of Probate Division judges are often not generally known. To promote both consistent consideration of compensation requests and to provide some guidance to both the bench and practicing bar, it is recommended that a committee be constituted to draft voluntary guidelines for fiduciary compensation. These guidelines would include “best practices” suggestions for preparation of petitions for compensation, including model petitions. It is suggested that guidelines could facilitate common

understandings on specific issues, help judges exercise their discretion in a consistent manner, and provide some predictability to attorneys and the general public. Judicial decisions in probate cases should be collected and reviewed as part of the effort to promote a more consistent review of compensation requests.

With respect to the time within which requests for compensation are considered, the Probate Division's goals are to review requests for compensation from the Guardianship Fund within 30 days of filing, review requests for compensation from estate assets filed without an account within 45 days of filing, and review requests for compensation with an account within 90 days of filing. While these goals are not binding, it is recommended that the goals be generally publicized, so that members of the Probate Bar have some general idea of what to expect with respect to the timing of their compensation.

The issue of the manner in which examiners are compensated is being comprehensively reviewed by separate action by the Probate Division, including review of appropriate training for examiners and the amount of appropriate compensation (such as whether a "flat fee" system might be appropriate).

CONCLUSION

We believe that the observations and recommendations of the Forester Report have been of valuable assistance to the workings of this Task Force. We hope that the Report of this Task Force will be of great value to the court for years to come.

Each member of this Task Force has had a rewarding experience working on this project and remains available for further assistance to the court should the Chief Judge find it necessary to call upon us.

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José M. López, Chair
Presiding Judge of the Probate Division

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