

DISTRICT OF COLUMBIA SUPERIOR COURT  
PROBATE DIVISION

# Probate Training Seminar



## Volume I

October 2002

Juror's Lounge  
3<sup>rd</sup> Floor  
500 Indiana Ave., NW  
Washington, D.C. 20001

**Superior Court of the District of Columbia  
Washington, D.C. 20001**

**Rufus King III  
Chief Judge**

September 25, 2002

(202) 879-1600

Dear Seminar Participant:

Welcome to the 2002 Probate Training Seminar and thank you for your interest and participation in the D.C. Superior Court Probate Division Training Program. I trust that you will find the information provided during these training sessions to be enriching, thought provoking and an aid to your practice before the Probate Division.

A training program of this depth and magnitude requires the dedication and contributions from many volunteers. The Court is indeed fortunate to have such able and willing members who give of their time, talent and financial resources to improve the quality and effectiveness of the legal services provided by members of the D.C. Bar.

My special thanks go to the Probate Education Committee for planning an outstanding program and materials for your use.

I wish to extend my appreciation to the Estates, Trust and Probate Law Section of the District of Columbia Bar for its support and active participation in planning the training seminar and for its generous donation for refreshments.

Finally, thank you for your participation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rufus King, III". To the right of the signature is a small, square, stylized mark or stamp.

Rufus King, III  
Chief Judge

# **District of Columbia Superior Court Probate Division Education Committee**

## **Committee Co-chairs**

**Judge Kaye K. Christian, Presiding Judge**

**Judge José Lopez, Deputy Presiding Judge**

## **Members**

**Robert Bunn**

**Michael Curtin**

**Kimberly K. Edley**

**Renée I. Fox**

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**Anne Meister**

**Barbara R. Miller**

**Darrel S. Parker**

**Constance Starks**

**Edward Varrone**



**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**WASHINGTON, D. C. 20001**

Kaye K. Christian  
José López  
Associate Judges

October 2, 2002


Dear Seminar Participants:


We welcome each and every one of you to the Probate Practice Seminar of 2002. The production of this seminar is in compliance with Chief Judge King's Administrative Order 02-07 issued in January 2002. While his mandate is to "establish standards for participation in the Division's fiduciary list," we seek to go further. We want to assure the citizens of the District of Columbia the highest quality of legal service in probate practice. We wish to thank your presenters for giving of their time and effort to make this program of the highest quality.

This is a cooperative endeavor involving the District of Columbia Bar, and the Probate Education Committee created by Chief Judge Rufus King, III, with the help of the Estate, Trust and Probate Law Section of the District of Columbia Bar. We must also give our appreciation to the Superior Court Center for Education, Training and Development, the Court Reporting and Recording Division and the Court Administrative Services Division.

We are very excited about this initiative, and we hope you find it valuable for your every day practice. Your thoughts and suggestions are most welcome, and we hope that you will complete the evaluation forms before you leave today.

Yours truly,

  
Kaye K. Christian, Presiding Judge  
Probate Division

  
Jose M. Lopez, Deputy Presiding Judge  
Probate Division

## INTRODUCTION TO THE PROBATE DIVISION AND THE OFFICE OF THE REGISTER OF WILLS

### The Probate Division/Office of the Register of Wills

- A. The Probate Division** has jurisdiction over the decedents estates, trusts, guardianships of minors, and guardianships and conservatorships of incapacitated adults. The organizational components are the Office of the Register of Wills, a statutory office, and two branches, which operate under the direction and supervision of the Register of Wills.
- **The Auditing and Appraisals Branch**, which audits accounts of fiduciaries under Court supervision; and
  - **The Probate Operations Branch**, which performs clerical services for all matters filed in the division.
- B. Role of the Register of Wills/Deputies.** In addition to management of the Probate Division, the Register of Wills is responsible for making recommendations to judges on all *ex parte* matters filed in the Division. To assist in this function, a team of four deputies reviews all substantive filings in the Division to ensure conformity with the rules and to prepare written recommendations to the probate judges on the disposition of the filings. The two regularly assigned judges alternate days when they receive the daily recommendations from the Register of Wills for action. Senior judges receive the daily work whenever they are assigned to the Division.
1. **Hours.** The deputies are available to review filings from 8:30 a.m. to 5 p.m. daily. Appointments are not available.
  2. **Legal Advice.** Deputies are not authorized to give legal advice. Thus, attorneys should not send clients or support staff to them for advice or assistance in preparing filings.
  3. **Processing Time.** The goal is to process initial petitions to open decedents estates and guardianships of minors and issue an order of appointment

within one (1) week of filing. Subsequent petitions should be processed within two (2) weeks of the date they are ripe for decision.

Initial petitions in intervention proceedings for adults are generally processed for the scheduling of an initial hearing within 30 days of filing. Subsequent petitions in interventions are processed in accordance with the same time standards as other petitions.

**4. Mail.** Filings may be delivered to the court by mail or in person.

**5. Telephone Inquiries.** The deputies will respond to telephone inquiries within one (1) business day. But calls should not be made until after an attorney has conducted a thorough examination of the law and rules pertaining to the inquiry.

**C. Auditing and Appraisals.** The Auditing Branch of the Division audits accounts and examines request for compensation for attorneys and fiduciaries for procedural compliance.

**1. Duty Auditor.** An auditor is available on a daily basis to review accounts and requests for compensation to ensure that they are in compliance with Court rules.

**2. Publications.** There is a pamphlet entitled *Record Keeping and Filing Duties in the Superior Court of the District of Columbia*, provides information on the duty to maintain records, and a manual entitled *Inventory and Accounting Guide*, which provides comprehensive information on the preparation of accounts. Both publications are available from the Division and are accessible from the Courts Web site at [www.dccourts.gov/dccourts/superior/probate](http://www.dccourts.gov/dccourts/superior/probate).

**D. Intervention Proceeding.** These cases are processed through the Intervention and Trusts section of the Probate Operations Branch of the Division.

**1. Assignments.** Intervention cases are assigned to the two probate judges alternating between odd and even at the time of filing. Subsequent petitions are routed accordingly. Hearing times and dates are scheduled in accordance with instructions from the respective judges.

**2. Temporary Relief.** Requests for temporary relief under the Guardianship and Protective Proceedings law are directed to the judge ordinarily assigned to the case number. These petitions are forwarded to the judges on alternating days.

Thus, a couple of days should be factored into targeted action dates, and if emergency relief is warranted, an appropriate petition should be filed and processed through the Judge-In-Chambers.

- E. Small Estates.** Small Estates Specialists are available to assist laypersons in completing petitions to open small estates valued at \$40,000 or less.
- 1. Compensation to Attorneys and Personal Representatives.** Personal representatives are not entitled to compensation under the law. There is nothing in the law, however, that expressly prohibits attorneys from receiving compensation in small estates. In light of the availability of specialists in the Probate Division, attorneys may refer potential clients to the Division for assistance in these matters.
  - 2. Appointments.** The Small Estates Specialists are available by appointment or on a first come, first served basis.
- F. The Probate Court Panel.** The chambers of the deputy presiding judge maintains the list of attorneys available for court appointments in probate matters. The judges make appointments to cases.
- 1.** Attorneys volunteering to serve may submit an application through the Chambers of Judge Franklin Burgess, III.
  - 2.** Changes of address or availability must be noticed to Judge Burgess.
  - 3.** The list is updated monthly and delivered to the judges presiding in Probate, the Judge-In-Chambers and to the Civil Division clerk's office.

**CONSERVATORSHIPS**

**GUARDIANSHIPS**



# FACULTY

## RENÉE I. FOX

Renée I. Fox is a sole practitioner who specializes in Estate Administration, Guardianship, Conservatorship and fiduciary matters, and some litigation relating to probate matters. Her undergraduate degree was granted by Brandeis University and she received her law degree from Catholic University where she was an associate editor of the law review. She served on the Probate Rules Advisory Committee when the current Conservatorship proceedings became effective and since 1989 has also served as a co-chair, member, subcommittee chair, and newsletter editor of the Estates, Trusts and Probate Law Section. Recently she was appointed to serve on the Tenth Year Retrospective Review Advisory Committee on Racial/Ethnic and Gender Fairness in the District of Columbia Courts.

## ROBERT A. GAZZOLA

Robert A. Gazzola is a principal in the law firm of Quinn, Racusin & Gazzola, Chartered specializing in estate planning and administration, Guardianship and Conservatorships and fiduciary services. He received his law degree from George Washington University Law School, an M.S. from the University of Southern California, a B.A. from Fordham University and is a distinguished graduate of the National War College. He was the co-chair and currently is a member of the Estates, Trusts and Probate Law Section of the D.C. Bar and is a former United States Air Force Colonel.

## DARREL S. PARKER

Darrel S. Parker, a native of New Orleans, is a principal in the firm of Roundtree, Knox, Hunter & Parker. Since joining his firm in 1975 he has concentrated on practice in the probate area while continuing work in the areas of family law, elder law and general civil proceedings. He received a B.S. degree from Howard University and his J.D. degree from American University. He has participated on the Advisory Board of Directors of the Legal Counsel for the Elderly, serving as its Chairman in 1996. Currently, he serves as a member of the District of Columbia Advisory Committee on Probate and Fiduciary Rules.

## EDWARD G. VARRONE

Ed Varrone is a 1978 graduate of George Washington University Law School. Following a two-year term as law clerk to the late Chief Judge H. Carl Moultrie I, he entered the private practice of law first as a sole practitioner, then as a partner in the firm of Carter & Varrone, and since 1998 again as a sole practitioner. Mr. Varrone has been a member of the Probate Rules Advisory Committee since 1995, has taught continuing legal education courses on Intervention Proceedings and guardianships of minors for the D.C. Bar and has participated on panels for Brown Bag Programs sponsored by the D.C. Bar Estates, Trusts and Probate Laws Section. He has extensive experience in intervention cases having served as petitioner, counsel for the various interested

persons and the subject, Guardian *ad litem*, Guardian, Conservator, Visitor and Special Conservator.

# Conservatorships and Guardianships

## **I. Pre-1989 Conservatorships**

## **II Roles of Participants in Initial Hearings**

- A. The Petitioner
- B. The Subject of the Proceeding
- C. Counsel for the Subject
- D. Guardian ad litem
- E. Visitor
- F. Examiner
- G. Interested Persons

## **III. Definition of Incapacity and Types of Relief**

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  - 1. Incapacity Defined
  - 2. Evaluating Incapacity
- B. Interviewing the Subject
- C. Significance of Evaluation of Incapacity.
- D. AVAILABLE RELIEF
  - 1. Guardianship: D.C. Code § 21-2041 through § 21-2049
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- E. Order for Relief
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- A. Before the Hearing
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  - 1. Jurisdiction
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**Appendix**

- Sample Forms
- Compensation

# PRE-1989 CONSERVATORSHIPS

## CONSERVATORSHIPS PRIOR TO 1989

Prior to 1989 when the District of Columbia Guardianship, Protective Proceedings and Durable Power of Attorney Act of 1986 became effective, Conservatorships were established and administered in accordance with D.C. Code § 21-1501 *et seq.* Unfortunately, when the current code sections dealing with Conservatorships and Guardianships were printed, the prior act was deleted because, after all, it had been repealed. Notwithstanding the efforts of the publishers to obliterate the earlier Conservatorships, some are active to this day. They primarily are designated with an “F” number.

Unlike today’s Intervention Proceeding, a Conservatorship established pursuant to the prior law provides only for management of assets of the ward. Should an occasion arise that requires attention to the ward’s personal welfare, a Petition to Appoint a Conservator of the person must be filed in the Probate Division. There is no requirement to file Conservator reports, or to appear in Court for any action subsequent to appointment if a Conservator is seeking authority to perform some task. To obtain authority to take **any** action to spend the ward’s funds one must file a verified Petition. Normally, unless there is opposition to the requested relief, there will be no hearing. The ward does not receive a copy of the Petition as currently required.

Generally, Successor Conservators for the “F” cases cannot merely rely on authority given to an earlier Conservator. The successor must file an inventory. The successor must file a Petition for Authority to Expend Funds. Although a petition can be filed annually, it makes more sense, when practical, to file a petition which has cumulative authority. For instance, if one wishes authority to pay nursing home bills, one could (and probably should) ask for authority to spend the precise amount required when one qualifies plus increases imposed “subject to proper accounting.” Authority to purchase clothing, pay utility bills, etc. can be requested in an amount, “up to.....” This means the Successor Conservator in an old-law Conservatorship must do some initial calculations and anticipate what costs may arise. The language relevant to a Conservator’s powers and duties is found in D.C. Code § 21-1503.

Unless specific authority is received, investments must be federally insured. Attention should be given to SCR-PD 202 (e) and (f). The former addresses how assets may be held and the latter requires the fiduciary to file a power of attorney should he or she become a nonresident of the District of Columbia after being appointed. There may be some instances when a ward still resides in property or owns property that the successor determines must be sold. SCR-PD 203 contains details regarding sale of that property.

### **Prior Approval is Required**

The Superior Court Probate Division Rules governing the “old law” Conservatorships include SCR-Civ.310 and SCR-PD 200 series with special attention to SCR-PD 223 and 225. SCR-PD 223 addresses expenditures and sales from an estate by a Conservator stating that all expenditures require prior Court approval exclusive of court costs and costs provided by statute such as taxes, including real property tax and bond premiums. The same rule addresses sale, disposal of or encumbrance of property. This means that if property is held in investment form because the Court previously approved an investment plan, if shares of stock have to be sold to obtain funds to care for the ward, prior Court approval is required.

### **Discharge of old-law Conservatorships**

D.C. Code § 21-1505 provides for discharge of old-law Conservatorships. Due to the passage of time, it is unlikely that a ward under the former Conservatorship proceeding will become competent to manage his property and, therefore will apply to the Court for discharge of the Conservatorship. Of course, the standard under which a Conservator was appointed in the first place differs from the definition of incapacity under current law. The ward must have been unable, “by reason of advanced age, mental weakness not amounting to unsoundness of



mind, mental illness, as the latter term is defined by D.C. Code § 21-501, or physical incapacity, properly to care for his property.” The converse is true to enable discharge.

### **Compensation for the Conservator**

Compensation for an old-law Conservator is paid by commission, not by hourly rate. The usual compensation is five (5) percent of the annual expenditures for Conservator type work. Conservator work includes tax preparation, accounting preparation, marshaling of assets, payment of bills and ordinary estate administration. If the Conservator performs legal tasks, such as filing petitions for authority to spend funds or to take some other action, he or she can be compensated at a usual hourly rate. As always, a proper petition requesting such compensation is required. Additionally, sometimes a Conservator provides “extraordinary services” on behalf of the ward. Request for compensation for such services also can be requested by proper petition. Sometimes a lay Conservator will request assistance of counsel to prepare inventories, accountings, tax returns and the like. As stated above, these are deemed to be tasks of the Conservator and the Court will not sanction payment to counsel for such work. Accordingly, it has been a common practice for attorneys to request (ahead of time) a written agreement from the Conservator that the Conservator’s commission will be paid to the attorney. The assignment must be filed with the Court. There is no guarantee that the amount of

the commission will cover the work done by the attorney. Additionally, it would be unfair for the attorney to take the entire commission should the work done on the Conservator's behalf not equal the amount the Conservator is to receive.

Remember that the Guardianship Fund is not available to conservators appointed under the former law.

Rule 225 addresses the compensation for a Conservator and clearly sets out ordinary services that a fiduciary is expected to provide without seeking any compensation other than the commission. Note that the commission may only be claimed in the annual accounting and no statement of services is required. Rule 225(c) lists the necessary requirements for seeking extraordinary commission. A turnover commission may be claimed in the final account not exceeding five (5) percent of the net assets turned over to a successor or the former ward. As a general rule, no statement of services is required. However, if a fiduciary's services are terminated by the fiduciary's death, resignation or incapacity, a statement of services must be filed to support the turnover commission. The rule is silent about what happens if the fiduciary is removed but Rule 225 (h) gives the Court discretion to require a statement of services or any additional verified documentation to determine appropriate commission in any case. It is wise for the Conservator to keep records of time in the same manner as he or she does under the current law in the event the Court requests the records. Additionally, if a ward dies, is restored to

competency or attains the age of majority within three (3) years of the fiduciary's appointment, and if the net assets to be turned over exceed \$100,000, the fiduciary must either file a statement of services to support the claimed turnover commission or apply for a waiver of the requirement to file such a statement. Notice of a petition for compensation for extraordinary service or for legal fees must be given in an appropriate form [SCR-PD 225 (f)]. Objections may be filed in accordance with SCR-PD 225 (i).

## Chapter 15.—CONSERVATORS

Sec.

- 21-1501. Appointment of conservators.  
21-1502. Filing of petition; requirements; time and place of hearing; appointment of guardian ad litem.  
21-1503. Bond; powers and duties.  
21-1504. Discharge.  
21-1505. Appointment of temporary conservator.  
21-1506. Personal welfare of person under conservatorship.  
21-1507. *Lis pendens*.

### § 21-1501. Appointment of conservators

When an adult residing in or having property in the District of Columbia is unable, by reason of advanced age, mental weakness not amounting to unsoundness of mind, mental illness, as the latter term is defined by section 21-501, or physical incapacity, properly to care for his property, the Superior Court of the District of Columbia may, upon his petition or the sworn petition of one or more of his relatives or any other person or persons, appoint a fit person to be conservator of his property.

### § 21-1502. Filing of petition; requirements; time and place of hearing; appointment of guardian ad litem

(a) Pursuant to the filing of the petition under section 21-1501, the court shall fix a time and place for a hearing; and shall cause at least 14 days' notice thereof to be given to the person for whom a conservator is sought to be appointed, if he is not the petitioner, and to such other persons as the court directs. The petition shall include, among other things—

- (1) the reasons for the appointment of a conservator;
- (2) the name and address of the person for whom the conservator is sought;
- (3) the date and place of his birth, if known; and
- (4) the names and addresses of the nearest known heirs at law, or the next of kin, if any.

(b) The court may appoint a disinterested person to act as guardian ad litem in a proceeding under this section. Upon a finding that the person for whom the conservator is sought is incapable of caring for his property, the court shall appoint a conservator who shall have the charge and management of the property of the person subject to the direction of the court.

### 21-1503. Bond; powers and duties

The conservator before entering upon the discharge of his duties shall execute an undertaking with surety to be approved by the court in such amount as the court orders, conditioned on the faithful performance of his duties as conservator. He shall have control of the estate, real and personal, of the person for whom he has been appointed conservator, with power to collect all debts due the person, and upon authority of the court to adjust and settle all accounts owing by him, and to sue and be sued in his representative capacity. He shall apply such part of the annual income and of the principal of the estate as the court authorizes to the support of the person and the maintenance and education of his family and children; and shall in all other respects perform the same duties and have the same rights and powers with respect to the property of the person as have guardians of the estates of infants.

### § 21-1504. Discharge

When a person for whom a conservator has been appointed under this chapter becomes competent to manage his property, he may apply to the court to have the conservator discharged and to be restored to the care and control of his property. If the court finds him to be competent, it shall enter an order restoring the care and control of his property to him. The court has the same powers with respect to the property of a person for whom a conservator has been appointed as it has with the respect to the property of infants under guardianships.

### § 21-1505. Appointment of temporary conservator

Upon the filing of a petition as provided by this chapter, the court may, with or without notice or hearing, appoint a temporary conservator of the estate of a person, if it deems the action necessary for the protection of the estate, subject to the provisions for an undertaking specified by section 21-1503. The temporary conservator shall serve only until a permanent conservator can be appointed or until sooner discharged.

### § 21-1506. Personal welfare of person under conservatorship

The court may at any time order that the conservator or another person shall be responsible for the personal welfare of the person whose property is under conservatorship. In that event the conservator or other person, subject to the direction and control of the court, has the same powers and duties with respect to the personal welfare of the person whose property is under conservatorship as have the guardians of the persons or infants under guardianships.

### § 21-1507. *Lis pendens*

Upon the filing of a petition under this chapter, a certified copy of the petition may be filed for record in the office of the Recorder of Deeds of the District of Columbia. If a conservator is appointed on the petition, all contracts, except for necessities, and all transfers of real and personal property made by the ward after the filing and before the termination of the conservatorship are void.

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Probate Division**

**IN RE:**

:

, an adult

:

F

**PETITION TO APPOINT CONSERVATOR OF THE PERSON**

Cones now, \_\_\_\_\_, conservator of the estate of \_\_\_\_\_, an adult, to petition this Honorable Court, pursuant to D.C. Code § 21-1506 (1981 ed.), to appoint her conservator of the person of the adult ward. As grounds therefor, petitioner represents:

1. That she was appointed successor conservator for the ward by order of this Court dated \_\_\_\_\_.

2. That there never has been a conservator of the person for the adult ward.

3. That recently she was contacted by one of the ward's treating physicians, who requested appointment of a conservator of the person of the ward as the ward was refusing treatment for cancer, being in complete denial that she was suffering from any disease. Dr. \_\_\_\_\_ reported that the refusal of treatment was not related to any desire of the ward to not be treated for a terminal illness, but rather was because of the extreme denial the ward experiences.

4. More recently, Dr. \_\_\_\_\_ contacted petitioner stating that the need for a conservator for the person of the ward was more compelling as the ward, after treatment for pneumonia, "escaped" from the CRF in which she was living and was found after spending two nights in the stairwell of a building in which she lived some time ago. Dr. \_\_\_\_\_ provided petitioner with a statement (copy attached as Exhibit A), which indicates that because of the denial and dementia, the ward refuses to be treated for any illness she may have and poses a danger to herself.

5. It is apparent that appointment of a conservator of the person in this matter is merited to enable medical professionals to provide proper care for the ward.

WHEREFORE, the premises considered, petitioner prays:

1. That this honorable Court appoint her conservator of the person of \_\_\_\_\_

\_\_\_\_\_ ;

2. For such other and further relief as may be merited in this cause.

Respectfully submitted,

\_\_\_\_\_

Conservator

WASHINGTON, DC: SS

I hereby certify that the facts set forth in the foregoing petition are true to the best of my knowledge, information and belief.

\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_

NOTARY PUBLIC

My commission expires:

CERTIFICATE OF SERVICE

\_\_\_\_\_

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
PROBATE DIVISION**

In re: \_\_\_\_\_ :  
\_\_\_\_\_ : F  
An Adult \_\_\_\_\_ :

**PETITION FOR AUTHORITY TO EXPEND FUNDS**

Comes now, \_\_\_\_\_ appointed successor conservator in the referenced matter, to petition this Honorable Court for authority to continue to pay the expenses for the ward as those paid by the prior conservator and to pay additional medical expenses as have arisen since the death of the prior conservator. As grounds therefor petitioner states:

1. She was appointed successor conservator of \_\_\_\_\_ by order of this Court on \_\_\_\_\_.
2. In the Petition for Appointment of a Successor Conservator, petitioner requested that she be authorized to continue the expenditures incurred by the deceased conservator. Specifically, she advised the Court that to the best of her knowledge the ward's assets total approximately \$ \_\_\_\_\_.
3. She further advised the Court that the ward receives annuity income from the \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per year.
4. The annual expenses authorized to be paid by the prior conservator included room and board (\$14,400.00 plus increases), out of pocket expense funds (\$2,300.00 plus increases) and day care (\$17,420.00 plus increases). The current expenditures are room and board \$20,400.00; out of pocket \$2,280.00; day care program \$3,024.00; and out of pocket expenses of approximately \$1000.00. Additionally, the Veterans Administration

submitted a bill to be reimbursed for certain medical expenses in the amount of \$1,085.48 (Exhibit A).

5. The order appointing the undersigned as successor conservator failed to address her request for authority to continue the expenditures for the ward. Accordingly, the successor conservator is renewing her request for authority to continue the prior conservator's expenditures and is requesting additional authority to pay the Veterans Administration for medical charges as they are imposed subject to proper accounting. To the undersigned's knowledge, there never have been charges previously for medical expenses by the Veterans Administration. It is difficult, therefore, to estimate the amount that will be needed to satisfy those charges.

**WHEREFORE**, the premises considered, Petitioner prays:

1. That she be authorized to continue the same expenditures as the prior conservator, subject to proper accounting;
2. That she be authorized to pay Veterans Administration medical bills as they are presented, subject to proper accounting;
3. For such other and further relief as may be merited.

Respectfully submitted,

---

Successor Conservator



**VERIFICATION**

I, \_\_\_\_\_, being first sworn on oath, depose and say that I have read the foregoing pleading by me subscribed and that the facts therein stated are true to the best of my knowledge information and belief.

\_\_\_\_\_

WASHINGTON, DC: SS

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 200\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

ROLES OF PARTICIPANTS

IN

INITIAL HEARINGS

## ROLES OF PERSONS IN INITIAL HEARINGS

1. **The Petitioner.**

The Petitioner can be the person to be protected or any person interested in the welfare of the incapacitated individual [D.C. Code §§ 21-2041 (a), 21-2052 (a)].

2. **The Subject of the Proceeding.** (The allegedly incapacitated adult.)

3. **Counsel for the Subject.**

D.C. Code § 21-2033 (b); SCR-PD305.

a. Unless the Subject is already represented by counsel, the Court must appoint Counsel for the Subject [D.C. Code § 21-2041 (d), 21-2054 (a)].

Under Rule 321 (d), the Court will appoint counsel when a petition is filed, and need not appoint existing Counsel for the Subject if good cause to the contrary exists. If the Subject does not already have counsel, the court will appoint counsel from the court's appointment list.

b. Counsel for the Subject "is to represent zealously that individual's legitimate interests" [(emphasis added) D.C. Code § 21-2033 (b)]. Minimally, counsel shall personally interview the subject; explain the nature and possible consequences of the intervention proceedings, and secure and present evidence to protect the rights of the subject.

i. A zealous advocate is not an investigator and reporter of fact or advocate for a general best interests determination.

- The advocate represents the Subject's interests as communicated by the Subject, not what the advocate believes is in the Subject's best interest.
- The best interest of a Subject is not always clear; one person's view of best interest may be another's worst outcome.

- The Court, and not Counsel for the Subject, determines the Subject's "best interest."
- The zealous advocate need not contest every issue or assertion -- note the requirements of Rule 11-- but the zealous advocate must assert the client's views and desires.

ii. To the maximum extent possible, the Subject shall determine his or her legitimate interests.

iii. The standards for attorney-client relationships apply in Intervention Proceedings [See D.C. Rules of Professional Conduct; particularly Rules 1.2, 1.3, 1.4, and 1.14]. The relationship between Counsel for the Subject and the Subject is no different than any other attorney-client relationship.

iv. Counsel for the Subject files pleadings; counsel does not file reports.

c. If the subject is unconscious, or "otherwise wholly incapable of determining his or her interests," counsel should advise the Court of this fact; petition for the appointment of a Guardian *ad litem*; and, if a Guardian *ad litem* has been appointed, Counsel follows the Guardian *ad litem*'s determination of the Subject's legitimate interests [SCR-PD 305 (a) (b)].

d. Counsel for the Subject has specific duties set out in the statute and SCR-PD 305.

4. **Guardian ad litem.**

D.C. Code § 21-2033 (a); SCR-PD 306.

a. The court may appoint a Guardian *ad litem* to assist the Subject, determine his or her interests or to determine the Subject's interest if the Subject is unconscious or wholly incapable of determining his or her interest even with assistance.

- i. Under current practice, appointment of a Guardian *ad litem* is not automatic, and is used in special circumstances.
  - ii. The Appointment Order generally will provide the purpose for appointment of the Guardian *ad litem* and generally will specify the duties of the Guardian *ad litem*.
- b. The Guardian *ad litem* is not an independent fact finder, investigator, ombudsman or neutral party [D.C. Code § 21-2033].
  - i. The Guardian *ad litem* is more appropriately described as a “substitute client.”
  - ii. The Guardian *ad litem*’s task is to determine what the Subject would want if the Subject were able to understand and/or communicate his or her views concerning the issues in the case.
- c. The Petitioner or Counsel for the Subject or any other party, may request the appointment of a Guardian *ad litem* [D.C. Code § 21-2033 (a); SCR-PD 306 (b)].
- d. Most frequently, Guardian *ad litem* appointments are made in emergency 15-day proceedings.

**5. Visitor.**

D.C. Code § 21-2033 (c); SCR-PD 327.

- a. The Visitor is a special appointee of the Court and has no personal interest in the proceedings [D.C. Code §21-2011 (26)].
  - i. Under current practice, Visitors are not appointed often.
  - ii. Anyone can seek the appointment of a Visitor unless the Subject is already represented by counsel.
  - iii. A person, an organization, or someone with social services experiences, can be appointed a Visitor.
- b. The statute authorizes one or more Visitors [D.C. Code §§ 21-2041 (d),

(e), 21-2054 (a), 21-2054 (b)].

c. The Visitor interviews the subject, the petitioner and any person nominated to serve as Guardian or Conservator, and thereafter files a report. The Visitor can make recommendations as to the appointment of a Guardian or Conservator.

d. Unlike Counsel for the Subject or the Guardian *ad litem*, the Visitor is an independent investigator who is expected to draw his own conclusions. The Visitor is much like a traditional Guardian *ad litem* under a former Conservatorship law.

e. The Court will, on occasion, appoint a Visitor to conduct a special investigation in specifically identified issues. Potential conflict of interest issues are an example. Therefore, requesting a Visitor in a contested case may be useful.

6. **Examiner.**

D.C. Code §§ 21-2041 (d), 21-2054 (a); SCR-PD 326

a. The Examiner is a person qualified in the diagnosis, care or treatment of the causes and conditions giving rise to the alleged incapacity, such as a gerontologist, psychiatrist or qualified mental retardation professional [D.C. Code § 21-2011 (7)].

b. The examiner files a report that includes findings concerning the incapacity of the subject.

**NOTE:** In case of mental retardation, there are special rules concerning the appointment of a Visitor and Examiner and the reports that each is to present to the court [D.C. Code § 21-2011 (24), 21-2041 (f), 21-2053 (c)].

c. In contested proceedings the Examiner may be required to appear, not merely file a report.

7. **Interested Persons.**

a. Any person interested in the welfare of the subject may apply to participate in the proceeding [D.C. Code §§ 21-2024 (i) and 21-2054 (f); SCR-PD 303]. “Party” status may be conferred.

b. An Interested Person may file a request to receive notice of proceedings in the case upon payment of the required fee [D.C. Code § 21-2034; SCR-PD 304].

DEFINITION OF INCAPACITY

AND

TYPES OF RELIEF



# INCAPACITY

## I. ISSUES AND CONSIDERATIONS

### A. GENERAL CONSIDERATIONS

"Incapacity" (not "incompetence") is the standard for application of the Protective Proceedings Act.

1. The protections afforded to an incapacitated adult should be the least restrictive alternative needed to afford the necessary protection [D.C. Code §§ 21-2044(a), 21-2055(a)].

The Act is based on a concept of first determining whether there is incapacity, then determining the nature and extent of the incapacity, and lastly determining the nature and extent of the relief needed to address the incapacity.

2. The process of determining whether an adult is incapacitated and in need of protection is based on the adversarial model of litigation.

1. No party is presumed to know the best interests of the allegedly incapacitated adult.

2. The person alleging incapacity, or seeking appointment of a guardian, conservator or other relief, has the burden of proof.

1. The standard of proof is clear and convincing evidence [D.C. Code § 21-2003].

### B. INCAPACITY DEFINED

1. An "incapacitated individual" means an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to manage all or some of his or her financial resources or to meet all or some essential requirements for his or her physical health, safety, habilitation, or therapeutic needs without court-ordered assistance or the appointment of a Guardian or Conservator [D.C. Code § 1-2011(11)].

2. Incapacity is a functional, not medical,

determination and can vary in severity. Medical diagnosis can influence the decision of whether there is incapacity, but is not the determination.

3. In re John T. Hodges, D.C. App., 756 A.2d 389 (2000). Although the subject may have been suffering from mental illness (paranoia), the intervention petition was dismissed because there was no showing that the subject was unable to provide for his financial and personal needs.
4. In order to warrant court intervention, there must be a finding of both an impairment and the need for intervention.

An existing trust arrangement or durable power of attorney may mean that, although a subject's ability to receive and evaluate information effectively . . . is impaired, court-ordered assistance is not necessary. In re Hodges, supra.

5. A finding of incapacity is not a finding of legal incompetence [D.C. Code ĩ 21-2004].

### C. EVALUATING INCAPACITY

1. Factors to Consider:
  - a. Does the person have a factual understanding of relevant issues?
  - b. Does the person have an appreciation of a given situation or the likely consequences of a decision?
  - c. Can the person rationally process information? This involves a consideration of one's logical chain of reasoning.
  - d. Can the person make, and communicate, a clear choice and a stable choice?
  - e. Does, or can, the person function in his/her own environment? (The subject may be having difficulty coping in a stressful situation, but may be able to function if the stress is removed.)
  - f. What are the actual expectations of or

demands placed on the person?

g. Is the incapacity physical or mental incapacity, or both?

h. Is there a support program that can obviate the need for a Guardian or Conservator?

For example, is there an existing durable power of attorney, grantor trust or representative payee arrangement in place which allows the subject, acting through a designated agent, to manage all or some or his or her financial resources . . . ?

Note: These factors are relevant both to the determination of incapacity and to a determination of the nature and extent of the relief to be afforded if the subject is incapacitated.

## 2. Interviewing the Subject

- a. Maintain confidentiality. Take steps to meet with the client alone.
- b. The time of day when meeting with an allegedly incapacitated client may be significant. ( Sundowning )
- c. The setting in which an attorney-client conference takes place may be important. Try to meet in a familiar or comfortable setting.
- d. A subjects appearance of capacity can change even during the course of an interview. (A subject may appear to have capacity for 15 or 20 minutes, but thereafter show significant signs of incapacity.)
- e. Discuss and question. Do not interrogate.

## 3. Significance of Evaluation of Incapacity.

The nature and extent of incapacity is very important in determining the appropriate remedy. What is the least restrictive remedy to address the incapacity existing in a specific case?

## II. AVAILABLE RELIEF

General Concept: Under prior law, it was easier to establish a Conservatorship, but the Conservator and Conservator for the person needed to obtain specific authority for every act and expenditure. Under the Protective Proceedings Act, the process to secure the appointment of a Conservator and/or Guardian is rigorous, but once appointed, a Guardian and a Conservator can have very broad authority.

### A. GUARDIANSHIP: D.C. CODE § 21-2041 THROUGH § 21-2049

1. Guardianships deal with the physical care and well-being of an incapacitated adult, including medical decisions.
2. Guardianships can be general, with the Guardian having all statutory powers, or limited, with the Guardian having only some of the statutory powers [D.C. Code Ĩ 21-2044(c)].
3. The statutory powers of a Guardian which can be exercised without special order, and the limitations on those powers (actions which a Guardian may not take or which require a special order of court) are set out in D.C. Code Ĩ 21-2047.
4. Special Issues:
  - a. Do Not Resuscitate or No Code Orders
    - i. D.C. Code Ĩ 21-2047(c)(3) may be less than clear on this, but Judge Long held that a general Guardian has legal authority to sign a DNR order without specific court authority. In re Genevieve Kelly, Int. 12-97 (J. Long, 3/22/00); In re Theresa Pipkins, Int. 163-00 (J. Long, 8/15/00).
    - ii. It may be prudent to seek court authorization for a DNR order particularly where there is family discord and where a valid health care power of attorney or advance directives do not exist. See D.C. Code Ĩ 21-2062 for authority to seek appropriate instructions if this issue is not addressed in the appointment Order.
  - b. Withholding or withdrawal of treatment
    - i. Under the Act, the default option is to treat. (For example, consent to dialysis, consent

to g-tube feedings, etc.)

ii. For withholding consent to treatment or ordering withdrawal of treatment, such as consenting to withholding of food and hydration or terminating use of a respirator, D.C. Code § 21-2047(c)(3) requires a specific court order.

iii. A Bioethics consult may be useful in these types of cases. The Superior Court Probate Division has a volunteer Bioethics program; a committee that will review medical/ethical issues and make recommendations to the Court. Details on this program are available at the Register of Wills office.

c. Mental Illness issues

## B. CONSERVATORSHIPS: D.C. CODE § 21-2051 THROUGH § 21-2077

Conservatorships deal with protection of the property, income and assets of an incapacitated adult.

1. A Conservatorship or other protective arrangement is available for an adult who has disappeared or is being held hostage or detained by a foreign power.

2. Conservatorships can be general, with the Conservator having all statutory powers, or limited, with the Conservator having only some of the statutory powers of a Conservator [D.C. Code § 21-2072].

3. The powers of a Conservator that can be exercised without special order are set out in D.C. Code §§ 21-2070 and 21-2071.

4. In addition to the statutory powers, the Court can grant a Conservator additional powers [D.C. Code § 21-2072].

## C. PROTECTIVE ARRANGEMENTS: D.C. CODE § 21-2055 & § 21-2056

1. The Court, either acting itself or through a special Conservator, may take any action with respect to the estate and business affairs of a person that the person could take if not incapacitated, except make a Will. (There is a special standard for certain gift and estate powers.)

2. Single transactions are authorized under the statute. Examples include:

- a. Create a trust, or fund an existing trust;
- b. Effectuate existing power of attorney (sell real property where power of attorney is not effective for conveyance of real property);
- c. Disclaim interests;
- d. Exercise or release power of appointment;
- e. Authorize gifts
  - i. D.C. Code § 21-2055(b)(2)(B) empowers the Court to authorize gifts. See § 21-2055(c)(2) for special standard for gifts exceeding 20 per cent of annual income.
  - ii. Where annual tax planning gifts are desired, the court can provide for annual gifts in the initial appointment order or may act pursuant to a Petition Post Appointment.

### III. ORDER FOR RELIEF

#### A. GENERAL CONSIDERATIONS

1. The order entered by the Court should reflect the interplay between incapacity and the relief that is available under the law. It is in this area that the work of the zealous advocate is, as a practical matter, very important:

- a. It is very rare for a Petition to be denied because of a lack of proof of incapacity, but the nature and extent of the relief can be greatly influenced.
- b. Reviewing and specifying the statutory powers of the Guardian and Conservator is useful when preparing a joint stipulation and proposed order.
- c. Specific issues and problems can be addressed in the Order of Appointment, thereby avoiding problems or the need to return to court.

2. The Court can enter appropriate relief, regardless of the relief asked for in the Petition [D.C. Code § 21-2044(b)].

## B. WHO IS APPOINTED GUARDIAN AND CONSERVATOR

1. The Court, acting in the best interests of the subject, can appoint as Guardian or Conservator any person the Court deems appropriate [D.C. Code §§ 21-2043; 21-2057].

2. There is a preferred priority of appointment, but this is not binding on the Court.

3. The wishes of the subject are, by statute, entitled to high priority [D.C. Code §§ 21-2043(b), 21-2057(a)(1), 21-2057(a)(2)].

4. It is not necessary that the same person serve as both Conservator and Guardian.

5. In cases in which there is a dispute among family members as to who should be appointed Guardian and/or Conservator, the Court often will appoint a disinterested attorney from the appointment list.

In cases in which an attorney will be appointed as Conservator and/or Guardian, most judges will initially consider appointing the attorney who served as Counsel for the subject or Guardian ad litem, or the Visitor (if any).

## C. SURETY BONDS

1. Surety bond is set in the Order of Appointment of a Conservator [D.C. Code § 21-2058; SCR-PD 332].

2. Bond is not required. The statute states that the court "may" require a bond. However, it is very rare for a Conservator to be appointed without a bond for the full amount of the assets over which the Conservator assumes authority. Real estate is given special consideration.

3. Generally, the amount of the bond is set pursuant to a formula set out in the statute.

Including a limitation on the power of the Conservator to sell real property will reduce the amount of the bond and, possibly, the amount of the bond premium.

4. Generally, the Court will require an increase in the amount of the bond, as additional assets are discovered or obtained.

In In re Nettie Wise, Int. 67-99 (5/18/00), the Court held that if the Court specifies the amount of bond by reference to the statutory formula, it may not be necessary to file a Petition Post Appointment to increase or reduce the amount of bond.

5. The statute permits a Guardian to receive limited funds (for example, as representative payee of social security benefits), but does not specifically provide for surety bonds for Guardians.

6. When a non-attorney is appointed Conservator, the bonding companies will very often require joint control of assets between an attorney and the Conservator. (As Counsel, you should be sure that you want to serve under a joint control arrangement.) It may be useful to preliminarily investigate the bondability of the person seeking appointment as Conservator.

#### D. SPECIFIC ISSUES

It is possible to be quite creative in fashioning appropriate relief in specific cases and to effect protections for the subject or to advance specific goals. Some examples are:

1. Obtain specific authority to ratify, amend, or revoke an existing power of attorney [D.C. Code § 21-2083].
2. Consider alternative dispositions: private trust, representative payee arrangement, etc.
3. Maintain subject in his/her home by limiting authority of Guardian to change subjects residence and/or limit authority of Conservator to sell or lease real property.
4. Specify persons who will continue to be parties and/or who will continue to receive notice.
5. Require ratification of, or right to oppose, Conservatorship Plan.
6. Provide for special discretionary fund for subjects personal use.



7. Provide for specific authority to provide assistance or support to spouse, dependent, relative, etc. of subject. D.C. Code Ĩ 21-2071 provides for authority for expenditures for support of dependents without specific court authority, but in a particular case a detailed plan may be useful.
8. Specific authority to retain counsel to provide start up assistance to non-attorney fiduciary.
9. Specifically authorize lawsuit or resolution of claims. Authority to seek a resolution of marital status or parentage claims may be needed.
10. End-of-Life issues, such as do not resuscitate or no code orders, advance directives, etc.
11. Specific authority to retain professionals:
  - a. to develop care plan;
  - b. to provide case management services;
  - c. for tax assistance;
  - d. for litigation.
12. Address the specific issues that prompted the Intervention Proceeding:
  - a. Void questionable property transfers;
  - b. Void grantor trusts made as a result of undue influence of lack of capacity;
  - c. Obtain authority to remove wrongdoers from subjects residence.
13. Prepaying funeral and burial costs, including grave markers, etc.
  - a. A Conservator has authority to purchase a prepaid funeral plan, or establish a \$1,500.00 burial fund [D.C. Code Ĩ 21-2070(c)(5); 21-2070(c)(7); 21-2071(4); In re Frank White, Int. 28-90 (J. Long); In re Alton McCall, Int. 120-91 (J. Wolf)]. However, it may be useful to request specific Court authorization to expend funds for prepaid funeral and burial costs in the Order of Appointment, particularly if a prepaid-funeral plan or burial trust fund is established as part of Medicaid planning.

14. Protect existing estate plan, by preserving or substitution for existing pay-on-death accounts (including joint accounts), establishing a trust, confirming a grantor trust or power-of-attorney, etc.

**In re John T. HODGES.**

**Alexis Hodges Brown, Appellant.**

**No. 99-PR-681.**

District of Columbia Court of Appeals.

Argued June 1, 2000.

Decided July 13, 2000.

Adult daughter petitioned for appointment of guardian and conservator for her elderly father, and father opposed petition. The Superior Court, District of Columbia, Cheryl M. Long, J., entered summary judgment for father, and daughter appealed. Adopting the Superior Court's opinion as its own, the Court of Appeals held: (1) that father might be mentally ill did not

warrant appointment of guardian or conservator under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act; (2) that father sold his home in Colorado for an unreasonably low sum did not warrant appointment of guardian or conservator; (3) that father suffered from paranoid delusion that daughter was trying to poison him did not warrant appointment of a guardian and conservator.

Affirmed.

#### 1. Mental Health ⇐107

That adult daughter's elderly father might be mentally ill did not warrant appointment of guardian or conservator under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act, absent showing that father was in danger of being unable to provide for himself or to protect his assets. D.C.Code 1981, § 21-2001 et seq.

#### 2. Federal Courts ⇐1055

The obligation to draw reasonable inferences in favor of the opposing party on motion for summary judgment does not mean that the court must assume facts that are unsubstantiated or that the court must fill blanks where no evidence exists.

#### 3. Mental Health ⇐104.1

The test for imposing a court-appointed fiduciary under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act is proof that the subject cannot take those actions enumerated in the Act in order to provide for himself and protect himself. D.C.Code 1981, § 21-2001 et seq.

#### 4. Mental Health ⇐107

Fact that adult daughter's elderly father sold his home in Colorado for an unreasonably low sum did not warrant appointment of guardian or conservator under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act, where father wanted to get away from daughter, whom he suspect-

ed was trying to poison him, and gave son power of attorney with instructions to sell house. D.C.Code 1981, § 21-2001 et seq.

#### 5. Mental Health ⇐107

Fact that adult daughter's elderly father suffered from paranoid delusion that daughter was trying to poison him did not warrant appointment of a guardian and conservator under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act, where delusion had not resulted in any inability on part of father to handle his financial affairs or make health care decisions for himself. D.C.Code 1981, § 21-2001 et seq.

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Ron M. Landsman, Bethesda, MD, for appellant.

MaryJane Reynolds, Washington, DC, with whom John C. Morrison, Alexandria, VA, was on the brief, for appellee.

Before TERRY, RUIZ and  
WASHINGTON, Associate Judges.

#### PER CURIAM:

This case concerns the attempt of a daughter to have a conservator and guardian appointed for her elderly father. Appellant, Alexis Hodges Brown, appeals from an adverse grant of summary judgment in a proceeding arising under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986. *See* D.C.Code §§ 21-2001 to -2098 (1997 Repl.). Ms. Brown, who had had no contact with her father in over three years, initiated the proceeding to have a guardian and conservator appointed for her father, appellee, John T. Hodges, whom she believes to be suffering from mental illness or other mental conditions that may have affected Mr. Hodges' ability to manage his affairs. Mr. Hodges filed a motion for summary judgment with accompanying affidavits, which Ms. Hodges opposed with other affidavits. Ms. Hodges subsequently filed the affida-

MEMORANDUM ORDER

vit of Nathan A. Billig, M.D., requesting that he be recognized as an expert witness, and a request for further limited discovery. The trial court granted Mr. Hodges' motion for summary judgment, dismissed the discovery requests, and denied the request to recognize the additional affidavit of the expert witness. Ms. Hodges timely appealed these determinations.

Summary judgment is proper where the record shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See Super. Ct. Civ. R. 56(c) (2000); *Big Builders, Inc. v. Israel*, 709 A.2d 74, 76 n. 1 (D.C.1998). D.C.Code § 21-2022 provides that "[u]nless specifically provided to the contrary in this chapter or inconsistent with its provisions, the rules of the court . . . govern proceedings [for appointment of guardians and conservators] under this chapter." See *In re Langon*, 663 A.2d 1248, 1250 (D.C.1995) (holding that existing rules of trial and appellate practice apply to intervention proceedings). This is an appropriate case for summary judgment because Ms. Brown has failed to raise a material issue of fact as to Mr. Hodges' ability to provide for his financial and personal needs, as evidenced by his income level and present living arrangement. Moreover, Mr. Hodges has already made further provision for the event of his incapacity by investing his son, Stephen Hodges, with his power of attorney, thus obviating the need for court intervention. Ms. Brown has made no allegation that this appointment was improper, that her brother is incapable of adequately performing his duties in the event of Mr. Hodges' incapacity, or that the power of attorney is insufficient.

We adopt the well-reasoned opinion of the trial court set forth below, with certain factual clarifications, as our own.\* The judgment of the trial court is

*Affirmed.*

\* Our factual clarifications are noted in footnotes marked by an asterisk.

This case is before the Court for adjudication of the Motion for Summary Judgment filed on behalf of the Subject, as well as the subsequent Motion for Leave to Have Nathan Billig Recognized as Expert Witness. This latter pleading was filed on March 5, 1999, while the Motion for Summary Judgment has been under advisement.<sup>1</sup> Both requests for relief are opposed. This petition is opposed by the Subject's son, Stephen Hodges.

The Court will address both matters herein as follows.

I. MOTION FOR SUMMARY JUDGMENT

The Subject herein has retained his own lawyer and has filed a Motion for Summary Judgment and to Dismiss Hearing. Essentially, he argues that there is no basis for this Court to proceed on the Petition for Appointment of Guardian and Conservator.

Mindful of the fundamental case law governing the dispositions of summary judgment motions, this Court also endeavors to apply the relevant legal principles that control intervention proceedings in particular.

The facts that are necessary to adjudicate this matter are sufficiently set forth in the record already. In this Court's view, no discovery is appropriate and the Petition should be denied. A variety of factors compel this conclusion, and the Court will set forth its reasoning as follows.

A. Pertinent Facts of record.

The Petition for General Proceedings was filed by the Subject's daughter (Alexis Brown) on June 30, 1998. At that time, the Subject was 85 years of age and was

1. Petitioner's Opposition to the Motion for Summary Judgment also contains a Motion to Permit Limited Discovery.

residing (as he does now) at the United States Soldiers' & Airmen's Home (hereinafter "the Home") in the District of Columbia.

The Subject has very substantial assets. According to Robert Rabinowitz, Ph.D., who examined the Subject at the Home, the [Subject's] assets consist of approximately \$1,400,000 in certificates of deposit and securities. In addition, the Subject receives retirement income from numerous sources: the military (\$2538 per month), Civil Service (\$367.00 per month); an annuity (\$301.00 per month), and Social Security (\$466.00 per month).<sup>2</sup>

Where conservatorship issues are concerned, there are no reports that the Subject is currently unable to pay any bills, such as his fee for residing in the Home, or that he cannot oversee his investments and otherwise protect his interests.

Where guardianship interests are concerned, there are no reports that the Subject cannot make health care decisions for himself or that he [lacks a] back-up plan for such an eventuality.

#### B. Issues Presented by the Parties.

The Motion for Summary Judgment and to Dismiss Hearing is predicated on the assertion that the Subject is not in fact incapacitated within the meaning of the Code. Essentially, counsel for the Subject contends on the basis of various affidavits that the Subject simply is not suffering any harm, that he is protected, and has his

own plan in place for the contingency of becoming incapacitated.

The gist of the Opposition appears to be a contention that the Subject was exhibiting certain signs of mental illness while he was living in Colorado, prior to his departure to the District of Columbia in 1997.\*\* There are no allegations about disturbed or dangerous behavior during the intervening time period.

The Petitioner contends that there are material issues of fact existing as to whether the Subject is suffering from a mental illness that affects "other qualities and abilities" aside from property management. In other words, the Subject's daughter contends that even if the Subject is able to manage his finances, hire a lawyer, and otherwise provide for himself, that the Court should still impose a fiduciary upon him if he is found to have a "diagnosable and potentially treatable paranoia." Petitioner's Opposition to Motion for Summary Judgment at 18.

In her words, the Petitioner suspects that aside from the Subject's ability to manage assets, there are "other qualities and abilities" that are being affected by an unlabeled mental illness. Opposition to Mot. for Summary Judgment at 18. The Petitioner's focus is squarely upon her quest to establish that her father suffers from "treatable paranoia." Opposition to Mot. for Summary Judgment at 18.

2. One of the attachments to the Motion for Summary Judgment is a Report of Visitor, prepared by Rabinowitz. He was not appointed by the Court, but is a witness for the Subject. Although his Report is unsworn, no party disputes the generalized description therein of the Subject's assets. Even if these numbers provided by Rabinowitz are not precise[, it is obvious that the Subject is simply a wealthy man.

\*\* Ms. Brown and her friend, Gilbert Kover, visited her father, a former Air Force airman, for two weeks at his Colorado home in August 1996. One evening after dinner out at a restaurant, Mr. Hodges stayed up late with chest pains but would not allow Mr. Kover to drive him to the hospital. Mr. Hodges left

early the next morning saying he was going to the U.S. Air Force Academy Hospital. Later, a "senior victim volunteer" from the Colorado Springs Police Department called on Mr. Hodges' behalf and directed Ms. Brown and Mr. Kover to leave Mr. Hodges' home because he had filed an elder abuse claim against her. A few hours later the Colorado Springs police escorted Ms. Brown and her friend from the house after they had finished packing. Ms. Brown has had no direct contact with her father since that incident. Mr. Hodges allegedly told the police and others with whom he was in contact that he did not want Ms. Brown to know of his whereabouts because he believed she was trying to harm him, perhaps by poisoning.

## C. The Intervention Statute.

The Code provides that a person is "incapacitated" if he or she is

an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to manage all or some of his or her financial resources or to meet all or some essential requirements for his or her physical health, safety, habilitation, or therapeutic needs without court-ordered assistance or the appointment of a guardian or conservator.

D.C.Code § 21-2011(11).

In turn, the Code also defines what is meant by the terms "manage financial resources" and "meet essential requirements for physical health or safety." In pertinent part, the Code states that a person is able to manage his or her financial resources if he or she can take

those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income[.]

D.C.Code § 21-2011(15). The Code states that a person is able to meet the essential requirements for physical health or safety if he or she can take

those actions necessary to provide health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness is more likely than not to occur.

D.C.Code § 21-2011(16).

These statutory definitions are the measure by which the Court must evaluate any reasonable inferences that must be drawn in favor of the party opposing summary judgment.

The Code places the burden of proof upon the Petitioner, and the standard of proof is "clear and convincing evidence." D.C.Code § 21-2003.

## D. Analysis of the Issues.

[1, 2] To be sure, the obligation to draw reasonable inferences in favor of the opposing party does not mean that the Court must assume facts that are unsubstantiated or that the Court must fill blanks where no evidence exists.

For the sake of discussion, however, it is not necessary for the Court to await the result of a fishing expedition so that the Petitioner can attempt to establish if the Subject is actually suffering from a diagnosable mental illness.

Based upon the affidavits of record, including those proffered by the Petitioner, this Court would confidently deny the Petition even if the Subject is found to have a current diagnosis of paranoia, or some type schizophrenia, or the like.

Because the Subject is not in danger of being unable to provide for himself or protect his asset[s], the mere existence of mental illness is the most that the Petitioner can realistically hope to prove. Such proof, without discrete proof of a need for a fiduciary, would not entitle the Petitioner to relief.

The Petitioner cannot prevail on this Petition by merely demonstrating that the Subject has an illness. This is because, as a matter of law, the Court is not empowered to impose a fiduciary upon the Subject if, as practical matter, he does not need one.

[3] The objective of the Code is not to insure that no citizen of the District is mentally ill. Rather, the test for imposing a court-appointed fiduciary is proof that the Subject cannot take those actions enumerated in the Code in order to provide for himself and protect himself.

The facts of record clearly show that the Subject does not need any court-ordered assistance or any Guardian or Conservator.

For the sake of brevity, the Court will not repeat all of the details in the competing affidavits. It suffices to say that even

if the Petitioner's factual renditions of old incidents are credited by the Court, they are too old to elucidate any genuine, present-day inability of the Subject to protect himself and to provide for himself.\*\*\*

[4] The Court will not quibble with the Petitioner's descriptions of the Subject's past conduct, as outlined in her affidavit. While the descriptions of the Subject's past conduct [ ] may denote behavior that is not understood by the Petitioner and which was obviously disconcerting to her, the strongest allegation as to the need for a fiduciary is that the Subject sold his home for an unreasonably low sum. He apparently did this without first informing his daughter. He left Colorado and relocated to the District. He ceased his relationship with his daughter.

This type of occurrence should always be examined closely, because it may be a trouble sign. The significance of this story about the house sale fades, however, when seen in the light of the Subject's zeal to get away from his daughter and to simply relocate himself. Selling a house for a bargain price is not unusual when the seller is in a hurry to move away.

Surmising that his daughter was attempting to poison him (for motives unstated) the Subject gave a power of attorney to his son, with instructions to sell the house. Thus, any judgment call made by the son as to the selling price cannot be fairly attributed to mental illness of his father. The sale of the house and the Subject's decision to relocate to the District came in the wake of his suspicion that his daughter had tried to poison him.

[5] The Subject may have been innocently mistaken about the poisoning theory—or he simply may have experienced a paranoid delusion altogether. However, if he believed it (for whatever reason), his

subsequent desire to move to a more protected environment (at the Home) is totally consistent with a desire to protect himself and to simplify his life. By moving to the Home, he would cease being a single homeowner and he would be in a place that could monitor his visitors and protect him.

It is clear from all of the affidavits that even if the Subject's fear of poisoning at the hands of his daughter was a paranoid delusion, it has not resulted in any inability of the Subject to handle his financial affairs or to make health care decisions for himself.

The sole, alleged bad result of the alleged poisoning delusion is that the Subject has cut off his relationship with his daughter and possibly other family members. It is she—not the Subject—who is being adversely affected by the alleged delusion. It is quite apparent from her affidavit and pleadings that the object of obtaining a court appointed Guardian is to somehow force her father to accept treatment, to rid himself of the so-called paranoia so that he will now have a friendly relationship with his daughter. A change in their relationship is the only putative goal of a cure.

There are no indications that the so-called paranoia has brought any genuine discomfort to the Subject. As long as he is not being forced to continue a relationship with his daughter, he considers that his problem has been solved and he otherwise functions well.

The pleadings, files, and records in this case conclusively show that the Petitioner is not entitled to relief. Several factors are important.

This Court is most impressed with the un rebutted affidavit evidence as to the Subject's present ability to self-manage his portfolio, to retain counsel to oppose the

\*\*\* As additional evidence to the August 1996 incident of alleged paranoia, Ms. Brown's affidavit relates that as of September 1995 Mr. Hodges had complained to the police three times that "someone had taken 'brownish'

bricks from his driveway area and had thrown them into the street," though she had always known her father's driveway to be lined by large stones not bricks.



## IN RE HODGES

D. C. 395

Cite as 756 A.2d 339 (D.C. 2000)

Petition, and to institute a power of attorney contingency plan by which his son will make decisions for him upon his incapacity.

In addition, no one disputes the fact that the Subject has established a new residence at the Home, which has its own medical facilities, a full range of personal care options, the assistance of social workers (when needed), etc.

The fact that the Subject has executed a power of attorney instrument, to address future decision-making needs, shows that he is well aware of the need for having a contingency plan in place. This is not the act of a person who is so demented or paranoid that he does not recognize the need for such coverage. He plainly does. Moreover, the Subject promptly and shrewdly retained his own attorney, instead of waiting for court-appointed counsel to act on his behalf.

Furthermore, the Court recognizes a glaring fact of life with respect to the inability of the Petitioner to demonstrate her entitlement to relief.

The Subject resides in an institution that, by historical performance, is vigilant about the mental capacity of its residents. Every year, the Home files its own Petitions for General Proceedings whenever it is apparent that a resident cannot manage his affairs or make reliable decisions about health care, etc. The Home is not shy or reluctant to take such actions and to bring these situations to the attention of the Superior Court. With the high level of inquiry and prodding by the Petitioner, it is remarkable that the Home has never filed a Petition regarding this resident.

As a practical matter, the officials and physicians of the Home are in the best position to know whether anything is seriously amiss with John T. Hodges. To avoid liability problems and in order to insure that their own bill is paid, the Home has every incentive to move with alacrity to file a Petition if any one of its residents begins to show signs of legal incapacity.

It is not in the Home's best interests to hide any such problem.

This Court will not deny the Petition simply because of the failure of the Home to take action. However, its declination to do so strongly and realistically corroborates the legal and factual contentions of the Subject.

The appointment of a fiduciary would do at least two things that are not in the Subject's interests: (1) take away his personal freedom and authority to make decisions; and (2) forcibly expend his assets to pay for such unneeded help. In addition, since it is clear that the Subject cherishes his privacy, the appointment of a fiduciary would require that all of his personal and financial business be displayed upon the public record for the rest of his life—giving the Petitioner and other[s] a gratuitous window into his life that he clearly opposes.

The Court must obey the legislature's command that the intervention law "shall be liberally construed and applied to promote its underlying purposes and policies." D.C.Code § 21-2001(a). The Court is not to liberally construe [the statute] to promote anything else. The explicit, underlying purposes and policies of the intervention law, are (in pertinent part) to "[p]romote a speedy and efficient system for managing and protecting the estates of protected individuals so that assets may be preserved for application to the needs of protected individuals and their dependents.[]" D.C.Code § 21-2001(b)(2).

The "system" for managing and protecting the assets of the Subject is already in place. Consequently, there is no lawful role for the Court to play, particularly against the express desires of the Subject.

It is true, as Petitioner argues, that the Code can be applied so as to insure that a person who is ill is able to address his or her "therapeutic" needs, even if insuring financial needs are not the issue. This would certainly include the right to obtain psychotropic medication, therapies, etc.

Court-ordered assistance is appropriate, however, only when the absence of such treatment adversely affects the Subject personally. Collateral ill effects upon persons who are neither the Subject nor his dependents are clearly not the business of the Court. The intervention statute was never designed to cast the Superior Court as the relationship police.

Ironically, the Petitioner swears in her own affidavit that on May 15, 1998, she had a conversation with a medical officer at the Home, to whom she stated that she was "trying to avoid upsetting [her] father in any way, but only wanted to provide information and to encourage them to give him help in getting him evaluated." Affidavit of Petitioner at paragraph 45. She then complains in the affidavit that the medical officer "dismissed [her] concerns" and told her to get a lawyer. Affidavit of Petitioner at paragraph 45.

If indeed the Petitioner does not want to upset her father, she has acted in a manner inconsistent with this intent. Based upon the content and tone of the Subject's affidavit and the arguments of his lawyer, it is clear that Petitioner has upset her father by filing the instant Petition.

Even before she ever filed the Petition, she [had] already accomplished the goal of alerting the officials and physicians at the Home that she suspects that her father is mentally ill and that she wants him to have treatment if he needs it. She is disgruntled that they apparently do not have the same view. This, however, is again not a reason for the Court to inject a court-appointed fiduciary into her father's life.

It is important to note the observations in the statement of one of the Petitioner's potential witnesses, James H. Brown. His statement (unsworn) is an attachment to the affidavit of the Petitioner. This person is a longtime family friend and is the former husband of the Petitioner. He ob-

\*\*\*\* By "the four of us," Mr. Brown means himself, appellant, and their two children,

serves that the Subject and the Petitioner "are both strong willed individuals and have always struggled to agree[ ] on various issues. . . . John has always had a preference for his [son] Stephen, while Leontine [their mother] preferred Alexis." Statement at 1.

Mr. Brown complains about the rejection of his inquiries and interest in the Subject by officials of the Home, stating, "Their actions have impeded any attempt to properly determine John's true mental state and reestablish a relationship between John and the four of us."\*\*\*\* Statement at 2. This is a short, plain statement of the sub-text that drives this litigation. Unmistakably, [Mr.] Brown has revealed that this Petition is designed ultimately to re-engineer the Subject's family relationships.

In context, the statement of James H. Brown tends to cast the instant Petition as an extension of the ancient sibling rivalry, and a tug of war over the affections of their father. The father is caught in the middle.

The Petitioner desires to satisfy her own curiosity about why her father has rejected her, and desires to insure that he is "cured" of this approach. This is a bald encroachment upon the Subject's personal freedom in a situation in which he otherwise needs no help from the Court.

Drawing all reasonable inferences in favor of the Petitioner, there is still no sound reason for this Court to force the Subject to undergo psychiatric examinations and treatment in order to satisfy the curiosities and goals of third persons. This is precisely what this case is all about.

On balance, the Court is utterly unconvinced that granting the Petition would do any favor for the Subject, as opposed to the Petitioner.

Mr. Hodges' grandchildren.

## II. MOTION FOR LEAVE TO SUBPOENA PHYSICIAN

The Motion is moot, but lacks merit in any event because the request to take discovery is nothing more than a request to launch a fishing expedition. This Motion will be denied, and the Court will also deny the Motion for Leave to Take Discovery.

WHEREFORE, it is by the Court this 16<sup>th</sup> day of April, 1999

ORDERED that the Subject's Motion for Summary Judgment is hereby granted. The Petition for General Proceeding is denied; and it is

FURTHER ORDERED that the Motion for Leave to Take Discovery is denied; and it is

FURTHER ORDERED that the Motion to Subpoena Physician is hereby denied; and it is

FURTHER ORDERED that the Motion to Have Nathan Billig Recognized As Expert is denied.



## § 21-2047. General powers and duties of guardian.

Except as limited pursuant to section 21-2044, a guardian of an incapacitated individual is responsible for care, custody, and control of the ward, but is not personally liable to third persons by reason of that responsibility for acts of the ward.

(a) In particular and without qualifying the foregoing, a guardian shall:

(1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

(2) Take reasonable care of the ward's personal effects and commence protective proceedings, if necessary, to protect other property of the ward;

(3) Apply any available money of the ward to the ward's current needs for support, care, habilitation, and treatment;

(4) Conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian, at least quarterly, shall pay to the conservator money of the ward to be conserved for the ward's future needs; and

(5) Report in writing the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the ward's welfare or as required by court rule, but at least semi-annually.

(b) A guardian may:

(1) Receive money payable for the support of the ward under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship;

(2) Take custody of the person of the ward and establish the ward's place of abode within or without the District, if consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward;

(3) Institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward, if no conservator for the estate of the ward has been appointed;

(4) Consent to medical examination and medical or other professional care, treatment, or advice for the ward, without liability, by reason of the consent for injury to the ward resulting from the negligence or acts of third persons, unless the guardian fails to act in good faith;

(5) Obtain medical records for the purpose of applying for government entitlements or private benefits and have the status of a legal representative under the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Code, sec. 6-2001 *et seq.*); and

(6) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(c) A guardian shall not have the power:

(1) To consent to an abortion, sterilization, psycho-surgery, or removal of a bodily organ except to preserve the life or prevent the immediate serious impairment of the physical health of the incapacitated individual, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

(2) To consent to convulsive therapy, experimental treatment or research, or behavior modification programs involving aversive stimuli, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

(3) To consent to the withholding of non-emergency, life-saving, medical procedures unless it appears that the incapacitated person would have consented to the withholding of these procedures and the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

(4) To consent to the involuntary or voluntary civil commitment of an incapacitated individual who is alleged to be mentally ill and dangerous under any provision or proceeding occurring under chapter 5 of title 21, except that a guardian may function as a petitioner for the commitment consistent with the requirements of chapter 5 of title 21 or the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective November 8, 1978 (D.C. Law 2-137; D.C. Code, sec. 6-1901 *et seq.*);

(5) To consent to the waiver of any substantive or procedural right of the incapacitated individual in any proceeding arising from an insanity acquittal; or

(6) To prohibit the marriage or divorce, or consent to the termination of parental rights, unless the power is expressly set forth in the order of appointment or after subsequent hearing and order of the court.

(d) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing personally provided to the ward, but only as approved by order of the court pursuant to section 21-2060(a). (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; May 10, 1989, D.C. Law 7-231, § 27, 36 DCR 492; Sept. 22, 1989, D.C. Law 8-34, § 2(h), 36 DCR 5035.)

## **§ 21-2055. Permissible court orders.**

(a) The court shall exercise the authority conferred in this subchapter to encourage the development of maximum self-reliance and independence of a protected individual and make protective orders only to the extent necessitated by the protected individual's mental and adaptive limitations and other conditions warranting the procedure.

(b) The court has the following powers that may be exercised directly or through a conservator with respect to the estate and business affairs of a protected individual:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court may preserve and apply the property of the individual to be protected as may be required for the support of the individual or dependents of the individual.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to an individual, the court, for the benefit of the individual and members of the individual's immediate family, has all the powers over the estate and business affairs that the individual could exercise if present and not incapacitated, except the power to make a will. Those powers include, but are not limited to:

(A) Power to obtain medical records for purposes of application for governmental entitlements or private benefits;

(B) Power to make gifts;

(C) Power to convey or release contingent and expectant interests in property, including marital property rights and any right of survivorship incident to a joint tenancy or tenancy by the entirety;

(D) Power to exercise or release powers held by the protected individual as trustee, personal representative, custodian for a minor, conservator, or donee of a power of appointment;

(E) Power to enter into contracts;

(F) Power to create revocable or irrevocable trusts of property of the estate that may extend beyond the incapacity or life of the protected individual;

(G) Power to exercise options of the protected individual to purchase securities or other property;

(H) Power to exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value; and

(I) Power to exercise any right to an elective share in the estate of the individual's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer.

(c) The court may exercise or direct the exercise of the following powers only if satisfied, after notice and hearing, that it is in the best interest of the protected individual and that the individual either is incapable of consenting or has consented to the proposed exercise of power:

(1) To exercise or release powers of appointment of which the protected individual is donee;

(2) To renounce or disclaim interests;

(3) To make gifts in trust or otherwise exceeding 20% of any year's income of the estate; and

(4) To change beneficiaries under insurance and annuity policies. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

**§ 21-2056. Protective arrangements and single transactions authorized.**

(a) If it is established in a proper proceeding that a basis exists as described in section 21-2051 for affecting the property and business affairs of an individual, the court, without appointing a conservator, may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected individual. Protective arrangements include payment, delivery, deposit, or retention of funds or property; sale, mortgage, lease, or other transfer of property; entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or addition to or establishment of a suitable trust.

(b) If it is established in a proper proceeding that a basis exists as described in section 21-2051 for affecting the property and business affairs of an individual, the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected individual's property and business affairs if the court determines that the transaction is in the best interest of the protected individual.

(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected individual and, in view of the incapacity, disappearance, or detention by a foreign power, whether the protected individual needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

## **§ 21-2070. Powers of conservator in administration.**

(a) Subject to limitation provided in section 21-2072, a conservator has all of the powers conferred in this section and any additional powers conferred by the law of the District.

(b) Without court authorization or confirmation, a conservator may invest and reinvest funds of the estate as would a trustee.

(c) A conservator, acting reasonably in efforts to accomplish a purpose of the appointment, may act without court authorization or confirmation, to perform the following:

(1) Collect, hold, and retain assets of the estate including land in another jurisdiction, until judging that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested;

(2) Receive additions to the estate;

(3) Continue or participate in the operation of any business or other enterprise;

(4) Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(5) Invest and reinvest estate assets in accordance with subsection (b) of this section;

(6) Deposit estate funds in a local or federally insured financial institution, including a financial institution operated by the conservator;

(7) Acquire or dispose of an estate asset, including land in another jurisdiction, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(8) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

(9) Subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange, partition by giving or receiving considerations, and dedicate easements to public use without consideration;

(10) Enter, for any purpose, into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(11) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or agreement;

(12) Grant an option involving disposition of an estate asset and take an option for the acquisition of any asset;

(13) Vote a security, in person or by general or limited proxy;

(14) Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(15) Sell or exercise stock-subscription or conversion rights;

(16) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(17) Insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;

(18) Borrow money to be repaid from estate assets or otherwise, advance money for the protection of the estate or the protected individual and for all expenses, losses, and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets, for which the conservator has a lien on the estate as against the protected individual for advances so made;



(19) Pay or contest any claim, settle a claim by or against the estate or the protected individual by compromise, arbitration, or otherwise, and release, in whole or part, any claim belonging to the estate to the extent the claim is uncollectible;

(20) Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;

(21) Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, amortization, or for depletion in mineral or timber properties;

(22) Pay any sum distributable to a protected individual or dependent of the protected individual by paying the sum to the distributee or by paying the sum for the use of the distributee to the guardian of the distributee, or, if none, to a relative or other person having custody of the distributee;

(23) Employ persons, including attorneys, auditors, investment advisors, or agents to advise or assist in the performance of administrative duties, act upon their recommendation without independent investigation, and instead of acting personally, employ 1 or more agents to perform any act of administration, whether discretionary or not;

(24) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and for the protection of the conservator in the performance of fiduciary duties; and

(25) Execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator. (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Mar. 24, 1998, D.C. Law 12-81, § 14(v), 45 DCR 745.)

## **§ 21-2071. Distributive duties and powers of conservator.**

A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected individual and dependents in accordance with the following principles:

(1) The conservator shall consider recommendations relating to the appropriate standard of support, education, and benefit of the protected individual or dependent made by the protected individual and a parent or guardian, if any. The conservator may not be surcharged for sums paid to persons furnishing support, education, or care to the protected individual or a dependent pursuant to the recommendations of a guardian of the protected individual unless the conservator knows that the guardian derives personal financial benefit from the recommendation, including relief from any personal duty of support, or knows that the recommendations are clearly not in the best interest of the protected individual.

(2) The conservator shall expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected individual and dependents with due regard to:

(A) The size of the estate, the probable duration of the conservatorship, and the likelihood that the protected individual, at some future time, may be fully able to be wholly self-sufficient and able to manage business affairs and the estate;

(B) The accustomed standard of living of the protected individual and dependents; and

(C) Other funds or sources used for the support of the protected individual.

(3) The conservator may expend funds of the estate for the support of individuals legally dependent on the protected individual and others who are members of the protected individual's household who are unable to support themselves and who are in need of support.

(4) Funds expended under this section may be paid by the conservator to any person, including the protected individual, to reimburse for expenditures that the conservator might have made, or in advance for services to be rendered to the protected individual if it is reasonable to expect that the services will be performed and advance payments are customary or reasonably necessary under the circumstances.

(5) A conservator, in discharging the responsibilities conferred by court order and this section, shall implement the principles described in section 21-2055(a). (Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Mar. 24, 1998, D.C. Law 12-81, § 14(w), 45 DCR 745.)

# EMERGENCY PETITIONS

# EMERGENCY ORDERS TEMPORARY GUARDIANS

## 1. APPOINTMENT OF TEMPORARY GUARDIAN FOR EMERGENCY

1. D.C. Code § 21-2046 (a) sets forth the conditions for appointment of a temporary **15-day** guardian.
  1. An incapacitated individual who has no guardian.
  2. A life-threatening emergency exists. Note that D.C. Law 13-221 substituted “life-threatening situation or a situation involving emergency care” for life-threatening emergency. This change was intended to be effective for 225 days. Counsel should check current status of the statute.
  3. Powers specified in Order appointing Temporary Guardian.
2. Procedure – Superior Court Probate Division Rule 341
  1. File petition with Probate Division (Form IIIA). Petitioner may need to file for a Permanent Guardian at the same time; file usually will be hand carried to Judge in Chambers by clerk in Probate Division. It is wise to call Judge-in-Chambers to alert clerk of forthcoming filing and ascertain available time for hearing.
  2. File proposed orders for appointment of counsel (Form III-A-3) and Temporary Guardian (Form III-D).
  3. Judge-in-Chambers appoints Counsel and possibly a Guardian *ad litem* from the Probate Division appointment list.
  4. Register of Wills serves a copy of the Petition, Order of Appointment and any Notice of Hearing on appointed counsel who files notice of appearance (Form I-D).

5. Copy of Petition, Orders of Appointment and Notice of Appointment served by Petitioner to those entitled to notice under SCR-PD 325 (a). Notice to be given to alleged incapacitated individual and Interested Persons in accordance with D.C. Code § 21-2042.
6. Proof of service by affidavit **within 15 days of appointment** or, if hearing requested, no later than time of hearing.
7. Hearing scheduled by Judge-in-Chambers **within 48 hours** of receipt of request for hearing.
8. All parties or counsel notified by telephone of hearing and Petitioner obliged to cause notice (Form III-E) to be personally served on subject and all persons listed in D.C. Code § 21-2042 (a) and SCR-PD 325 (a) if in D.C. Persons not in D.C. may be notified by telecommunications reasonably calculated to result in immediate notification.

## INFORMATION NEEDED RE MENTAL STATUS

1. Does client know his or her full name? Yes or No  
Address? Yes or No  
Birth date? Yes or No  
Current or former occupation? Yes or No
  
2. Can client tell you the names and approximate ages of his or her children? Yes or No  
If no spouse or children, can client name closest blood relative? Yes or No
  
3. Can client tell you if he or she has a will? Yes or No  
If client has a will, can client name the beneficiaries? Yes or No
  
4. If client's proposed disposition plan changes the disposition of either the intestacy statute or client's current will, what reasons does client give for this proposed change?
  
5. What is client's involvement in bill paying? Great or Small  
Balancing a checkbook? Great or Small  
Asset investment? Great or Small
  
6. Client summary of assets and values (bank accounts, securities, real estate, valuable personal property).

ASSET	VALUE

7. **How is client's vocabulary?** **Good or Poor**  
**Does client search unsuccessfully for words or make up words?** **Yes or No**
8. **What is client's appearance and demeanor?** **Normal or Inappropriate**
9. **Did client drive to the interview?** **Yes or No**  
**Driving requires complex intellectual tasks.**
10. **Does client live alone?** **Yes or No**  
**If so, client is able to perform activities of daily living (feed, dress) for himself.**
11. **Does client know today's date?** **Yes or No**
12. **Can client explain the meaning of a proverb?** **Yes or No**  
**(Client is able to think abstractly and understand that the act of signing a will can change disposition of his assets.)**
- **A stitch in time saves nine**
  - **People who live in glass houses shouldn't throw stones**

**Mini-Mental State Examination**  
continued from reverse

CLOSE YOUR EYES

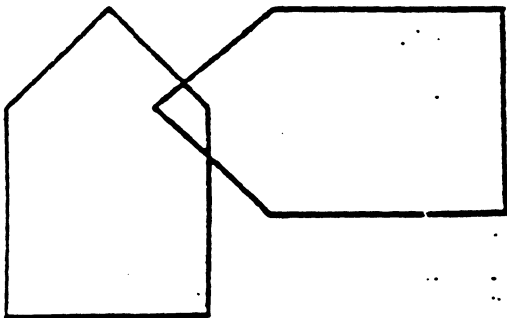
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WRITE A SENTENCE

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COPY DESIGN





# Mini-Mental State Examination

Patient's Name: \_\_\_\_\_ Patient #: \_\_\_\_\_

Examiner's Name: \_\_\_\_\_ Date: \_\_\_\_\_

Patient Score	Maximum Score
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## Orientation

_____	5	What is the (year) (season) (date) (day) (month)?
_____	5	Where are we (country) (state) (county) (city) (clinic)?

## Registration

_____	3	Name three objects, allotting one second to say each one. Then ask the patient to name all three objects after you have said them. Give one point for each correct answer. Repeat them until he hears all three. Count trials and record number.
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APPLE...BOOK...COAT                      Number of trials: \_\_\_\_\_

## Attention and Calculation

_____	5	Begin with 100 and count backward by 7 (stop after five answers): 93, 86, 79, 72, 65. Score one point for each correct answer. If the patient will not perform this task, ask the patient to spell "WORLD" backwards DLROW). Record the patient's spelling: _____ Score one point for each correctly placed letter.
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## Recall

_____	3	Ask the patient to repeat the objects above (see Registration). Give one point for each correct answer.
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## Language

_____	2	<b>Naming:</b> Show a pencil and a watch, and ask the patient to name them.
_____	1	<b>Repetition:</b> Repeat the following: "No ifs, ands, or buts."
_____	3	<b>Three-Stage Commands:</b> Follow the three-stage command. "Take a paper in your right hand; fold it in half; and put it on the table."
_____	1	<b>Reading:</b> Read and obey the following: "Close your eyes" (show the patient the item written on reverse side).
_____	1	<b>Writing:</b> Write a sentence (on reverse side).
_____	1	<b>Copying:</b> Copy the design of the intersecting pentagons (on reverse side).

_____	30	<b>Total Score Possible</b>
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THE INTERVENTION PROCESS

PLEADINGS, ETC.

# The Intervention Hearing

## BEFORE THE HEARING

SCR-PD 321(f) requires that all parties and persons entitled to participate must file and serve *a responsive pleading no later than five (5) days before the intervention hearing*, if appropriate.

### What may be included in the responsive pleading?

- *Admissions or denials of the allegations in the petition.*
- *A statement of the positions of each party or persons entitled to participate.*

To assist the parties and persons entitled to participate, the examiner and visitor reports are to be provided to the parties and filed with the Court ten (10) days before the initial hearing, providing enough time for review of the findings before the pleadings are due.

- *Any prayers for relief.*

May be included in the petition or included in the responsive pleadings based upon the evaluations and investigations of the parties or persons entitled to participate.

### **Query:**

#### What prayers for relief are common?

- ✓ Requests for appointment and issuance of emergency orders under D.C. Code § 21-2046.

Generally made by the filing of the petition in probate and a request for emergency relief. To prevail in scheduling an emergency proceeding, the issues must be life threatening.

However, in a non-emergency petition, a request can be made for relief under SCR-PD 323, appointment of a temporary six (6)-

month Guardian. This relief at the initial hearing is generally granted when the issues are not an emergency but further investigation is needed before the Court can determine whether the issues alleged in the petition are sustained. Temporary relief must be prayed for and the specific duties of the Guardian and Conservator must be outlined in the request.

- ✓ If any party requests the appointment of a temporary Guardian or Conservator pending resolution of the allegations in the petition, the party should request orders detailing the specific issues, reporting deadlines and duties to be performed pending further hearing or trial [D.C. Code § 21-2046].
- ✓ Any party may request the issuance of protective orders or the appointment of a Conservator. The moving party must show there are assets or there may be assets that will be subject to waste without protective orders or the appointment of a conservator or a temporary conservator [D.C. Code § 21-2054]. D.C. Code § 21-2055 (b) (2) gives the Court authority to preserve and apply the property of the individual to be protected as may be required for the support of the individual or dependents of the individual.
- ✓ Pending further hearing or trial, any party may request that the court enter orders freezing the assets of the subject with good cause shown (assets will be wasted or lost without said relief) and that the exercise of authority is in the best interest of the subject [D.C. Code § 21-2056].
- ✓ Pending further hearing or trial, any party may request that the court enter protective orders to preserve the property of the subject. The proposed orders or the Court's orders should be specific and provide direction for the preservation of assets pending resolution of the matter before the Court [D.C. Code § 21-2055]. Once protective orders are entered, the court has all of the powers over the estate and the business affairs that the individual could have exercised if present and not incapacitated [D.C. Code § 21-2056].

- *A statement as to whether the subject of the proceeding should be excused from the hearing, the reasons for the request and whether the subject requests that the hearing be closed.*

**Query:**

D.C. Code § 21-2054(e) requires the presence of the subject of the intervention proceeding. Good cause must be shown for the subject's absence.

What will support excusing the subject from the proceeding?

- ✓ The subject's medical condition precludes participation?
  - Yes
  - No
- ✓ The subject has dementia and will not be able to participate in the proceeding?
  - Yes
  - No
- ✓ The subject must be transported by ambulance?
  - Yes
  - No

- *Statement requesting the appointments of additional visitors, examiners or Guardian ad litem pursuant to SCR-PD 306 with a specific statement of the reasons for the requests. Where a request is made for the appointment of a Guardian ad litem, the request must outline the proposed duties of the GAL.*

**Query:**

Is one party responsible for requesting additional visitors, examiners or a Guardian ad litem?

Any party may request additional visitors, examiners or a Guardian *ad litem*. In the case of the request for a Guardian *ad litem*, the requestor must specify the duties that the GAL will perform.

When should these requests be made?

To avoid delaying the initial hearing, which is scheduled as soon as the petition is filed, all parties should determine whether additional information to be provided by a visitor, examiner or the assistance of a Guardian *ad litem* is required.

It is expected that requests for these appointments will be made either at the time of the filing of the petition or with enough time to avoid the need for rescheduling the initial hearing or requiring a further initial hearing.

- *Copies of any current evaluations, habilitation plans, social, psychological, medical or other evaluations used for diagnostic purposes or in the development of a treatment plan for the subject.*

Any party -- including the subject -- may provide the court with other evaluations that will assist the Court in determining whether the allegations in the petition are proven.

- *If the petition requests Protective Orders (appointment of a Conservator), information related to the value of the estate and a recommendation regarding the amount of bond to be set by the court.*

**Query:**

How is the value of the estate set?

D.C. Code § 21-2058 defines how a bond is to be set.

- *A statement indicating whether the proceeding may be resolved at the hearing. If the proceeding can be resolved at the hearing, the statement is to clearly state what must be determined by the Court. If the intervention cannot be resolved at the hearing, a clear statement that sets forth what issues remain and the best means for determining them.*

## THE INITIAL HEARING

### Who must be present?

- ✓ The subject, unless excused by the Court;
- ✓ Counsel for the Subject
- ✓ The Petitioner
- ✓ Counsel for the Petitioner
- ✓ The visitor, unless excused by the Court (SCR-PD 327)
- ✓ The examiner, unless excused by the Court (SCR-PD 326)

### Who are persons considered *ENTITLED TO PARTICIPATE*:

- ✓ Persons entitled to participate

The following classes of persons are considered entitled to participate pursuant to SCR-PD 325(a)(2)(4)(5)(6):

- The spouse and adult children of the subject;
- The subject's parents;
- The agent/attorney in fact of the subject nominated in a durable power of attorney;
- If the spouse or adult children of the subject or the subject's parents are not available, the nearest adult relative of the subject;
- Any person entitled to support by the subject;
- Any counsel for the subject in any other proceeding, if known to the Petitioner;
- Any other person the Court directs.

How does a person become an interested party for purposes of the hearing and further proceedings?

D.C. Code §21-3034 sets the procedure for a person to receive all Orders entered in any proceeding.

- ✓ The person seeking status as an interested person must file notice with the clerk, any appointed guardian or conservator.
- ✓ A filing fee is required.
- ✓ The request is effective only as to those proceedings that occur after the filing of the notice

**JURISDICTION**

The petitioner, at the start of the hearing, must provide a statement of jurisdiction in the petition for Court intervention. The grounds for jurisdiction are set forth in D.C. Code § 21-2021.

**NOTICE**

D.C. Code § 21-2031(b) defines the notice requirements for Intervention Proceedings.

The critical provision is found in D.C. Code § 21-2031(d), which requires *proof of giving notice must be provided by affidavit not later than the date of the hearing.*

SCR-PD 325 details who must be served and the form of the notice. The petitioner or moving party in proceedings post appointment is responsible for complying with the notice requirements.

**THE EVIDENCE**

- Under most circumstances, even if all parties agree it is in the best interests of the subject to have a guardian and/or conservator appointed, the court must have credible evidence of incapacity. Therefore, it is best practice to ensure that:



- ✓ The examiner or visitor has filed a detailed report regarding incapacity.

**and**

- ✓ The examiner or visitor is **subpoenaed** to testify to the findings detailed in the report, allowing counsel for the subject or any other interested parties to cross-examine the examiner or visitor.
- Evidence of the value of the subject's estate and income should be presented to the Court and included in the order prepared after trial.

### **Query:**

#### Who has the burden of proof?

The party who is the proponent of the issue that is not resolved at initial hearing.

#### What is the standard of proof?

The standard of proof is clear and convincing evidence.

### **THE FINDINGS, CONCLUSIONS OF LAW AND ORDERS:**

- At the end of the hearing, the court will issue oral findings of fact and conclusions of law. Where possible, counsel for the parties should endeavor to draft findings and conclusions based upon the issues that are not contested prior to the hearing. The parties will be required to prepare the final orders at the end of the initial hearing when resolution of all issues is achieved at the hearing.
- Form orders are available in the Probate Division. The orders should define the powers of the Guardian and/or Conservator and any relief ordered by the Court that is in the best interest of the subject.
- The order must also include the value of the estate if a conservator is prayed for or protective orders are sought. The orders must state the amount of the bond and any conditions that will affect the bond in the future (example: how the bond amount is to be adjusted upon the sale

of personal property or real estate or a decrease in the value of the estate.

## **Step II: Further hearings and trial**

- Any party may request the waiver of the appearance of the subject at further initial hearings/status hearings or trial. As with the initial hearing, there must be a compelling reason to waive the subject's presence.
- When the allegations in the petition cannot be resolved before or during the initial hearing, the court will set a trial date and pretrial schedule to resolve the petition.
- Fact and expert witness may be called and all rules of civil procedure including civil discovery rules apply.
- Evidence of the value of the subject's estate and income should be presented to the Court and included in the order prepared after trial.

### **Query:**

#### Who has the burden of proof?

The party who is the proponent of the issue that is not resolved at initial hearing.

#### What is the standard of proof?

- The standard of proof is clear and convincing evidence.

## **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS**

- At the conclusion of the trial, the court may issue oral findings of fact and conclusions of law and require the counsel for the parties to draft the findings of fact and conclusions of law which are to be filed with the clerk immediately after the trial is concluded, or take the matter under advisement or request that the parties confer and draft proposed findings of fact and conclusions of law.
- Where possible, counsel for the parties should endeavor to draft findings

and conclusions based upon the issues that are not contested prior to trial.

- As with the drafting of findings, conclusions and orders at the conclusion of the initial hearing, probate forms may be used to complete the orders. In some cases, the judge presiding over the case may instruct counsel to confer and draft proposed orders by a time certain on the day of the hearing.
- It behooves counsel to determine the preferred practice related to findings, conclusions and orders at the time the case is scheduled for hearing/trial.
- Form Orders are available in the Probate Division. The orders should define the powers of the guardian and/or conservator and any relief ordered by the court that is in the best interest of the subject.

# POST APPOINTMENT PROCEEDINGS

## POST APPOINTMENT RELIEF

Petition Post Appointment (Form IIQ) must be filed (D.C. Code § 21-2062 and SCR-PD322) for all proceedings subsequent to the appointment of a Guardian or Conservator. The requirements:

- The Petition Post Appointment must be sworn.
- File a notice of hearing (Form IJ) and form for appointment of counsel with petition.
- Notice of hearing must be served in the same manner as a notice of hearing for the original petition on:
  - ☞ Incapacitated individual;
  - ☞ Attorney of record for each party or the party if not represented by an attorney;
  - ☞ Any person who has filed an effective request for notice.
- Petition should include a detailed statement of the relief suggested.
- Objection to the petition shall be filed within 10 days of service of petition and notice or 13 days if service was by mail.

Examples of relief that may be requested or subjects that may be addressed in a Petition Post Appointment include:

- Permission to sell real property if the original bond did not cover the value of the real property.
- Request for bond if none posted originally or for reduced bond.
- Request for a special accounting.
- Request for order directing distribution.
- Request for removal of Conservator or Guardian and appointment of a Temporary Guardian or Conservator [D.C. Code § 21-2046 (b)].
- Request for instructions concerning fiduciary responsibility.
- Termination of Guardianship/Conservatorship [D.C. Code § 21-2075].
- Objection to or modification of a Guardianship report or Conservatorship plan.
- Resignation of Guardian and/or Conservator and request for appointment of Successor Guardian and/or Conservator.
- Authority for specific health care decisions.
- Request for increase or limit of powers of Guardian or Conservator, e.g. any

permissible powers pursuant to D.C. Code §§ 21-2055 and 2056 specifically not granted in the initial order.

- Power to make gifts.
- Power to convey or release contingent and expectant interests in property, including marital property rights and any right of survivorship incident to a joint tenancy or tenancy by the entirety.
- Power to exercise or release powers held by the protected individual as Trustee, Personal Representative, Custodian for a minor, Conservator, or Donee of a Power of Appointment.
- Power to create revocable or irrevocable trusts of property of the estate that may extend beyond the incapacity or life of the protected individual.
- Power to change beneficiaries under insurance and annuity policies and to surrender policies for their cash value.
- Power to exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value.
- Power to exercise any right to an elective share in the estate of the individual's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by *inter vivos* transfer.

- To exercise or release powers of appointment of which the protected individual is donee.
- To renounce or disclaim interests.
- To make gifts in trust or otherwise exceeding 20 per cent of any year's income of the estate.



# BIOETHICS

## Faculty

### ANDREA J. SLOAN

Andrea J. Sloan received her J.D. from Georgetown University and a B.S. in nursing from the University of Pittsburgh. Her practice includes Health Law, Employment Law, Conservatorship, Guardianships, Healthcare Risk Management and Bioethics as well Disciplinary Matters. Ms. Sloan has served on the Steering Committee for the Health Law Section of the D. C. Bar, the DCHA Subcommittee for Advance Directives, the Metropolitan Washington Bioethics Network Board, and currently chairs a Visitors Panel for the Bioethics Network Pro Bono Visitors Consultation Program. She is admitted to practice in Virginia and the District of Columbia and is licensed as a registered nurse in the District of Columbia.

# THE BIOETHICS VISITORS PROGRAM

The Metropolitan Washington Bioethics Network<sup>1</sup> provides a *pro bono* **BIOETHICS ADVISORY PANEL**, to the Court for bioethics consultation in Guardianship/Conservatorship cases.

Since 1996, Bioethics Visitors panels have assisted the Probate Division of the District of Columbia Superior Court, offering consultation in matters ranging from appropriateness of certain family members to serve as fiduciaries, to questions regarding “Do Not Resuscitate Orders” and issues concerning the withdrawal of feeding tubes and ventilators.

## I. The Bioethics Advisory Panel is:

- A. **Appointed** by the Court to serve as a **Visitor** pursuant to D.C. Code §21-2033 and SCR-PD 327;
- B. A **panel of three** persons who shall not be affiliated with any institution involved in the case, nor have any other conflict of interest;
- C. **Multi-disciplinary** in composition and may include physicians, nurses, healthcare attorneys, social workers, bioethicists, healthcare administrators, clergy, medical therapists, etc.;
- D. **Chaired by an individual** who has participated in a bioethics consultation service;

and

- E. **Required to visit** the ward, **review** relevant records, **interview** healthcare providers and other interested parties.

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<sup>1</sup>For further information, contact Joan Lewis at the District of Columbia Hospital Association, 202.682.1581 or Andrea J. Sloan at 703.438.9200.

II. The Bioethics Panel:

A. **Identifies** bioethical issues, based on visits, interviews and other findings and in accordance with accepted principles of bioethics;

B. **Reports** its findings to the Court as required, in *writing* or *by appearance*;

and

C. **Serves** only in an *advisory capacity* on such issues.

III. The Bioethics Advisory Panel may **NOT**:

A. **Issue formal recommendations** in any matter;

or

B. **Assume any other role** in the matter, including examiner, counsel, Guardian *ad litem*, temporary or permanent Guardian or Conservator, or healthcare provider.

IV. When can a Visitor be requested?

A. The Petitioner may request the appointment of a Bioethics Visitor in the petition.

B. Any interested party may request the appointment of a Bioethics Visitor at any time during the Intervention Proceeding.

C. A Guardian or Conservator may request a Bioethics Visitor for consultation on issues post-appointment.

## DUTIES OF THE GUARDIAN AND CONSERVATOR: THE COMMUNITY PERSPECTIVE

The District of Columbia Code sets out the broad range of statutory duties of the Guardian in § 21-2047 and the duties of the Conservator in § 21-2071 and § 21-2072. However, when an attorney or other individual is appointed by the Court to be a Guardian, the healthcare community has some specific expectations. Following is a list of actions the Guardian should take within the first 30 days of appointment.

- VISIT the Ward in person as soon as possible following the appointment.
- CONTACT the Ward's primary physician and other healthcare providers as soon as possible after the appointment.
- CONTACT the community social worker or care manager if the Ward resides at home.
- CONTACT the Administrator *and* social worker *and* the head nurse of the unit on which the Ward resides if the Ward is in a nursing home.
- OBTAIN pertinent medical records and the current plan of care for the Ward from all available sources.
- DISCUSS the following with all healthcare providers, especially primary physician and facility where the Ward is placed (hospital, nursing facility, assisted living, home care agency, hospice, etc.):
  1. What is the current diagnosis and prognosis for the Ward? Make a very specific determination of the Ward's ability to make or participate in decision-making.
  2. What is the plan of care for the Ward? If in a nursing facility, is the plan supported in the MDS (Minimum Data Set)? Are there instructions or Court Orders for "Do Not Resuscitate," "Do Not Hospitalize," or other specific indication of the Ward's wishes?
  3. What are the planned treatments for the Ward? Determine the risks and benefits of these treatments and the expected outcomes. Is it ethically

appropriate to consider aggressive palliative care, while limiting such therapies as dialysis, ventilator support and/or feeding tubes?

- IDENTIFY ethical issues surrounding the care of the Ward. Seek a bioethics consultation through the institution in which the Ward resides, if available, or a Bioethics Visitor through the Court.
- PROVIDE your address, telephone, fax and e-mail information to each individual you contact regarding the Ward's care.
- PROVIDE contingency contact information to each individual you contact regarding the Ward's care. Remember: The health of the Ward is already fragile and a member of the healthcare team may need to be in contact at any time; the Guardian must be reasonably available 24 hours/day, 7 days/week, or make arrangements for coverage if unavailable for any extended period.
- CONTACT known family members, friends, neighbors or co-workers or other persons who may have knowledge about the Ward, the Ward's family, finances and other issues.
- CONTACT a chaplain or other clergy person to determine and address the Ward's spiritual needs.
- DISCUSS with the Ward, if possible, whether the Ward has made any written Advance Medical Directives or whether the Ward has any specific wishes regarding providing, withholding or withdrawing medical care including spiritual or religious beliefs as they may have an impact on healthcare decisions.
- DISCUSS Advance Medical Directives with all healthcare providers, family members and significant others in the community to determine whether the Ward has made any such wishes known orally or in writing, including spiritual or religious beliefs as they may have an impact on health care decisions.
- PROVIDE written medical directives to all healthcare providers based on the information obtained through discussions with the Ward, family and significant others.
- ADDRESS medical directives regarding end-of-life care if the Ward is

elderly, has dementia or is seriously ill.

At a minimum, the Ward's CODE STATUS (whether or not resuscitation will be initiated in the event of cardiac or respiratory arrest) and whether or not the use of ARTIFICIAL NUTRITION AND HYDRATION is appropriate should be determined. Obtain court orders, as necessary to affect the Ward's wishes and appropriate care.

- IDENTIFY financial resources available to carry out the wishes of the Ward or financial constraints for providing the Ward's care.
- IDENTIFY funeral arrangements made by the Ward. If none have been made, DISCUSS the Ward's wishes with the Ward, the Ward's family and/or significant others in the community.
- MAKE funeral arrangements if none have been made. If the Ward is indigent, identify other sources of funds for such arrangements.

# APPENDIX



PETITION FOR GENERAL INTERVENTION PROCEEDING

PERMANENT GUARDIANSHIP - (Limited, General or Successor)  
PERMANENT CONSERVATORSHIP - (Limited, General or Special)  
PROTECTIVE ORDER

GUIDELINES REGARDING SERVICE OF NOTICE OF INITIAL  
HEARING ON PETITION FOR GENERAL INTERVENTION PROCEEDING

I. Form Notice of Hearing.

- A. Form II-J to be sent to subject of proceeding and others required to receive notice, together with information sheet attached thereto explaining purpose of proceeding, procedure, significance and rights to which parties are entitled.
- B. Form II-J1, together with "Your Hearing Rights" information sheet may be sent to subject of proceeding in lieu of Form II-J.

II. Service of Notice of Hearing Form.

- A. Individuals to be served. (D.C. Code Section 21-2042, 21-2053 & SCR-PD 325)
  - (1). Subject of proceeding.
  - (2). Spouse and adult children of subject of proceeding, or, if none, parents.
  - (3). Any Guardian, Conservator or custodian.
  - (4). Agent/attorney-in-fact of subject nominated in Durable Power of Attorney (See 21-2083(b)).
  - (5). If no one in (2) through (4) above exists, then to at least one of the nearest adult relatives of the subject of proceeding if any can be found. (Notice may be given to others within same class).
  - (6). Any person entitled to support by the subject.
  - (7). Each person with a higher priority pursuant to 21-2043 or 21-2057, as applicable.
  - (8). Any other person as the Court directs.
  - (9). Any person who has filed an effective request for notice pursuant to SCR-PD 304 (Form I-C).

III. How service is to be effected. SCR-PD 325 requires that procedures for notice be given in accordance with SCR PD 311.

- A. Personal Service. SCR-PD 311 requires that notice of hearing be served Personally by petitioner's counsel or other agent, other than petitioner, on the following:
  - (1). Subject of proceeding.

(2). Any person required to be served under SCR-PD 325 who resides in the District of Columbia.

- B. Service by Certified or Ordinary First Class Mail. Pursuant to 21-2042, 2053 and SCR-PD 311 notice may be served on all other persons by certified or ordinary first class mail addressed to the person being notified at the person's place of residence or office as provided in 21-2031.

Time for Notice. SCR-PD 311(c) provides that notice be delivered or mailed as appropriate, no less than 17 days before the hearing. It is noted, however, that 21-2031(b) (1), (2) and (3) provide the only statutory time frame for notice and these statutory provisions require 17 days notice before the time set for hearing if by mail, but only 14 days notice before hearing if by personal delivery.

Different Method and Time of Notice. The Court, for good cause shown upon petition, may provide for a different method of time or giving notice of any hearing [see 21-2032(c)].

Proof of Service. [SCR-PD 311(c) (6)].

- A. Proof of personal service to be by affidavit (Form I-K) filed no later than the time set for hearing.
- B. Proof of mail service to be by affidavit (Form I-K1) filed no later than the time set for hearing.

Waiver of Notice. [21-2032 & SCR-PD 311(d)]. The subject of the proceeding, a Ward or Protected Person may not waive notice. All others may waive notice in writing (Form I-L).

Notice to attorney. Notice shall be given to the attorney of record for any person required to be notified, or to the attorney to whom the person has requested that notice be sent.

GUIDELINES REGARDING SERVICE OF INITIAL PETITION FOR GENERAL INTERVENTION PROCEEDING

PERMANENT GUARDIANSHIP - (Limited, General or Successor)

PERMANENT CONSERVATORSHIP - (Limited, General or Special)

PROTECTIVE ORDER

1(c) A. Service of Petition.

1. On subject of proceeding by First Class Mail within three days of filing of petition.

) 321(c) 2. Service also required on the following by First Class Mail within three days of filing of petition:

(a). Subject of proceeding (unless subject is petitioner).

(b). Subject's counsel, if known.

(c). All other persons entitled to notice under 21-2042.

(1). Persons (aside from subject) who must be served with copy of petition as listed in 21-2042 and required by SCR-PD 321

[a]. Spouse, or in none, adult children, or, if none, parents. (It would appear that adult children should also be served with a copy of the petition to coincide with hearing notice requirements of SCR-PD 325).

[b]. Any Guardian, Conservator or person who has custody of the subject of the proceeding.

[c]. If no spouse, adult children nor parents, then to at least one of the nearest adult relatives of the subject, if any can be found.

[d]. Any other person as directed by the Court.

B. Proof of Service. By Certificate of Service as set forth on Form II-A.

Superior Court of the District of Columbia

PROBATE DIVISION

II-JI

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

**YOUR HEARING RIGHTS**

As the subject of an intervention proceeding, you have the following rights:

1. To have your partial or total incapacity proved by clear and convincing evidence by the petitioner.
2. To an attorney of your own choice or to have an attorney appointed for you if you have not retained an attorney.
3. To be present at the hearing.
4. To present evidence on your own behalf.
5. To cross-examine witnesses who testify against you, and the right to cross-examine any examiner and visitor.
6. To remain silent.
7. To have the hearing open or closed to the public at your election.
8. The right to appointment of an examiner unless a report on you has been submitted to the Court.

**GENERAL RIGHTS**

1. Unless it is waived, notice of hearings in these proceedings must be given to each of the following:

A. The subject of the petition and his or her spouse and adult children, or if none, parents;

B. Any person who is serving as guardian or conservator, or who has the care and custody of the individual alleged to be incapacitated:

C. In case no other individual is notified under paragraph (A) of this subsection, at least one of the nearest adult relatives, if any can be found; and

D. Any other person as directed by the Court.

2. The subject of the petition may not waive notice. Other individuals including a guardian ad litem or other fiduciary may waive notice by a signed writing with the court.

3. Upon the filing of the petition the Court will appoint an attorney to represent the subject of the petition, unless the individual has retained counsel.

4. At any point in the proceeding, the Court may appoint a guardian ad litem to prosecute or defend the interest of any individual if the Court determines that representation of the interest otherwise would be inadequate.

5. Upon the filing of the petition, the Court may appoint a visitor and an examiner pursuant to D.C. Code §§ 21-2042 or 21-2045. The examiner and visitor will be separate individuals. Each must file and serve on all parties written reports no later than 10 days before the date of the hearing.

**POSSIBLE CONSEQUENCES OF A FINDING OF  
INCAPACITY OF THE RESPONDENT**

At the hearing a guardian may be appointed for your person, and/or a conservator for your estate. The appointment may affect or transfer to the guardian or conservator title to your property, your right to contract, to manage and control your property, to give informed consent for medical treatment, to fix your place of residence, and other important rights.

**GENERAL CONSEQUENCES**

Persons with personal and/or financial dealings with you must be aware that appointment of a guardian or conservator may affect or transfer to the guardian or conservator title to your property, your right to contract, to manage and control of property, to give informed consent to medical treatment, to fix the place of residence and other important rights.

Parties are entitled to the following rights: to respond in writing to the above petition; to appear through counsel; to participate at the hearing; to conduct discovery with the Court's permission; and to receive copies of pleadings filed by other parties.

Any person who is not a party but who wishes to participate in the hearing must file a proper petition (Petition for Permission to Participate) and proposed order (Order Permitting Participation) in accordance with SCR-PD 303(b).

Date of Notice: \_\_\_\_\_

**NOTE:** Pursuant to SCR-PD 311(c)(3), this notice must be mailed no less than 17 days, or personally delivered no less than 14 days, before the time set for the hearing.

Copies to:

Parties to the above captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR-PD 304.

Proof of service required in accordance with SCR-PD 311(c)(6) in Form I-K.

Superior Court of the District of Columbia

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

PETITION FOR PERMISSION TO PARTICIPATE

In accordance with SCR-PD 303, I, \_\_\_\_\_,  
(Name of petitioner)

hereby seek permission to participate in this proceeding in the following manner: \_\_\_\_\_.

I am not required to be notified of this proceeding by D.C. Code §21-2042(a) or 21-2053(a).

My relationship (if any) to the subject of the proceeding is as follows: \_\_\_\_\_.

My participation in the proceeding will serve the best interests of the subject of the proceeding because: \_\_\_\_\_.

Wherefore, I request that an order be entered permitting me to participate in this proceeding, and for such other relief as the nature of the case may require and the Court may deem just and proper.

VERIFICATION

I \_\_\_\_\_, being first duly sworn, on oath, depose and say that I have read the following pleadings by me subscribed and that the facts therein stated are true to the best of my knowledge, information and belief.

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.



\_\_\_\_\_  
(Signature of attorney)

\_\_\_\_\_  
(Name of petitioner)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Tel. No.

\_\_\_\_\_  
Tel. No.

\_\_\_\_\_  
Bar No.

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_,  
19 \_\_\_\_, a copy of the foregoing \_\_\_\_\_ was  
served by first class mail, postage prepaid, upon the following  
parties to the above captioned case and persons granted permission  
to participate pursuant to SCR-PD 303 and persons who requested  
notice pursuant to SCR-PD 304.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

Superior Court of the District of Columbia

I-B

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

ORDER PERMITTING PARTICIPATION PURSUANT TO SCR-PD 303

Upon consideration of the petition of \_\_\_\_\_,  
filed herein on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, for  
permission to participate in the above-captioned proceeding and  
it appearing to the Court that the best interests of the subject  
of the proceeding will be served thereby, it is by the Court  
this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_,

ORDERED, that the petitioner is granted permission to  
participate in said proceeding upon the following terms and  
conditions:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
JUDGE

Copies To:

**SUBPART V**  
**Foreign Conservators**

V-A Power of Attorney Appointing Agent to Accept  
Service of Process . . . . . not yet available

|  
\$25.00  
Certificate

Superior Court of the District of Columbia

I-C

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

REQUEST FOR NOTICE

In accordance with SCR-PD 304, \_\_\_\_\_  
(Name of requestor)

requests copies or notice of any petition, motion, pleading, order or other paper filed in the above-captioned intervention proceeding after the filing and service of this request. Notice may be served on the undersigned and upon the undersigned's attorney at the addresses and telephone numbers shown below.

The undersigned has an interest in the proceeding of the above-named individual because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DC Bar Number: \_\_\_\_\_

Date: \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Attorney)

\_\_\_\_\_  
(Signature of Requestor)

\_\_\_\_\_  
(Typewritten Name of Attorney)

\_\_\_\_\_  
(Typewritten Name of Requestor)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

Telephone No. \_\_\_\_\_

Telephone No. \_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_,  
19 \_\_\_\_\_, a copy of the foregoing \_\_\_\_\_ was  
served by first class mail, postage prepaid, upon the following  
parties to the above captioned case and persons granted permission  
to participate pursuant to SCR-PD 303 and persons who requested  
notice pursuant to SCR-PD 304.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
Signature

Superior Court of the District of Columbia

I-D

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_ An Adult

NOTICE OF APPEARANCE

The undersigned \_\_\_\_\_, whose address, telephone and bar number appear below, agrees to represent zealously the legitimate interest of the subject of the proceeding in accordance with D.C. Code §21-2033(b) and SCR-PD 305

Counsel is court-appointed.

Counsel has been retained by the subject of the proceeding.

\_\_\_\_\_  
Name of Counsel

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Unified Bar No.

CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, a copy of the foregoing \_\_\_\_\_ was

served by first class mail, postage prepaid, upon the following parties to the above captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR-PD 304.

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Signature

Superior Court of the District of Columbia  
PROBATE DIVISION

I-E

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

ORDER APPOINTING COUNSEL

Upon consideration of the petition for an intervention proceeding, the Court hereby appoints \_\_\_\_\_ Counsel for \_\_\_\_\_, the subject of the above proceeding. Counsel shall perform the duties set forth in D.C. Code §21-2033(b) and SCR-PD 305 and represent the subject at the hearing to be held on \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Judge



Superior Court of the District of Columbia

I-F

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

ORDER APPOINTING GUARDIAN AD LITEM

Pursuant to D.C. Code §21-2033(a) and SCR-PD 306, the Court hereby appoints \_\_\_\_\_ guardian ad litem for the following purpose(s):

- To prosecute or defend the interest of \_\_\_\_\_ because the Court has determined for reasons stated below that representation of the interest otherwise would be inadequate.
- To assist the subject of this intervention proceeding to determine his or her interests in regard to this proceeding.
- To determine the interests of the subject of this intervention proceeding in regard to this proceeding because the subject is:
  - unconscious
  - otherwise wholly incapable of determining his or her interest in this proceeding even with assistance.

The Guardian ad litem is appointed for the following reasons: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and shall perform the following specific duties: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Guardian ad litem shall not serve as an independent finder of fact, investigator, ombudsman or other neutral party in this proceeding.

Superior Court of the District of Columbia

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

PETITION OF CLAIMANT FOR DETERMINATION OF CLAIM

1. A statement of claim was filed on \_\_\_\_\_  
by the undersigned who seeks payment of \_\_\_\_\_  
for the following described consideration: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Conservator has

- allowed claim but has not paid claim
- not denied claim and sixty days have passed since claim deemed presented
- denied claim

3. Claimant seeks the following relief with respect to the claim.

- an order allowing the claim which the conservator must address no later than the next accounting
- an order directing the conservator to pay the claim by a date certain
- an order directing the conservator to perform specified acts listed below
- an order directing the conservator to allow security from the estate
- an order allowing an attachment or garnishment
- other (describe) \_\_\_\_\_

\_\_\_\_\_  
Attorney for Claimant

\_\_\_\_\_  
Claimant

CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_,

19\_\_\_\_, a copy of the foregoing \_\_\_\_\_ was

served by first class mail, postage prepaid, upon the following parties to the above captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR-PD 304.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
Signature

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

PROBATE DIVISION

IN RE:

)

)

Intervention Proceeding No.

)

\_\_\_\_\_

An Adult

)

STATEMENT OF CLAIM PURSUANT TO SCR-PDIP 308

Name, address and telephone number of claimant:

\_\_\_\_\_  
\_\_\_\_\_

Amount of Claim: \_\_\_\_\_

(Attach supporting documents)

\_\_\_\_\_  
\_\_\_\_\_

Name, address and telephone number of attorney for claimant:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Claimant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing statement of claim was delivered/mailed by first class mail postage prepaid to \_\_\_\_\_ conservator herein.

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Date Mailed

Superior Court of the District of Columbia  
PROBATE DIVISION

IN RE:

Intervention Proceeding

\_\_\_\_\_  
An Adult

No. \_\_\_\_\_

AFFIDAVIT OF SERVICE BY MAIL

I, \_\_\_\_\_, being first duly sworn, say: That I am over the age of eighteen years and am not a party to the above entitled action and that my address is \_\_\_\_\_

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ I served the attached Notice of Hearing on Petition on the person or persons named below by placing in an official depository of the United States Postal Service a copy of the Notice of Hearing on Petition enclosed in an envelope, postage prepaid, addressed to the person or persons as set forth below.

Names of Persons Served:	Address	Date of Mailing
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_  
Affiant's signature

Subscribed and sworn before me \_\_\_\_\_, 19\_\_\_\_,

\_\_\_\_\_  
Notary Public/Clerk

Superior Court of the District of Columbia  
PROBATE DIVISION

IN RE:

Intervention Proceeding

\_\_\_\_\_  
An Adult

No. \_\_\_\_\_

AFFIDAVIT OF PERSONAL SERVICE

I, \_\_\_\_\_, being first duly sworn, say: That I am over the age of eighteen years and am not a party to the above entitled action and that my address is \_\_\_\_\_

That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ I served personally the attached Notice of Hearing on Petition on the person or persons named below by delivery to and leaving with the person or persons at the time and place set forth below a copy of the said notice.

Names of Persons Served	Address	Place of Service	Date of Service
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\_\_\_\_\_  
Affiant's signature

Subscribed and sworn before me \_\_\_\_\_, 19\_\_\_\_,

\_\_\_\_\_  
Notary Public/Clerk

Superior Court of the District of Columbia

I-J

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

**NOTICE OF HEARING ON SUBSEQUENT PETITION**  
(Pursuant to D.C. Code §21-2031 and SCR-PD 311 and 322)

You are advised that a hearing has been scheduled before the District of Columbia Superior Court, 500 Indiana Avenue, N.W., at \_\_\_\_\_ a.m. on \_\_\_\_\_, 19\_\_\_\_ in Courtroom \_\_\_\_\_ for the purpose of considering whether to grant the relief requested in the following described petition: \_\_\_\_\_.

A person entitled to file a response who wishes to do so must file the response within ten days of the date of this notice (or 13 days if this notice has been mailed). A copy of the response must be sent to the persons whose name(s) appear(s) below under "copies to". At the hearing the Court will hear from all parties and persons entitled to participate and may take testimony on the issues presented.

At the hearing to which this notice relates the above described pleading will be considered.

Parties are entitled to the following rights: to respond in writing to the above petition; to appear through counsel; to participate at the hearing; to conduct discovery with the Court's permission; and to receive copies of pleadings filed by other parties.

Any person who is not a party but who wishes to participate in the hearing must file a proper petition (Petition for Permission to Participate) and proposed order (Order Permitting Participation) in accordance with SCR-PD 303(b).

Date of Notice: \_\_\_\_\_

**NOTE:** Pursuant to SCR-PD 311(c)(3), this notice must be mailed no less than 17 days, or personally delivered no less than 14 days, before the time set for the hearing.

Copies to:

Parties to the above captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR-PD 304.

Proof of service required in accordance with SCR-PD 311(c)(6) in Form I-K.



Superior Court of the District of Columbia

I-L

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult.

WAIVER OF NOTICE OF HEARING ON PETITION  
(IN ACCORDANCE WITH D.C. CODE §21-2032)

I, \_\_\_\_\_, have been informed of the hearing scheduled before the Fiduciary Judge at \_\_\_\_\_ o'clock on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in Courtroom \_\_\_\_\_.

I have received a copy of the Petition that is to be heard at that time.

I understand that I may have the right to respond to that Petition within 10 days of receiving it.

I hereby waive notice of said hearing.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, a copy of the foregoing \_\_\_\_\_ was served by first class mail, postage prepaid, upon the following parties to the above captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR-PD 304.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

Superior Court of the District of Columbia

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

PRETRIAL STATEMENT OF \_\_\_\_\_

I. Facts

All

Parties (1) brief statement of the nature of the controversy:

II. ISSUES

All

Parties (2) concise statement of petitioner's claims:

All

Parties (3) concise statement of position of the subject of the petition:

All

Parties (4) concise statement of any other positions:

**III. RELIEF:**

Petitioning

Party (5) itemization of all prayers for relief:

Subject of

the petition

(6) statement in opposition to relief sought  
and/or itemization of prayers for relief:

Other parties

(7) itemization of all prayers for relief:

**IV. CONDUCT OF TRIAL**

All

Parties (8) names and address of all witnesses

(except impeachment witnesses to be called at trial)

All

Parties (9) specific designation of all non-oral evidence

(except impeachment evidence) to be introduced at  
trial and not attached hereto, including records,  
x-rays, photographs, diagrams, deposition, etc:

All

Parties (10) request for stipulations--facts to be deemed admitted, documents to be admitted without formal proof, mortality tables to be utilized, etc.:

All

Parties (11) unusual cases or statutory provisions to be relied on:

All

Parties (12) estimation of trial time: \_\_\_\_ days

#### V. SETTLEMENT

All

Parties (13) what is the maximum minimum relief now acceptable to your client:

#### VI. OTHER MATTERS

All

Parties (14) any other matter which is pertinent to the settlement of the case or the preparation of the Court's pretrial order.

Respectfully Submitted,

\_\_\_\_\_  
Unified Bar No.

\_\_\_\_\_  
Signature of Party or Counsel

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Address

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ a copy of the foregoing \_\_\_\_\_ was served by first class mail, postage prepaid, upon the following parties to the above captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR-PD 304.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Superior Court of the District of Columbia

II-A-1

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

ACCEPTANCE OF

guardian

conservator

and

consent to jurisdiction if not same individual  
as petitioning party.

I do hereby accept the duties of the office of  
 guardian  conservator of

\_\_\_\_\_  
(Name of ward/protected person)

and consent to personal jurisdiction in any  
action instituted in the District of Columbia  
by any interested person against me as   
guardian  conservator arising out of the  
duties of my office and if a non-resident, I  
do hereby irrevocably appoint the Register of  
Wills and successors in office as the person  
upon whom all notice and process issued by a  
competent court in the District of Columbia  
may be served with the same effect as personal  
service in relation to all suits or matters  
pertaining to the proceeding in which letters  
of

guardianship, and/or

conservatorship shall issue.

<u>Rule Number</u>	<u>Title</u>	<u>Page Number</u>
SCR-PD 323	Procedures in proceedings for appointment of 6-month temporary guardian	31
SCR-PD 324	Procedures for appointment of a successor conservator	32
SCR-PD 325	Notice of initial hearing on petition	33 - 34
SCR-PD 326	Examiner, duties and appointment	35
SCR-PD 327	Visitor, duties and appointment	36 - 37
SCR-PD 328	Guardianship reports	38 - 39
SCR-PD 329	Individual conservatorship plan and inventory	40 - 41
SCR-PD 330	Accounts and reports of conservators	42 - 44
SCR-PD 331	Audit of accounts	45 - 46
SCR-PD 332	Bonds	47
SCR-PD 334	Appraisal	48
SCR-PD 335	Statement of distribution and Settlement	49
SCR-PD 341	Procedures in proceedings for appointment of 15-day temporary guardians	50 - 52
SCR-PD 350	Procedures in proceedings for appointment of conservator for a missing, disappeared or detained person	53 - 55
SCR-PD 351	Conservatorship of estate of missing Person	56 - 57
SCR-PD 361	Foreign conservators	58 - 60

Incorporating all changes through 7/19/89

**SCR-PD-300** Rules governing guardianship and protective proceedings

Subpart I - All Proceedings

**SCR-PD-301** Scope, purpose and effective date

(a) Scope. These rules apply to intervention proceedings 21-2001(3)  
filed under the District of Columbia Guardianship, Protective 21-2002  
Proceedings, and Durable Power of Attorney Act of 1986, 21-2011(2)  
hereinafter the Guardianship Act of 1986. (D.C. Code  
§21-2001 to 2085). All intervention proceedings shall be filed  
in the Probate Division of The Superior Court of the District of  
Columbia.

(b) Effective Date. These Rules apply to intervention D.C. Bill 8-226  
proceedings filed on or after September 30, 1989. §2(a)&(c)

(c) Continuation of existing conservatorship proceedings. D.C. Bill 8-226  
Nothing herein shall affect any conservator appointed by the §2(c) &  
Court upon a petition filed before September 30, 1989. 21-2002(c)  
Conservators in proceedings under D.C. Code §21-1501 et seq.  
shall continue to be governed by SCR Civil 301-310. 21-2052(a)



**SCR-PD-302** Forms of pleadings and petitions

All proceedings (except foreign conservatorships) shall be initiated by the filing of a petition. Application to the Court for an order in any pending proceeding shall be by verified petition served on the parties and those entitled to notice in accordance with the statute and these Rules. **21-2022**

All petitions shall set forth the relief requested and contain a brief statement of the petitioner's entitlement to that relief. A proposed order shall accompany the petition. Motions in accordance with SCR-Civil 12 shall not be required except as specifically required by these Rules or as the Court may direct.

Superior Court of the District of Columbia

IV-B

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

**NOTICE OF HEARING ON PETITION FOR PROTECTION OF  
PROPERTY OF A MISSING, DISAPPEARED OR DETAINED PERSON**

NOTICE IS HEREBY GIVEN that a Petition for the

- Appointment of a General/Limited/Special Conservator
- Entry of a Protective Order

has been filed by \_\_\_\_\_ for  
(Petitioner)

\_\_\_\_\_. Hearing has been set to  
(Subject of Proceeding)  
consider the petition on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, at \_\_\_\_\_ M., before the presiding Fiduciary Judge  
of the District of Columbia Superior Court, 500 Indiana Avenue,  
N.W.

Petitioner states that \_\_\_\_\_, the  
subject of the proceeding, is missing and that:

The subject has property that will be wasted or  
dissipated unless property management is provided (delete if not  
applicable); and/or

Money is needed for support, care, and welfare of  
those entitled to the subject's support and protection is  
necessary or desirable to obtain and provide money (delete if not  
applicable).

The subject of the proceeding has a right to appear and  
inform the Court that he or she is not missing. At the hearing  
the Court will hear from all parties and persons entitled to  
participate and may take testimony on the issues presented and  
may then grant the relief requested.

Parties are entitled to the following rights: to respond in  
writing to the above petition by sending a response with a copy  
to the Court, to those persons whose names appear below under  
"copies to"; to appear through counsel; to participate at the  
hearing; to conduct discovery with the Court's permission; and to  
receive copies of pleadings filed by other parties.

Any person who is not a party but who wishes to participate in the hearing must file a proper petition (Form I-A) and proposed order (Form I-B) in accordance with SCR-PD 303(b).

First published:

---

Name of newspaper:

---

TRUE TEST COPY

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Register of Wills

Superior Court of the District of Columbia

IV-A

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

PETITION FOR

- Appointment of Conservator
- Appointment of Special Conservator
- Entry of a Protective Order

IN THE CASE OF A MISSING, DISAPPEARED OR DETAINED PERSON

1. (a) \_\_\_\_\_  
(Name of Petitioner)

(b) \_\_\_\_\_  
(Address of Petitioner)

(c) \_\_\_\_\_  
(Petitioner's Relationship to Subject of Proceeding)

2. (a) \_\_\_\_\_  
(Name of Subject of Proceeding)

(b) \_\_\_\_\_  
(Age of Subject of Proceeding)

(c) \_\_\_\_\_  
(Address and Residence of Subject of Proceeding)

3. \_\_\_\_\_  
\_\_\_\_\_  
(Name and Address of Guardian, if any)

4. This Court has jurisdiction because:

- (a) the subject of the proceeding is domiciled in the District of Columbia.
- (b) property is located in the District of Columbia that belongs to the subject.
- (c) property of the subject is coming, or has come, into the control of a conservator who is subject to the laws of the District of Columbia.

5. Describe generally the subject's property with an estimate of the value of that property, including any compensation, insurance, pension, or allowance to which the subject is entitled:

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6. If the appointment of a conservator is sought, state the name and address of the person whose appointment is sought and the basis of any claim to priority for appointment: (Priority of appointment for conservators is set forth in D.C. Code §21-2057.)

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7. Persons to whom notice of the proceeding must be given whose names, addresses and telephone numbers should be set forth in the petition:

(a) The subject of the proceeding (by publication):

(b) The spouse and adult children of the subject, and the guardian or custodian of any minor children:

(c) If no spouse or adult children, the parents:

(d) The agent/attorney in fact of the subject nominated in a durable power of attorney, if known:

(e) If no spouse, adult children, parents, or agent/attorney in fact nominated in a durable power of attorney exists, then at least one of the nearest adult relatives, if any can be found:

(f) Any person entitled to support by the subject:

(g) Counsel for the subject:

(h) Any other person as directed by the Court:

8. If the petitioner seeks the appointment of a guardian ad litem, state the reasons for the request and the specific duties sought:

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9. The subject of the proceeding:

- has disappeared
- is being detained by a foreign power
- is being detained by someone other than a foreign power

and:

- the subject has property that will be wasted or dissipated unless property management is provided and/or
- money is needed for the support, care and welfare of those entitled to the subject's support and protection is necessary or desirable to obtain and provide money.

and that:

- a protective order should be made, or
- a conservator should be appointed.

10. The petitioner seeks the following relief:

- Entry of a protective order as follows:

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- Appointment of a conservator with:

- statutory powers as conservator  
or
- greater powers (Specify power sought and by what authority the Court may grant it)  
or
- lesser powers (Note that if the conservator's bond is not to include securities and/or real estate, this box must be checked)

11. The petitioner requests the following temporary relief pursuant to D.C. Code §21-2055(b)(1) pending the hearing of this petition:

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12. Bond is sought in the amount of \_\_\_\_\_ because the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of securities deposited under arrangements requiring an order of the Court for their removal and the value of any land that the fiduciary, by express limitation of power, lacks power to sell or convey without Court authorization is \_\_\_\_\_.

If petitioner seeks reduced bond, identify all securities and/or real estate for which Court authorization for sale or conveyance will be sought:

13. Acceptance of conservator and consent to jurisdiction:

I do hereby accept the duties of the office of conservator of \_\_\_\_\_

(Name of subject)

and consent to personal jurisdiction in any action instituted in the District of Columbia by any interested person against me as conservator arising out of the duties of my office and, if a non-resident, I do hereby irrevocably appoint the Register of Wills and successors in office as the person upon whom all notice and process issued by a competent court in the District of Columbia may be served with the same effect as personal service in relation to all suits or matters pertaining to the proceeding in which letters of conservatorship shall issue.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Telephone Number

**VERIFICATION**

I \_\_\_\_\_, being first duly sworn, on oath, depose and say that I have read the foregoing pleadings by me subscribed and that the facts therein stated are true to the best of my knowledge, information and belief.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Name, address, telephone number and unified bar number of counsel for petitioner

**Superior Court of the District of Columbia**  
**PROBATE DIVISION**

In Re: Intervention Proceeding  
No. \_\_\_\_\_

\_\_\_\_\_  
 An Adult

REPORT OF VISITOR

I, \_\_\_\_\_, Visitor appointed by Order entered on \_\_\_\_\_ submit the following report concerning the investigation which I conducted pursuant to D.C. Code §21-2033(c) and either §20-2041(d) or §20-2054(a) and Rule SCR-PD 327.

I. Interview of Subject of Proceeding [Visitor should attempt to make the below inquiries in terms comprehensible to the subject]:

A. Date and place of interview: \_\_\_\_\_  
 \_\_\_\_\_

B. Oriented as to time and place? \_\_\_\_\_ Yes \_\_\_\_\_ No

C. Physical appearance: \_\_\_\_\_  
 \_\_\_\_\_

D. Subject asked and responded as follows:

1. Do you understand my explanation of the substance of the Petition; the nature, purpose and effect of the proceeding; and the general powers and duties of a guardian and conservator? \_\_\_\_\_ Yes \_\_\_\_\_ No (If no, explain here)



2. You have the right to retain an attorney at your own expense. If you cannot afford to pay an attorney, one will be provided by the Court without cost to you. Do you have an attorney?  Yes  No (If yes, give name and address:) \_\_\_\_\_

---

3. Do you understand that under the laws you have the following rights:

To be present in person at any court proceeding and to see or hear all evidence bearing on your condition;  Yes  No

To be represented by counsel;  Yes  No

To present evidence and cross-examine witnesses, including any court-appointed visitor or physician;  Yes  No

To have a closed hearing on any issue;  Yes  No

To contest the Petition;  Yes  No

To object to the appointment of the proposed guardian or conservator or their powers or duties;  Yes  No

To object to the creation of the proposed guardianship or conservatorship or guardian ad litem appointed to represent your interests if the Court determines that a need for such representation exists; and  Yes  No

To have all or a portion of the compensation of any court-appointed visitor, attorney, guardian ad litem or physician paid by the Court or the Petitioner if you cannot afford to pay it?  Yes  No

4. Who are your closest family members? (Give name, address and relationship) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Do you have a doctor? \_\_\_\_\_ Yes \_\_\_\_\_ No (If yes, give name and address) \_\_\_\_\_  
\_\_\_\_\_

Is this the same doctor who provided a letter (if any) attached to the Petition filed in these proceedings?

\_\_\_\_\_ Yes \_\_\_\_\_ No

6. Do you need help caring for yourself or your finances? \_\_\_\_\_ Yes \_\_\_\_\_ No (If yes, how?) \_\_\_\_\_  
\_\_\_\_\_

7. Who would you like to help care for you? \_\_\_\_\_  
\_\_\_\_\_

8. How are you currently caring for yourself? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Describe your income, assets and liabilities. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Do you know \_\_\_\_\_, the proposed Guardian or Conservator? \_\_\_\_\_ Yes \_\_\_\_\_ No

a. How do you feel about having him/her make decisions about your day to day care? \_\_\_\_\_

b. What decisions do you want your guardian or conservator to make? \_\_\_\_\_

c. If a guardian or conservator is appointed, what decisions would you like to make for yourself, and what actions (e.g. with respect to your property), would you like to take for yourself? \_\_\_\_\_

\_\_\_\_\_

d. How do you feel about what is requested in the petition? [Visitor should describe request]

\_\_\_\_\_

E. Names of third person(s) present during interview of person (if any) and their relationship to the subject:

\_\_\_\_\_

II. Interview of Person Seeking Appointment as Guardian or Conservator:

A. Date and place of interview: \_\_\_\_\_

B. Person seeking appointment asked and responded as follows:

1. Name, address, home and business telephone numbers, and occupation: \_\_\_\_\_

\_\_\_\_\_

2. Relationship to subject of the proceeding: \_\_\_\_\_

\_\_\_\_\_

3. Why does subject need help: \_\_\_\_\_

\_\_\_\_\_

4. Where has subject resided during last three months?

\_\_\_\_\_  
\_\_\_\_\_

5. Who, if anyone, has been caring for subject during this period? \_\_\_\_\_

\_\_\_\_\_

6. What changes in residence are contemplated? \_\_\_\_\_

\_\_\_\_\_

7. What alternative arrangements have you sought to assist subject? \_\_\_\_\_

\_\_\_\_\_

8. Have you discussed your plans for care and management with subject?

\_\_\_ Yes     \_\_\_ No

9. Does subject agree with your plans?

\_\_\_ Yes     \_\_\_ No

III. Interview of Persons Who Have Evaluated or Rendered Care, Counsel, Treatment or Service to Subject of Proceeding In Recent Past:

A. Name and position of person interviewed: \_\_\_\_\_

B. Training and qualifications of person interviewed: \_\_\_\_\_

C. Dates and types of evaluation of or care, counsel, treatment or service rendered to subject (attach additional sheets if necessary):

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_:  
\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_:  
\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_:

D. Diagnosis or opinion of subject's condition (if any):

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E. What functions is the subject unable to perform  
in his or her daily life? \_\_\_\_\_

---

IV. Report on Condition of Subject's Present Place of Abode:

A. Date \_\_\_\_\_ [ ] visited [ ] information otherwise  
obtained: \_\_\_\_\_

B. Address: \_\_\_\_\_  
\_\_\_\_\_

C. Type of abode: \_\_\_\_\_

D. Condition (if a home):

1. Lawn and landscaping: \_\_\_\_\_

2. Exterior: \_\_\_\_\_

3. Interior:

a. Utilities working? \_\_\_Yes \_\_\_No

b. Clean? \_\_\_Yes \_\_\_No

c. Fire hazards? \_\_\_Yes \_\_\_No

d. Other (explain): \_\_\_\_\_

V. Report on Condition of Subject's Proposed Place of Confinement  
or Residence:

A. Date \_\_\_\_\_ [ ] visited [ ] information  
otherwise obtained: \_\_\_\_\_

B. Location and type of place: \_\_\_\_\_  
\_\_\_\_\_

C. Condition: \_\_\_\_\_  
\_\_\_\_\_

VI. Conclusions of Visitor:

A. The nature and degree of Subject's current incapacity or disability is as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. My evaluation of the fitness and appropriateness of the guardian or conservator seeking appointment is as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. I  do  do not recommend limitation of the powers of the guardian or conservator seeking appointment. (If limitation recommended, explain) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. I am of the opinion that a guardian ad litem  should  should not be appointed to represent subject because \_\_\_\_\_

\_\_\_\_\_

VII. Additional comments (if any): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VIII. If there is no nominated guardian or conservator, I hereby  
nominate \_\_\_\_\_ to serve as guardian  
and \_\_\_\_\_ to serve as conservator, for  
the following reasons: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_ Signature of Visitor \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_,  
19 \_\_\_\_\_, a copy of the foregoing \_\_\_\_\_ was  
served by first class mail, postage prepaid, upon the following  
parties to the above captioned case and persons granted permission  
to participate pursuant to SCR-PD 303 and persons who requested  
notice pursuant to SCR-PD 304.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

Superior Court of the District of Columbia

II-0

PROBATE DIVISION

Intervention Proceeding

No. \_\_\_\_\_

IN RE:

\_\_\_\_\_  
An Adult

BOND OF CONSERVATOR

Know all persons by these presents, that whereas the undersigned \_\_\_\_\_ of \_\_\_\_\_ (Address of conservator) has been appointed conservator of \_\_\_\_\_ by order of the Court, dated \_\_\_\_\_ and is required to give a bond, under seal, in the maximum amount of \_\_\_\_\_ dollars, fixed by the Court, conditioned as by law and said order required: And whereas the condition of this undertaking is that the said \_\_\_\_\_ shall faithfully discharge all duties of the trust according to law as such conservator and in all things obey such order as the Court shall make in the premises:



We, therefore, the undersigned, \_\_\_\_\_

\_\_\_\_\_, as principal \_\_\_\_\_

\_\_\_\_\_ and \_\_\_\_\_

as surety appearing and submitting to the jurisdiction of the Court, hereby undertake for ourselves and each of us, our and each of our heirs, personal representatives, successors, and assigns to abide by and perform the order of the Court in the premises, and do further agree that upon default by the said principal in any of the conditions hereof, the damages, not exceeding the sum aforesaid, may be ascertained in such manner as the Court shall direct; that the Court may give judgment hereon in favor of any person thereby aggrieved against us for damages suffered or sustained by such aggrieved party and that such judgment may be rendered in said cause against all or any of us whose names are hereto signed:

Signed, sealed, and delivered in the

presence of ---

_____	_____ (Seal)
_____	_____ (Seal)
_____	_____ (Seal)
_____	_____ (Seal)

Surety approved this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

REGISTER OF WILLS

CLERK OF THE PROBATE DIVISION

BY \_\_\_\_\_  
Deputy Clerk

Superior Court of the District of Columbia  
PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_ An Adult

REPORT OF EXAMINER

The undersigned examiner states that he or she has personally examined

\_\_\_\_\_ and hereby submits the following  
(Name of Subject of Proceeding)

report based on a personal examination of the subject on the \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_ pursuant to Order of this Court  
entered on \_\_\_\_\_.

1. Is the subject suffering from a  mental,  emotional or  physical  
illness? \_\_\_\_\_ Yes \_\_\_\_\_ No

2. If yes, please describe diagnosis and prognosis.

\_\_\_\_\_  
\_\_\_\_\_

3. Describe the subject's mental, emotional or physical condition and, where ap-  
propriate, describe educational condition, adaptive behavior, and social skills.

\_\_\_\_\_  
\_\_\_\_\_

4. Does the subject's mental, emotional or physical condition affect his/her ability  
to function? \_\_\_\_\_ Yes \_\_\_\_\_ No

5. If yes, please describe in detail the extent to which the condition affects the subject's ability to receive and evaluate information or to communicate decisions concerning the management of all or some of his/her financial resources or to provide for his/her health care, food, shelter, clothing, personal hygiene, and other care, or meet all or some of his/her essential requirements for his/her habilitation or therapeutic needs. \_\_\_\_\_

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6. What, in your opinion, is the most appropriate living arrangement for the subject, and if applicable, describe the most appropriate treatment or habilitation plan to maximize the subject's autonomy. \_\_\_\_\_

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7. Are you the subject's treating physician? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, how long have you been treating the subject? \_\_\_\_\_

8. Other comments: \_\_\_\_\_

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I hereby certify that I am a licensed \_\_\_\_\_

List briefly professional qualifications: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone Number

### CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, a copy of this Report of Examiner was served by first class mail, postage prepaid, upon the following parties to the above captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR-PD 304.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

Superior Court of the District of Columbia

I-H

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

PETITION OF CONSERVATOR FOR INSTRUCTIONS REGARDING  
STATEMENT OF CLAIM

1. A statement of claim was filed on \_\_\_\_\_  
by \_\_\_\_\_ who seeks payment of \_\_\_\_\_  
for the following described consideration: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Conservator seeks instructions of the court regarding  
said claim: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The reasons such instructions are sought are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Attorney for Conservator

\_\_\_\_\_  
Conservator

CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_,  
19 \_\_\_\_, a copy of the foregoing \_\_\_\_\_ was  
served by first class mail, postage prepaid, upon the following

parties to the above captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR-PD 304.

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Signature

Superior Court of the District of Columbia

II-H

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_ An Adult

JOINT STIPULATION

The Clerk of said Court will please note that the above entitled proceeding for \_\_\_\_\_

type of proceeding governed

\_\_\_\_\_ is jointly stipulated as herein-  
by SCR-PD

after set forth. The Clerk will please assign a new date

for a prompt hearing of this proceeding.

The parties hereto agree to the following facts:

\_\_\_\_\_  
\_\_\_\_\_

The following facts are disputed: \_\_\_\_\_

\_\_\_\_\_

The issues that are agreed to by the parties are as follows: \_\_\_\_\_

\_\_\_\_\_

The following issues are in dispute: \_\_\_\_\_

\_\_\_\_\_

The parties hereto propose to introduce the following evidence at the hearing of this proceeding: \_\_\_\_\_

\_\_\_\_\_

The parties hereto propose that the Court make the following findings and enter the following orders after the hearing of this proceeding: \_\_\_\_\_

\_\_\_\_\_

The parties hereto do not demand a jury trial.

DATED: \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
Petitioner (or attorney for  
Petitioner)

\_\_\_\_\_  
Attorney for subject of  
the Petition

Signatures of other parties or their attorneys:

\_\_\_\_\_  
\_\_\_\_\_

(such additional typewritten pages may be necessary and may be attached hereto.)



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
PROBATE DIVISION

IN RE:

Intervention Proceeding

\_\_\_\_\_

No. \_\_\_\_\_

REPORT OF GUARDIAN ( )

I, the undersigned, represent that I am the guardian of the above named ward, and that my report to the Court is as follows:

1. Present age of ward: \_\_\_\_\_ Date of birth: \_\_\_\_\_

2. Current address of ward:

\_\_\_\_\_  
\_\_\_\_\_

3. Ward's residence is:

own home

guardian's home

nursing home

hospital or medical facility

foster or boarding home

relative's home

\_\_\_\_\_  
(relationship)

other: \_\_\_\_\_

4. Ward has been in present residence since \_\_\_\_\_  
(date)

State reasons for any change of residence within the past reporting period: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. During the past reporting period, I visited the ward \_\_\_\_\_ times.  
The date of last visit was \_\_\_\_\_.

6. During the past reporting period the ward's mental health has:

remained about the same.

improved. (Describe:) \_\_\_\_\_  
\_\_\_\_\_

deteriorated. (Describe:) \_\_\_\_\_  
\_\_\_\_\_

7. During the past reporting period the ward's physical health has:

remained the same.

improved. (Describe:) \_\_\_\_\_  
\_\_\_\_\_

deteriorated. (Describe:) \_\_\_\_\_  
\_\_\_\_\_

8. During the past reporting period the ward has been treated or evaluated by the following :

Physician. Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Psychiatrist. Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Social or other Case

Worker. Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Other. Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

9. Is the ward under a regular physician's care?  Yes  No

If yes, doctor's name and address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Describe activities in which the ward has participated during the past reporting period:

Recreational: \_\_\_\_\_

Educational : \_\_\_\_\_

Social : \_\_\_\_\_

Occupational: \_\_\_\_\_

Other: \_\_\_\_\_

None available

Refuses or unable to participate.

11. As guardian, I rate the ward's living arrangements as

Excellent

Average

Below Average. (Explain:)

\_\_\_\_\_  
\_\_\_\_\_

12. As guardian, I believe the ward is:

Content with living situation.

Unhappy with living situation.

13. As guardian, I believe the ward has the following unmet needs:

\_\_\_\_\_  
\_\_\_\_\_

14. In my opinion, this guardianship  should be continued

should not be continued. (If not, explain:)

\_\_\_\_\_  
\_\_\_\_\_

15. If I have been appointed limited guardian, my powers should be

increased  decreased. (Explain: )

\_\_\_\_\_  
\_\_\_\_\_

16. I  did  did not have possession or control of any of the ward's estate during the reporting period. If in possession or control of any of the estate, please indicate as follows:

a. Total Amount Received and Source: \_\_\_\_\_

b. Total Amount Expended and for what purposes: \_\_\_\_\_

\_\_\_\_\_

c. Balance currently in my possession or control and location. \_\_\_\_\_

\_\_\_\_\_

The undersigned swears that the answers set forth above are true and correct to the best of my knowledge and belief, subject to the penalties of making a false affidavit or declaration.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature of Guardian

\_\_\_\_\_  
Address of Guardian

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone Number of Guardian

**VERIFICATION**

I \_\_\_\_\_, being first duly sworn, on oath,  
(name of guardian)

depose and say that I have read the foregoing pleadings by me subscribed and that the facts therein stated are true to the best of my knowledge, information and belief.

\_\_\_\_\_  
(Signature of Guardian)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
(Notary Public)

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, a copy of the foregoing Guardianship Report was served by first class mail, postage prepaid, upon the following parties to the above captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR-PD 304.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Superior Court of the District of Columbia

PROBATE DIVISION

IN RE:

\_\_\_\_\_
An Adult

IP No. \_\_\_\_\_

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
(Successor Conservator)

This matter came before the Court

[ ] sua sponte

[ ] by hearing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ on

the Petition of \_\_\_\_\_ for his/her/their

[ ] Resignation as (permanent limited, permanent general, special) conservator of the above named protected individual

[ ] Removal of \_\_\_\_\_ and (permanent limited, permanent general, special) conservator of the above named protected individual

The Court makes the following preliminary findings:

A. No hearing was required because \_\_\_\_\_

B. The following were present at the hearing (check appropriate boxes and provide name)

1. [ ] Judge \_\_\_\_\_

2. [ ] Petitioner \_\_\_\_\_

3. [ ] Attorney for Petitioner \_\_\_\_\_

4. [ ] Attorney for Protected Individual \_\_\_\_\_

5. [ ] Conservator(s) \_\_\_\_\_

6. [ ] Attorney for Conservator(s) \_\_\_\_\_

- 7.  Protected Individual (was, was not) present
- 8.  Visitor \_\_\_\_\_
- 9.  Guardian ad litem \_\_\_\_\_
- 10.  The following persons also were present:  
 \_\_\_\_\_  
 \_\_\_\_\_

C. All notices required by D.C. Code §§21-2033(c), 2042(b), 2053(a) and 2059 have been given or have been waived by interested persons.

The Court made the following findings of fact after consideration of:

- the petition
- the reports filed herein
- evidence adduced at the hearing
- examination of the record of this matter

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. \_\_\_\_\_ was appointed (permanent limited, permanent general, special) conservator of \_\_\_\_\_, a protected individual, by Order of this Court on \_\_\_\_\_, 19 \_\_.

- 2.  No evidence has been presented to indicate appointment of a successor conservator is required.
- Appointment of successor (permanent limited, permanent general, special) conservator of the protected individual is merited because (check appropriate boxes):

[ ] The conservator has named a substitute in accordance with D.C. Code §21-2057(b)

[ ] The conservator seeks to resign his or her appointment and appointment of a successor conservator is necessary

[ ] Due to the conservator's death appointment of a successor conservator is necessary

[ ] The conservator's removal is indicated due to his or her failure to meet his or her fiduciary obligations as set forth by Order of this Court or pursuant to the Code of the District of Columbia, specifically:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Additional proceedings in this matter are/are not required.  
(Ref. D.C. Code §21-2074(d))

ORDER

1. The petition for appointment of a successor conservator is denied, with prejudice.

2. The resignation of \_\_\_\_\_ as (permanent limited, permanent general, special) conservator of \_\_\_\_\_, a protected individual, is accepted and \_\_\_\_\_ is hereby appointed successor conservator with the same powers vested in the prior conservator.

3. \_\_\_\_\_ is hereby removed as (permanent limited, permanent general, special) conservator of \_\_\_\_\_, a protected individual, and \_\_\_\_\_ is hereby appointed successor conservator with the same powers vested in the prior conservator.

4. \_\_\_\_\_ (prior conservator) shall file the account and report required by D.C. Code §§221-2065(a) and (d)(4) on or before \_\_\_\_\_.

5. The successor shall file the plan and inventory required by D.C. Code §21-2065(c) on or before \_\_\_\_\_.

6. Additional proceedings shall be scheduled as follows:

None required.

(specify proceedings) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
J U D G E

Copies to:

Parties to the above captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR-PD 304.

Proof of service required in accordance with SCR-PD 311(c)(6) in Form I-K.



Superior Court of the District of Columbia  
PROBATE DIVISION

II-Q

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

PETITION POST APPOINTMENT (SCR-PD 322)

PETITION FOR

\_\_\_\_\_  
(Briefly and Plainly State  
Relief Requested)

1. \_\_\_\_\_  
(Name of Petitioner)

\_\_\_\_\_  
(Interest of Petitioner)

2. Petitioner seeks the following relief: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Petitioner is entitled to this relief because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Counsel for Petitioner

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Address of Counsel

\_\_\_\_\_

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Address of Petitioner

\_\_\_\_\_  
Bar Number

\_\_\_\_\_  
Telephone Number of Petitioner

VERIFICATION

I, \_\_\_\_\_, being first duly sworn, on oath, depose and say that I have read the foregoing pleadings by me subscribed and that the facts therein stated are true to the best of my knowledge, information and belief.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, a copy of the foregoing \_\_\_\_\_ was served by first class mail, postage prepaid, upon the following parties to the above captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR-PD 304.


\_\_\_\_\_  
Signature

Superior Court of the District of Columbia

II-S

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

**NOTICE OF HEARING ON ACCOUNT**  
(Pursuant to D.C. Code §§2031 and 2065(a))

You are advised that a hearing has been scheduled before the Court at \_\_\_\_\_ o'clock \_\_\_\_ .m. on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ in Courtroom \_\_\_\_\_.

[A] For the purpose of considering whether to approve the \_\_\_\_\_ account filed herein \_\_\_\_\_.

[B] A person entitled to file a response who wishes to do so must file within ten days of the date of this notice (or 13 days if this notice has been mailed to you). You must send a copy of your response to the persons whose name(s) appear(s) below under "copies to". At the hearing the Court will hear from all parties and persons entitled to participate and may take testimony on the issues presented. The matter is then ripe for Court determination.

[C] At the hearing to which this notice relates the above described account will be considered. An order allowing an intermediate account adjudicates liabilities concerning the matters in the account and an order allowing a final account adjudicates all previously unsettled liabilities of the conservator.

[D] Only parties are entitled to the following rights: to respond in writing to the above account, to appear through counsel, to participate at the hearing, to conduct discovery with the Court's permission, to receive copies of pleadings filed by other parties.

[E] Any person who is not a party but who wishes to participate in the hearing must file a proper petition (Form I-A) in accordance with SCR-PD 303(b).

Date of Notice: \_\_\_\_\_

Copies to:

"Parties to the proceeding shall be: the subject of the proceeding, a guardian and conservator, the person filing a petition to initiate an intervention proceeding and a creditor filing a petition to determine a claim" SCR-PD 303(a).

Superior Court of the District of Columbia

II-P

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

**NOTICE OF APPOINTMENT OF TEMPORARY GUARDIAN**  
(Pursuant to D.C. Code section 2046(b))

NOTICE IS HEREBY GIVEN that pursuant to Order entered

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(name)

whose address is \_\_\_\_\_

was appointed TEMPORARY GUARDIAN on behalf of the above  
named incapacitated individual.

The period of the temporary guardianship is:

\_\_\_\_\_  
(not to exceed six months)

\_\_\_\_\_  
(name of attorney) has been appointed as

counsel or has entered an appearance as counsel for the above-  
named incapacitated individual.

The purpose for the appointment of a temporary  
guardian is that the previously appointed guardian is  
not effectively performing duties and the welfare of the  
incapacitated individual requires immediate action.

The appointment of the temporary guardian under D.C. Code §21-2046(b) may not extend beyond six months and he or she may exercise the powers set forth in the previous order of appointment. Pursuant to Section 21-2046(b) the authority of the permanent guardian is suspended as long as a temporary guardian has authority.

The incapacitated individual, or any other interested person, may petition for removal of the temporary guardian.

The individual alleged to be incapacitated, counsel for that individual, or any other interested person may request a hearing at any time within the period of the temporary guardianship. The hearing will be held no later than 48 hours after the request. If a hearing is requested all parties will be notified by the Court.

If you wish to request a hearing, please complete the Request for Hearing form (Form III-C) and file it with the Court.

---

Judge

**Superior Court of the District of Columbia  
PROBATE DIVISION**

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

**ORDER APPOINTING A FIFTEEN DAY TEMPORARY GUARDIAN**

Upon consideration of the petition for appointment of a fifteen day temporary guardian filed herein this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_, it is by the Court this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,

ORDERED that \_\_\_\_\_ is hereby appointed Temporary Guardian;\* and if is further

ORDERED that the temporary guardian has the following powers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and it is further

ORDERED that the following other relief is granted:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Judge

Copies To:

(List above by name and address the following: Petitioner, Counsel for Petitioner, Counsel for incapacitated person, Temporary Guardian, Subject and Interested Persons)

I hereby certify that the following is a true copy.

\_\_\_\_\_  
Register of Wills

\*Pursuant to D.C. Code Section 21-2046(a) [1989 Repl. Vol. to 1981 Ed.] the effectiveness of this Order shall expire no later than fifteen (15) days from the date of entry.

Superior Court of the District of Columbia

PROBATE DIVISION

ESTATE OF:

Administration No. \_\_\_\_\_

\_\_\_\_\_  
*Deceased*

RECEIPT OF LEGATEE, DISTRIBUTEE, OR WARD

\_\_\_\_\_, the undersigned, \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ y acknowledge to have received from \_\_\_\_\_

\_\_\_\_\_ of

state of \_\_\_\_\_

\_\_\_\_\_, the portion of the estate due \_\_\_\_\_, consisting of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

shown by the \_\_\_\_\_ account filed in said

on \_\_\_\_\_, 19\_\_\_\_\_

In testimony whereof \_\_\_\_\_ have hereunto signed

\_\_\_\_\_ name \_\_\_\_\_ and affixed \_\_\_\_\_ seal \_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_\_

\_\_\_\_\_ (Seal)

\_\_\_\_\_ (Seal)



Superior Court of the District of Columbia

Probate Division

Washington, D.C. 20001

Estate of

No. \_\_\_\_\_

Ward

CERTIFICATE OF DISTRIBUTION AND SETTLEMENT BY FIDUCIARY  
UNDER PARAGRAPH (g) OF LOCAL CIVIL RULE 305

Comes now \_\_\_\_\_ and

\_\_\_\_\_ appointed \_\_\_\_\_

the above-entitled cause, and being first duly sworn declare that \_\_\_\_\_ made complete

distribution of funds entrusted to \_\_\_\_\_ in said cause in compliance with the decree

\_\_\_\_\_, 19\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Register of Wills/Deputy Clerk/  
Notary Public

**Superior Court of the District of Columbia  
PROBATE DIVISION**

IN RE:

Intervention Proceeding

\_\_\_\_\_   
 An Adult

No. \_\_\_\_\_

**NOTICE OF APPOINTMENT OF TEMPORARY GUARDIAN**

Pursuant to D.C. Code §21-2046(a), notice is hereby given that pursuant to an Order entered \_\_\_\_\_, \_\_\_\_\_, whose  
Date Name  
 address is \_\_\_\_\_  
 \_\_\_\_\_

was appointed **TEMPORARY GUARDIAN** on behalf of the above-named incapacitated individual.

1. The period for the temporary guardianship is 15 days from the date of appointment,
2. \_\_\_\_\_ has been appointed as,  
 (Name of attorney)  
 or has entered an appearance as, counsel for the above-named incapacitated individual.
3. The purpose for the appointment of a temporary guardian is to provide care and supervision of the individual, if the individual has no guardian, a life threatening emergency exists, and no other person appears to have authority to act within the circumstances.

(Continued on Reverse)

4. The authority of the temporary guardian appointed pursuant to subsection (a) of D.C. Code §21-2046 may not extend beyond fifteen (15) days and he or she may exercise only those powers granted in the order.

5. The incapacitated individual or any other interested person may petition for removal of the temporary guardian.

6. The individual alleged to be incapacitated, counsel for that individual or any other interested person may request a hearing at any time within the period of the temporary guardianship. The hearing will be held no later than 48 hours after the request. If a hearing is requested all parties will be notified by the Court.

7. If you wish to request a hearing, please complete the attached Request for Hearing form and file same with the Court.

---

Petitioner

---

Address

---

**Superior Court of the District of Columbia  
PROBATE DIVISION**

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

**ACCEPTANCE OF TEMPORARY GUARDIAN AND  
CONSENT TO JURISDICTION**

I do hereby accept the duties of the office of temporary guardian of

\_\_\_\_\_  
(Name of alleged incapacitated person)

and consent to personal jurisdiction in any action instituted in the District of Columbia by any interested person against me as guardian arising out of the duties of my office. If a non-resident, I do hereby irrevocably appoint the Register of Wills and successors in office as the person upon who all notice and process issued by a competent court in the District of Columbia may be served with the same effect as personal service in relation to all suits or matters pertaining to the proceeding in which letters of guardianship shall issue.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

Superior Court of the District of Columbia  
PROBATE DIVISION

11-1-2

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

In Adult

FIFTEEN DAY TEMPORARY GUARDIAN INFORMATION SHEET

A person is incapacitated because said individual is an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to take actions necessary to:

(a) obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income;

and/or

(b) provide health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness is more likely than not to occur;

and/or

(c) acquire and maintain those life skills that enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment and to raise the level of his or her physical, intellectual, social, emotional, and economic efficiency or meet all or some essential requirements for his or her therapeutic needs.

Pursuant to D.C. Code §21-2046(a) notice shall be sent immediately to the following persons:

- (a) The individual alleged to be incapacitated.
- (b) The spouse of said individual.
- (c) The adult children of said individual.
- (d) If no spouse or adult children, then the parents.
- (e) Any person who is serving as guardian or conservator or who has the care and custody of said individual.
- (f) If no spouse, adult children or parents, then at least one of the nearest adult relatives, if any can be found.
- (g) Any other person as directed by the Court.
- (h) Counsel for said individual, if any, in this proceeding.
- (i) The agent/attorney in fact named in a durable or other power of attorney, if any.

Superior Court of the District of Columbia  
PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

PETITION FOR APPOINTMENT OF  
FIFTEEN DAY TEMPORARY GUARDIAN

1. \_\_\_\_\_  
(Name of Petitioner)

\_\_\_\_\_  
(Address of Petitioner)

\_\_\_\_\_  
(Interest of Petitioner)

2. \_\_\_\_\_ (Age)  
(Name of alleged incapacitated person)

\_\_\_\_\_  
(Residence of alleged incapacitated Person)

3. This Court has jurisdiction because:

The alleged incapacitated person is physically present in the District of Columbia or is domiciled in the District of Columbia.

4. (a) The appointment of a guardian is necessary because of the following incapacity. (See information sheet for statutory definition of incapacity.)

\_\_\_\_\_  
\_\_\_\_\_

(b) The nature of the life threatening emergency is:

\_\_\_\_\_  
\_\_\_\_\_

(c) The following authority for the guardian is requested:

\_\_\_\_\_  
\_\_\_\_\_

5. Petitioner proposes that \_\_\_\_\_ be appointed temporary guardian. (If a particular person is proposed to be appointed, list name, address and telephone number and submit form of acceptance with this petition.)

6. Petitioner will send a D.C. Code §2042 Notice to each interested person whose name, address, telephone number and relationship to the alleged incapacitated person is set forth below. See information sheet.)

\_\_\_\_\_  
(Signature of Petitioner)

**VERIFICATION**

I, \_\_\_\_\_, being first duly sworn, on oath,  
[OR: I, \_\_\_\_\_, affirm] depose and say that I have read the foregoing pleadings by me subscribed and that the facts therein stated are true to the best of my knowledge, information and belief.

\_\_\_\_\_  
(Signature of Petitioner)

Subscribed and sworn to before me this day of \_\_\_\_\_  
19\_\_\_\_.

\_\_\_\_\_  
Notary Public

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, a copy of the foregoing \_\_\_\_\_ was served by first class mail, postage prepaid, upon the following parties to the above captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR-PD 304.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature of Petitioner)

\_\_\_\_\_  
Counsel for Petitioner

\_\_\_\_\_  
Address, Telephone No. and Bar No.

Superior Court of the District of Columbia
PROBATE DIVISION

IN RE:

Intervention Proceeding

An Adult

No. \_\_\_\_\_

NOTICE OF INITIAL HEARING PURSUANT TO 325

NOTICE IS HEREBY GIVEN that a Petition for appointment of

- Permanent Limited Guardian
Permanent General Guardian
Successor Guardian
Conservator
Special Conservator
Entry of a Protective Order

for \_\_\_\_\_ (Subject of the Proceeding)

has been filed, a copy of which is attached hereto. Hearing has been set to consider the petition on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_M., in Courtroom \_\_\_\_\_ of the Superior Court of the District of Columbia, 500 Indiana Avenue, N.W., before the presiding Fiduciary Judge.

DATED: \_\_\_\_\_, 19\_\_\_\_

Petitioner/Attorney

Address

NOTE: Pursuant to SCR-PD 311(c)(3), this notice must be mailed no less than 17 days, and/or personally delivered no less than 14 days, before the time set for the hearing.

Copies to:

Parties to the above-captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR-PD 304.

Proof of service required in accordance with SCR-PD 311(c)(6) in Form I-K, or Form I-K2, as applicable.



The purpose of the proceeding is:

To determine whether the subject of the intervention proceeding is incapacitated because said individual is an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to take actions necessary to:

(Select appropriate box(es)):

- (a)  obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income
- (b)  provide health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness is more likely than not to occur
- (c)  acquire and maintain those life skills that enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment and to raise the level of his or her physical, intellectual, social, emotional, and economic efficiency or meet all or some essential requirements for his or her therapeutic needs
  - without court-ordered assistance  
and/or
  - the appointment of
    - a guardian  
and/or
    - a conservator.

### Procedure

Upon the filing of a petition for the appointment of a permanent limited or general guardian, the appointment of a successor limited or general guardian, the appointment of a general or limited conservator or special conservator, or the entry of a protective order, the clerk will schedule a hearing on the petition. If a joint stipulation is filed, a hearing may be scheduled on an expedited basis.

The petitioner must serve a copy of the petition upon the subject of the petition and his or her counsel, and to all other persons entitled to notice under D.C. Code §21-2042 by first class mail, within 3 days of the filing of the petition in accordance with SCR-PD 321(c).

The petitioner will also cause this notice of the hearing to be served personally on the subject of the petition and to all other individuals in accordance with SCR-PD 325. The notice must be served at least 14 days before the time set for the hearing.

The Court, for good cause shown, may provide for a different method or time of giving notice for any hearing.

Unless it is waived, notice of hearings in these proceedings must be given to each of the following:

(1) The subject of the petition and his or her spouse and adult children, or if none, parents;

(2) Any person who is serving as guardian or conservator, or who has the care and custody of the individual alleged to be incapacitated;

(3) In case no other individual is notified under paragraph (1) of this subsection, at least one of the nearest adult relatives, if any can be found; and

(4) Any other person as directed by the Court.

The subject of the petition may not waive notice. Other individuals, including a guardian ad litem or other fiduciary, may waive notice by a signed writing filed with the Court.

Upon the filing of the petition the Court will appoint an attorney to represent the subject of the petition, unless the individual has chosen counsel.

At any point in the proceeding, the Court may appoint a guardian ad litem to prosecute or defend the interest of any individual if the Court determines that representation of the interest otherwise would be inadequate.

Upon the filing of the petition, the Court may appoint a visitor and an examiner pursuant to D.C. Code §§21-2041 or 21-2054. The examiner and visitor will be separate individuals. Each must file and serve on all parties written reports no later than 10 days before the date set for the hearing.

After the filing of the reports of the examiner and the visitor, the parties may file a joint stipulation that the proceeding is uncontested as to all issues.

Not later than five days before the hearing the parties may file responsive pleadings in accordance with SCR-PD 321.

### **Significance**

This proceeding does not operate to repeal, alter or amend the right of an individual who is the subject of a petition for civil commitment in any proceeding under Chapter 5 of Title 21, or the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978 (D.C. Code, §6-1901 *et seq.*).

This proceeding does not effect guardians or conservators appointed by the Court prior to September 30, 1989, unless the prior proceedings are reinstated under D.C. Code, Chapter 20 of Title 21 (1988 Supp.).

A finding of incapacity does not constitute a finding of legal incompetence. An individual found to be incapacitated retains all legal rights and abilities other than those expressly limited or curtailed in the order of appointment of a guardian or in a protective proceeding, or subsequent order of the Court.

In a guardianship or protective proceeding the Court will exercise its authority so as to encourage the development of maximum self-reliance and independence of the incapacitated or protected individual and make appointive, protective and other orders only to the extent necessitated by the incapacitated or protected individual's mental and adaptive limitations and other conditions warranting the procedure.

If a guardian is appointed, the guardian will be responsible for care, custody, and control of the incapacitated individual with powers as set forth at D.C. Code §21-2047 or with limited powers as set forth in the order of appointment.

Unless otherwise directed by the Court, the guardian will not have the power to consent to certain medical treatment as set forth at D.C. Code §21-2047(c), or to consent to the waiver of any substantive or procedural right of the incapacitated individual in any proceeding arising from an insanity acquittal, or to prohibit marriage or divorce, or consent to termination of parental rights.

While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing, and without notice to others, the Court may preserve and apply the property of the individual to be protected as may be required for support of the individual or dependents of the individual.

After hearing and upon determining that a basis for an appointment of a conservator or other protective order exists with respect to an individual, the Court has the power

over the estate and business affairs that the individual could exercise if present and not incapacitated, except the power to make a will.

If a conservator is appointed, the conservator will hold title as trustee to all property of the protected individual presently held or after acquired, or to the part of the property specified in the order, including title to any property held for the protected individual by custodians or attorneys-in-fact. An order specifying that only part of the property of a protected individual vests in the conservator creates a limited conservatorship.

## **Rights**

In proceedings for the appointment of a guardian or conservator, the petitioner must present clear and convincing evidence that the appointment or protective order is warranted.

The individual alleged to be incapacitated has the right to request that the hearing be closed and must be present at the hearing unless cause is shown for the absence. The individual must be represented by counsel and is entitled to present evidence and cross-examine witnesses, including any court-appointed examiner or visitor.

As approved by order of the court, pursuant to D.C. Code §21-2060, any visitor, attorney, examiner, conservator, special conservator, guardian ad litem, or guardian is entitled to compensation for services rendered either in a guardianship proceeding, protective proceeding or in connection with a guardianship or protective arrangement.

Upon payment of a fee, any interested person who desires to be notified before any order is made in any of these proceedings may file a request for notice with the clerk and serve it on all parties in accordance with SCR-PD 304 (a). A request for notice is not sufficient to confer permission to participate.

The protected individual or any other interested person may petition the Court for removal of a guardian or conservator or termination of the proceeding. The guardian or conservator may resign upon petition and acceptance by the Court. The protected individual seeking termination is entitled to the same rights and procedures as in an original proceeding.

Any person interested in the welfare of an individual for whom a conservator is appointed may petition for orders subsequent to appointment requiring action respecting bonding or other appropriate relief pursuant to D.C. Code §21-2062, or for enlargement or limitation of powers pursuant to D.C. Code §21-2072.

Superior Court of the District of Columbia

II-JI

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

NOTICE OF INITIAL HEARING PURSUANT TO 325(b)

(to subject of proceeding only)

TO: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

You are notified that a petition has been filed, a copy of which is attached hereto, in which it is alleged that you are incapable of properly caring for yourself or of managing your financial affairs or both. The petition seeks the appointment of a guardian for your person or a conservator for your estate or both. The Court, being satisfied that there is good cause for the exercise of jurisdiction as to the matters alleged in said petition has set the matter for hearing on \_\_\_\_\_ at \_\_\_ o'clock \_\_\_ .m. in Courtroom \_\_\_\_\_ of the Superior Court of the District of Columbia located at 500 Indiana Avenue, N.W., Washington, D.C.

The Court has appointed counsel to represent you whose name, address and telephone number are as follows: \_\_\_\_\_

\_\_\_\_\_. Telephone: \_\_\_\_\_

A list of your rights in connection with the above described hearing is attached hereto.

\_\_\_\_\_  
Petitioner/Attorney

\_\_\_\_\_  
Address

NOTE: Pursuant to 325(a) and 311(c)(3) this notice must be personally delivered at least 14 days before the time set for the hearing.

Copies to: Parties to the above captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR-PD 304.



# SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20001

## CONSERVATORSHIP INFORMATION SHEET

The following information is provided to those individuals appointed as limited or general conservator of an incapacitated individual (protected individual) but is not intended to be all inclusive. Individuals appointed as conservators shall be governed by all applicable statutory provisions, rules of court, and by such orders as may be entered by the Court.

### 1. PERMANENT GENERAL CONSERVATOR

A permanent general conservator is an individual appointed by the Court and on whom the Court has conferred, without limitation, title to all property of the protected individual and on whom the court has conferred, with limitation, those powers in administration enumerated in D.C. Code Sec. §20-2070 and those distributive powers and duties enumerated in Sec. §21-2071 (1989 Replacement Volume to 1981 Ed.).

### 2. PERMANENT LIMITED CONSERVATOR

The Court establishes a Limited Conservatorship in either of two ways:

- (a) By entry of an order specifying that only a part of the property of the protected individual (ward) vests in the conservator;
- (b) The Court, at the time of appointment, or later, may limit the powers of a conservator otherwise conferred by Sec. §21-2070 and 21-2071, thereby creating a limited conservatorship.

### 3. TITLE BY APPOINTMENT

The appointment of a conservator vests in the conservator title as trustee to all property of the protected individual presently held or after acquired, or to the property specified in the court order, including title to any property held for the protected individual by custodians or attorneys in fact.

### 4. QUALIFICATION

A limited or general conservator qualifies by executing an acceptance of appointment and consent to jurisdiction and by executing and filing a bond in an amount set by the Court.

### 5. APPRAISAL

(a) A limited or general conservator shall promptly engage the services of a qualified appraiser provided the value of the protected personal property, in the judgment of the conservator, exceeds \$1,000.00. If the property, in the judgment of the conservator, is valued at \$1,000.00 or less, the conservator shall file an affidavit setting forth the description and the value of the tangible personal property. Without prepayment of additional court fees and subject to their availability, the standing court appraisers may be engaged for this purpose.

(b) Filing.

An appraisal shall be filed by conservator within sixty (60) days after qualification.

6. LETTERS OF CONSERVATORSHIP (RECORDING LETTERS).

(a) Letters of conservatorship are evidence of the transfer of all assets, or the part of assets specified in the letters, of a protected individual to the conservator. An order terminating a conservatorship is evidence of the transfer of all assets subjected to the conservatorship from the conservator to the protected individual or to the personal representative of the individual.

(B) Letters of conservatorship and orders terminating conservatorships shall be filed or recorded in the **OFFICE OF THE RECORDER OF DEEDS** to give record notice of title as between the conservator and the protected individual (Recorder of Deeds Office is located at 515 D Street, N.W., Washington, DC which is directly across the street from D.C. Superior Court - Main Building.

7. GENERAL DUTY OF CONSERVATOR

A conservator, in relation to the powers conferred, or implicit in the title acquired by virtue of the proceeding, shall act as a fiduciary and observe the standard of care applicable to trustees.

8. POWERS OF CONSERVATOR IN ADMINISTRATION

The powers of a conservator in administration are set forth in D.C. Code Sec. §21-2070. The powers conferred by Sec. §21-2070 are subject to any limitations the Court may impose at the time of appointment or at a later date (copy of Sec. §21-2070 is attached hereto).

9. DISTRIBUTIVE DUTIES AND POWERS

The distributive duties and powers of a conservator are set forth in D.C. Code Sec. §21-2071. The distributive duties and powers conferred by Sec. §21-2071 are subject to any limitations the Court may impose at the time of appointment or at a later date (copy of Sec. §21-2071 is attached hereto).

10. PETITIONS POST APPOINTMENT

Application to the Court for an order subsequent to appointment of a conservator shall be by verified petition (Form II-Q or a format substantially consistent with that form) and shall be filed in accordance with the provisions of SCR-PD 322. Petitioner may attach to the petition such supplemental information and /or documentation as may be considered appropriate.

11. CONSERVATORSHIP PLAN AND INVENTORY

A conservator, limited or general, shall file with the Court, within sixty (60) days from date of appointment an individual conservatorship plan together with a complete inventory of the financial resources designated by the order of Court. The plan and inventory shall be substantially in the format prescribed by Form II-N. The inventory shall be verified and served by first class mail upon those individuals as provided in SCR-PD 329.

12. ACCOUNTS AND REPORT OF CONSERVATOR

(a) Filing. A conservator shall file an account and report:

- (1). Annually on the anniversary date of appointment.
- (2). Within sixty (60) days of
  - (a) The resignation or removal of the conservator;
  - (b) Termination of the protected individuals incapacity;
  - (c) Termination of the conservatorship

(b) Term of Account and Report.

- (1) The account shall be typewritten or machine printed on forms prescribed by the Register of Wills or in a format substantially similar to the prescribed forms;
- (2) Each account shall have attached a conservator's report (Form II-R)

(c) Service: The account and report shall be served on those individuals as provided in SCR-PD 330(d)

13. SUGGESTION OF DEATH

Upon the death of the protected individual, the conservator shall forthwith file a suggestion of death (notice of death).

14. FINAL ACCOUNT

Upon death of the protected individual, the conservator shall within sixty (60) days thereafter file a final account and report.

15. RECEIPTS

Promptly after full distribution and settlement of an estate, the fiduciary shall file with the Register of Wills receipts or canceled checks evidencing final distribution.

16. The following additional information is also of importance to conservators, limited or general:

- (a) The applicable statute with respect to conservatorships is Title 21-Chapter 20.



- (b) The Applicable Court Rule governing conservatorships are located in the 300 series of the Probate Rules
- (c) No fees are to be paid out of estate funds unless specifically authorized by order of court after compliance with SCR-PD 308
- (d) No conservator shall commingle any estate assets with non-estate assets.
- (E) Conservators are admonished that any authority granted by the Court to Administer funds of the ward, terminates upon death. Upon death of the ward, not further expenditures shall be made.
- (F) Court Clerks are prohibited from giving any legal advice. If a legal question arises the conservator should consult an attorney. Neither the Register of Wills nor any member of her staff is permitted to recommend lawyers. Should assistance in securing the services of a lawyer be required, one may wish to consult the Lawyer Referral Information Service of the D.C. Bar (202) 331- 4306.



## SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20001

### GUARDIANSHIP INFORMATION SHEET

The following information is provided to those individuals appointed as limited or general guardian of an incapacitated individual (protected individual) but is not intended to be all inclusive. Individuals serving as guardians shall be governed by all applicable statutory provisions, rules of court, and by such orders as may be entered by the Court.

#### 1. PERMANENT GENERAL GUARDIAN

A permanent general guardian is one appointed by the Court and on whom the Court has conferred, without limitation, those general powers set forth in D.C. Code Sec. §20-2047(A) & (b) (1989 Replacement Volume to 1981 Ed.).

#### 2. PERMANENT LIMITED GUARDIAN

D.C. Code Sec. §21-2044(C) reads as follows:

The Court at the time of appointment, later on its own motion, or on appropriate petition or motion of the incapacitated individual or other interested person, may limit the powers of a guardian otherwise conferred by this chapter. Any limitations on the statutory power of a guardian of an incapacitated individual shall be endorsed on the guardian's letters. Following the same procedure, a limitation may be removed or modified and appropriate letters issued.

#### 3. QUALIFICATION

A guardian, limited or general, qualifies by executing an acceptance of appointment and consent to jurisdiction (paragraph 14 of Petition for a General Proceeding or by execution of Form II-A-1, whichever is appropriate). To qualify the guardian must also execute a bond in the amount set by the Court, if bond is required by Order of Court. The Court may or may not require bond of a guardian.

#### 4. POWERS

Upon qualification, a guardian is responsible for the care, custody, and control of the ward, subject however any limitations imposed by the Court. A guardian shall become or remain personally acquainted with and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities and physical and mental health.

The guardian shall exercise only those powers under D.C. Code 21-2047(a)(b) and (c) (copy attached) as set forth in the Court's Order of Appointment or as may be authorized in a subsequent order of court.

5. PETITIONS.

Application to the court for an order subsequent to appointment shall be by verified petition on Form II-Q or a format substantially consistent with that format, together with a notice (Form I-J) in accordance with SCR-PD 311. The petition shall state with specificity the grounds for the request. The petition shall be accompanied by a proposed order for the court's signature.

6 GUARDIANSHIP REPORTS

(a) Filing of Reports.

A guardian, limited or general, shall submit a written report to the Court at least semi-annually on the condition of the ward and the ward's estate that has been subject to the guardian's possession or control. The report shall be prepared on Form II-M and be signed under oath. The first report shall be due six months from date of appointment and successive reports shall be due at six month intervals thereafter.

(B) Service of Reports.

Reports shall be served upon all parties, upon any person who has filed an effective request for notice and upon such other persons as the Court may direct.

7. SUGGESTION OF DEATH

Upon the death of the ward, the guardian shall forthwith file a suggestion of death (notice of death).

8. FINAL REPORT OF GUARDIAN

Upon death of the ward, termination of the guardianship or resignation of the guardian, the guardian shall within sixty (60) days thereafter file a final report of guardian with respect to assets under the guardian's control or possession. An affidavit in lieu of final report of guardian shall be filed within the prescribed period if no assets were administered by the guardian.

9. RECEIPTS.

Promptly after full distribution and settlement a guardian shall file receipts or canceled checks evidencing final distribution of any assets held.

10. The following additional information is also of importance to guardians, limited or general:

- (a) The applicable statute with respect to guardianship is Title 21 - Chapter 20.
- (b) The applicable Court Rules governing guardianships are located in the 300 Series of the Probate Rules.

- (c) No fees are to be paid out of estate funds unless specifically authorized by order of court after compliance with SCR-PD 308.
- (d) No guardian shall commingle any estate assets with non-estate assets.
- (E) Guardians are admonished that any authority granted by the court to administer funds of the ward, terminates upon death. Upon death of the ward, no further expenditures shall be made.
- (f) Court Clerks are prohibited from giving any legal advice. If legal questions arise the guardian should consult an attorney. Neither the Register of Wills nor any member of her staff is permitted to recommend lawyers. Should assistance in securing the services of a lawyer be required, one may wish to consult the Lawyer Referral Information Service of the D.C. Bar (202) 331-4365.

Sec. §21-2047. GENERAL POWERS OF DUTIES OF GUARDIAN

Except as may be limited by court order pursuant to Sec. 21-2044, a guardian of an incapacitated individual is responsible for care, custody and control of the ward, but is not personally liable to third persons by reason of that responsibility for acts of the ward.

- (a) In particular and without qualifying the forgoing, a guardian shall:
  - (1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities and physical and mental health.
  - (2) Take reasonable care of the ward's personal effects and commence protective proceedings, if necessary to protect other property of the ward.
  - (3) Apply any available money of the ward to the ward's current needs for support, care, rehabilitation and treatment.
  - (4) Conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian, at least quarterly, shall pay to the conservator money of the ward to be conserved for the ward's future needs.
  - (5) Report in writing the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the ward's

welfare or as required by court rule, but at least semi-annually.

(B) A guardian May:

- (1) Receive money payable for the support of the ward under the terms of any statutory benefits or insurance system or any private contract, devise, trust, conservatorship or custodianship.
- (2) Take custody of the person of the ward and establish the ward's place of abode within or without the District, if consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward.
- (3) Institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward, if no conservator for the estate of the ward has been appointed.
- (4) Consent to medial examination and medical or other professional care, treatment, or advice for the ward, without liability, by reason of the consent for injury to the ward resulting from the negligence or acts of third persons, unless the guardian fails to act in good faith.
- (5) Obtain medical records for the purpose of applying for a government entitlement or private benefits and have the status of a legal representation under the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136: D.C. Sec. 6-2001 et seq.) and 6. If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(C) A guardian shall not have the power:

- (1) To consent to an abortion, sterilization, psycho-surgery, or removal of a bodily organ except to preserve the life or prevent the immediate serious impairment of the physical health of the incapacitated individual, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court.
- (2) To consent to convulsive therapy, experimental treatment or research, or behavior modification programs involving aversive stimuli, unless the power to consent is expressly set forth in the order of appointment

or after subsequent hearing and order of the court.

- (3) To consent to the withholding of non-emergency life-saving medical procedures unless it appears that the incapacitated person would have consented to the withholding of these procedures and the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court.
- (4) To consent to the involuntary or voluntary civil commitment of an incapacitate individual who is alleged to be mentally ill and dangerous under any provision or proceeding occurring under Chapter 5 of Title 21, except that as guardian may function as a petitioner for the commitment consistent with requirements of Chapter 5 of Title 21 or the mentally Retarded Citizens Constitutional Right and Dignity Act of 1978, effective November 8, 1978 (D.C. Law 2-137; D.C. Code Sec. 6-1901 et seq.).
- (5) To consent to the waiver of any substantive or procedural right of the incapacitated individual in any proceeding arising from an insanity acquittal.
- (6) To prohibit the marriage or divorce, or consent to the termination of parental rights, unless the power is expressly set forth in the order of appointment or after subsequent hearing and order of the court.

(D) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing personally provided to the ward, but only as approved by order of the court pursuant to Sec 21-2060(a). (Feb. 28, 1987, D.C. Law 6-204, Sec. 2(A), 34 DCR 632; May 10, 1989, D.C. Law 7-231, Sec. 27, 36 DCR 492).

## SPECIFIC INSTRUCTIONS TO GUARDIANS

Upon appointment, unless the appointment is made to accomplish one specific purpose, a guardian, limited or general, shall become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities and physical and mental health. Specifically the guardian shall do the following-

(1) Upon appointment, the guardian shall forthwith qualify by filing bond if the Court requires bond and by filing an acceptance and consent to jurisdiction (Form II-A-1) unless the guardian has executed paragraph fourteen (14) of the Petition for a General Proceeding.

(2) To ensure awareness at all times of the ward's needs and condition, the guardian shall personally visit the ward and the ward's place of abode not less than once every thirty (30) days.

(3) From available funds a guardian shall ensure that monies are available each month for the personal use and/or needs of the ward. If the ward resides in a nursing home the guardian may consider contacting the appropriate nursing home officials with a view toward establishing and funding a "patient's account" with the home to be utilized for the monthly purchase of incidental needs of the ward. If the ward is a Medicaid recipient the guardian shall utilize such amounts as allowed by Medicaid regulations for the personal use needs of the ward.

(4) If no conservator has been appointed and the guardian is charged with the responsibility of expending funds for the care and maintenance of the ward, the guardian shall ensure that monies available for the care and maintenance are timely paid to the nursing home or other authorized caretaker at the agreed upon times.

(5) The guardian shall keep abreast of the ward's medical needs and desires and shall maintain sufficient contact with the ward's medical personnel and caretaker officials to ensure the medical needs of the ward are fully satisfied and shall seek appropriate order of Court prior to consenting to any medical

Superior Court of the District of Columbia

II-B

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

PETITION FOR TERMINATION OF APPOINTMENT OF

Guardian

Conservator

1. (a) \_\_\_\_\_  
(Name of Petitioner)

(b) \_\_\_\_\_  
(Address of Petitioner)

(c) \_\_\_\_\_  
(Petitioner's Relationship to Subject of Proceeding)

2. (a) \_\_\_\_\_  
(Name of Subject of Proceeding)

(b) \_\_\_\_\_  
(Age of Subject of Proceeding)

(c) \_\_\_\_\_  
(Address and Residence of Subject of Proceeding)

(d) \_\_\_\_\_  
\_\_\_\_\_  
(Name and address of Guardian)

(e) \_\_\_\_\_  
\_\_\_\_\_  
(Name and address of Conservator)

3.  The subject of the proceeding is no longer incapacitated because said individual is an adult whose ability to receive and evaluate information effectively or to communicate decisions is not impaired to such an extent



that he or she lacks the capacity, without court-ordered assistance or the appointment of a guardian or conservator, to take actions necessary to:

(Select appropriate box(es))

- obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income  
and/or
- provide health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness is more likely than not to occur  
and/or
- acquire and maintain those life skills that enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment and to raise the level of his or her physical, intellectual, social, emotional, and economic efficiency or meet all or some essential requirements for his or her therapeutic needs.

(b) The specific reasons why the subject of this proceeding is no longer incapacitated are:

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---

(c) The alleged incapacity of the subject of this proceeding  
 did  did not arise out of mental retardation.

(d) A comprehensive evaluation or habilitation plan  does  
 does not exist.

4. (a) The name and address of the personal examiner (e.g. attending physician) of the subject of this proceeding is \_\_\_\_\_

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(b)  An existing examiner's report is attached hereto.

(c)  Petitioner seeks appointment of said personal examiner as examiner and:

(1) Petitioner has discussed such appointment with said personal examiner and advised the personal examiner of the duties of the examiner, and the right of the subject to cross-examine the examiner in court.

(2) The subject's personal examiner is willing to serve as examiner.

- (d)  Petitioner does not seek appointment of said personal examiner as examiner and requests the Court to appoint another person as examiner.
  - (e)  Petitioner waives appointment of an examiner.
5. (a) The name and address of a personal visitor [e.g. social worker] who is familiar with the case of the subject this proceeding is \_\_\_\_\_
- (b)  Petitioner seeks appointment of said person as visitor, and
- (1) Petitioner has discussed such appointment with the nominated visitor and advised the nominee of the duties of the visitor, and the right of the subject to cross-examine the visitor in court.
  - (2) The subject's personal visitor is willing to serve as visitor.
- (c)  Petitioner does not seek appointment of said person as visitor and requests the Court to appoint another person as visitor.
- (d)  Petitioner waives appointment of a visitor.

6. Listed below are the names and addresses of the parties to whom notice will be sent pursuant to SCR-PD 325:

\_\_\_\_\_  
Name of Subject of Proceeding

\_\_\_\_\_  
Spouse and adult children

\_\_\_\_\_  
Any counsel to the subject known to Petitioner

\_\_\_\_\_  
Persons nominated in subject's durable power of attorney to be Guardian and Conservator

7. (a)  Petitioner requests the Court to appoint a Guardian Ad Litem for the subject of this proceeding for the following purpose(s):
- To assist the subject to determine his or her interests in regard to this proceeding.

To determine the interests of the subject in regard to this proceeding because the subject is  unconscious or  otherwise wholly incapable of determining his or her interest in this proceeding even with assistance.

(b)  Appointment of a Guardian Ad Litem is not requested.

8. (a)  Termination of the appointment of the guardian is sought because a guardian is not necessary as a means of providing continuing care and supervision of the subject of this proceeding and/or

(b)  A protective order should be made or

(c)  The appointment of the conservator should be terminated because:

(Select appropriate box(es))

the subject has no property that will be wasted or dissipated unless property management is provided, and/or

money is not needed for the support, care and welfare of the said individual, and/or

money is needed for those entitled to said individual's support and but protection is not necessary or desirable to obtain and provide money.

9. If entry of a protective order is sought, describe generally the subject's property with an estimate of the value of that property including any compensation, insurance, pension, or allowance to which the subject is entitled.

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10. The Petitioner seeks the following relief:

Entry of a protective order as follows:

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Termination of appointment of the  guardian and/or  conservator.

VERIFICATION

I \_\_\_\_\_, being first duly sworn, on oath,  
[OR: I \_\_\_\_\_, affirm] depose and say that I  
have read the foregoing pleadings by me subscribed and that the  
facts therein stated are true to the best of my knowledge,  
information and belief.

Subscribed and sworn to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

CERTIFICATION OF SERVICE

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_,  
19 \_\_\_\_ a copy of the foregoing \_\_\_\_\_ was  
served by first class mail, postage prepaid, upon the following  
parties to the above captioned case and persons granted permission  
to participate pursuant to SCR-PD 303 and persons who requested  
notice pursuant to SCR-PD 304.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Address, Telephone Number and Unified Bar Number of  
Counsel for Petitioner



3. The Court has jurisdiction over this proceeding because:

- (a) The subject of the proceeding is domiciled in the District of Columbia.
- (b) The subject while not a domicile of, nevertheless owns property located in, the District of Columbia.
- (c) property is coming, or has come into the control of a guardian or conservator who is subject to the laws of the District of Columbia.

4. (a). The Subject of the proceeding is incapacitated because said individual is an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to take actions necessary to

(Select appropriate box(es))

- obtain, administer, dispose of real and personal property, intangible property, business property, benefits, and income  
and/or
- provide health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness is more likely than not to occur  
and/or
- acquire and maintain those life skills that enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment and to raise the level of his or her physical, intellectual, social, emotional, and economic efficiency or meet all or some essential requirements for his or her therapeutic needs

(Select one)

- without court-ordered assistance  
or
- the appointment of

- a guardian
- conservator

(b) The specific reasons why the subject of this proceeding is incapacitated are:

---

---

(c) The alleged incapacity of the subject of this proceeding  
 does  does not arise out of mental retardation.

(d) A comprehensive evaluation or habilitation plan  
 does  does not exist.

5. (a) The name and address of the personal examiner [e.g. attending physician] of the subject of this proceeding is \_\_\_\_\_

[ ] An existing examiner's report is attached hereto.

(b) [ ] Petitioner seeks appointment of said personal examiner as examiner and:

(1) Petitioner has discussed such appointment with said personal examiner and advised the personal examiner of the duties of the examiner, and the right of the subject to cross-examine the examiner in court.

(2) The Subject's personal examiner is willing to serve as examiner.

(3) If the alleged incapacity arises out of mental retardation said personal examiner is a qualified mental retardation professional.

(c) [ ] Petitioner does not seek appointment of said personal examiner as examiner and requests the court to appoint another person as examiner.

(d) [ ] Petitioner waives appointment of an examiner.

6. (a) The name and address of a personal visitor [e.g. social worker] who is familiar with the case of the subject of this proceeding is \_\_\_\_\_

(b) [ ] Petitioner seeks appointment of said person as visitor, and:

(1) Petitioner has discussed such appointment with the nominated personal visitor and advised the nominee of the duties of the visitor, and the rights of the subject to cross-examine the visitor in court.

(2) The subject's personal visitor is willing to serve as visitor.

(3) If alleged incapacity arises out of mental retardation said personal visitor is a qualified mental retardation professional.

(c) [ ] Petitioner does not seek appointment of said person as visitor and requests the court to appoint another person as visitor.

(d) [ ] Petitioner waives the appointment of a visitor.

\_\_\_\_\_  
\_\_\_\_\_

10. if entry of a protective order or appointment of a conservator is sought, describe generally the subject's property with an estimate of the value of that property including any compensation, insurance, pension, or allowance to which the subject is entitled.

\_\_\_\_\_  
\_\_\_\_\_

11. Petitioner seeks the following relief:

Entry of a protective order as follows:

\_\_\_\_\_  
\_\_\_\_\_

Appointment of guardian and/or conservator with

Statutory powers as

guardian

conservator

or

greater powers

(specify power sought and by what authority court may grant it.)

or

lesser powers

(Note that if the conservator's bond is not to include securities and/or real estate, this box must be checked.)

12. Petitioner requests the following temporary relief pursuant to D.C. Code §21-2044 (d) or §21-2055 (b) (1) pending the hearing of this petition:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Bond is sought in the amount of \_\_\_\_\_  
because the aggregate capital value of the property of the estate in the proposed conservator's control, plus one year's estimated income, and minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land that the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization is \_\_\_\_\_.



7. Listed below are the names, addresses and telephone numbers of the persons to whom notice will be sent pursuant to SCR-PD 325:

---

Name of Subject of Proceeding

---

Spouse and adult children (*if none, list other relative*)

---

Any counsel to the subject known to petitioner

---

Persons nominated in subject's durable power of attorney to be guardian and conservator

---

Any previously appointed guardian and/or conservator

8. (a)  Petitioner requests the court to appoint a Guardian *ad litem* for the subject of this proceeding for the following purpose(s):

- To assist the subject to determine his or her interests in regard to this proceeding.
- To determine the interests of the subject in regard to this proceeding because the subject  unconscious or  otherwise wholly incapable of determining his or her interest in this proceeding even with assistance.

- (b)  Appointment of a Guardian *ad litem* is not required.

9. (a)  Appointment of a guardian is sought and is necessary as a means of providing continuing care and supervision of the subject of this proceeding

and/or

- (b)  A protective order should be made

or

- (c)  A conservator should be appointed because:

(Select appropriate box(es))

- the subject of the proceeding has property that will be wasted or dissipated unless property management is provided, and/or

- money is needed for the support, care and welfare of the subject, and/or

- money is needed for those entitled to the subject's support and protection is necessary or desirable to obtain and provide money. (If this box is checked, list names and addresses of all said persons:)

(If petitioner seeks reduced bond, list all securities and/or real estate for which court authorization for sale or conveyance will be sought:)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Petitioner

VERIFICATION

I \_\_\_\_\_, being first duly sworn, on oath, depose and say that I have read the foregoing pleadings by me subscribed and that the facts therein stated are true to the best of my knowledge, information and belief.

\_\_\_\_\_  
Petitioner

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Notary Public

Acceptance of

- guardian
- conservator

and

consent to jurisdiction

I do hereby accept the duties of the office of  guardian  conservator of \_\_\_\_\_ and consent to personal jurisdiction in any action

(subject of proceeding)

instituted in the District of Columbia by any interested person against me  guardian  conservator arising out of the duties of my office and if a non-resident, I do hereby irrevocably appoint the Register of Wills and successors in office as the person upon whom all notice and process issued by a competent court in the District of Columbia may be served with the same effect as personal service in relation to all suits or matters pertaining to the proceeding in which letters of  guardianship  conservatorship shall issue.

\_\_\_\_\_  
Petitioner (Sign only if seeking own appointment)

\_\_\_\_\_  
Telephone Number

CERTIFICATE OF SERVICE

I hereby certify that copy of the foregoing petition was served by first class mail, postage prepaid, on the following persons who are entitled to service pursuant to SCR-PD 321(c) within three days of the date of filing of the foregoing petition.

---

Signature

---

Name, address, telephone number and bar number of counsel for petitioner

cc:

Superior Court of the District of Columbia

II-A-1

PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

ACCEPTANCE OF

guardian

conservator

and

consent to jurisdiction if not same individual  
as petitioning party.

I do hereby accept the duties of the office of  
 guardian  conservator of

\_\_\_\_\_  
(Name of ward/protected person)

and consent to personal jurisdiction in any  
action instituted in the District of Columbia  
by any interested person against me as   
guardian  conservator arising out of the  
duties of my office and if a non-resident, I  
do hereby irrevocably appoint the Register of  
Wills and successors in office as the person  
upon whom all notice and process issued by a  
competent court in the District of Columbia  
may be served with the same effect as personal  
service in relation to all suits or matters  
pertaining to the proceeding in which letters  
of

guardianship, and/or

conservatorship shall issue.

Superior Court of the District of Columbia  
PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

ORDER APPOINTING EXAMINER

Upon consideration of the petition for an intervention proceeding, filed herein on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, it is by the Court this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,

ORDERED, that \_\_\_\_\_ is appointed examiner herein. The examiner shall perform the duties prescribed by D.C. Code §§21-2041(d) and/or 21-2054(a) as applicable and SCR-PD 326, and submit a report in writing to the Court and mail copies to all persons listed below at least 10 days before the hearing to be held on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock a.m., in courtroom \_\_\_\_\_ of the Superior Court of the District of Columbia.

\_\_\_\_\_  
JUDGE

(SEE SCR-PD 326 ON REVERSE)

**Rule 326. Examiner, duties and appointment.**

(a) *Duties.* Any examiner appointed by the Court shall submit a written report to the Court in accordance with Form II-F and mail copies to all persons listed on the order appointing the examiner no later than 10 days before the hearing. The examiner shall attend the hearing unless excused by the Court.

(b) *Contents of report.* In the report, the examiner shall make findings indicating whether the individual's ability to receive and evaluate information is impaired to such an extent that he or she lacks the capacity:

(1) To take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

(2) To take those actions necessary to provide health care, food, shelter, clothing, personal hygiene and other care for him or herself so that serious physical illness is more likely than not to occur.

(3) To meet all or some essential requirements for his or her habilitation or therapeutic needs.

(c) *Termination of appointment.* The appointment of an examiner shall terminate upon disposition of the matter unless otherwise directed by the Court.

Superior Court of the District of Columbia  
PROBATE DIVISION

IN RE:

Intervention Proceeding

No. \_\_\_\_\_

\_\_\_\_\_  
An Adult

ORDER APPOINTING VISITOR

Upon consideration of the petition for an intervention proceeding, filed herein on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, it is by the Court this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

ORDERED, that \_\_\_\_\_ is appointed visitor herein. The visitor shall perform the duties prescribed by D.C. Code §21-2033(c) and SCR-PD 327 and submit a report in writing to the Court and mail copies to all persons listed below at least 10 days before the hearing to be held on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock a.m., in Courtroom \_\_\_\_\_ of the Superior Court of the District of Columbia.

\_\_\_\_\_  
JUDGE

(SEE SCR-PD 327 ON REVERSE)

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Probate Division

N RE: Intervention Proceeding

No. \_\_\_\_\_

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came on for hearing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ on the Petition of \_\_\_\_\_ for \_\_\_\_\_

- Appointment of a permanent limited guardian of an incapacitated individual
- Appointment of permanent general guardian of an incapacitated individual
- Appointment of a successor guardian
  - General       Limited
- Appointment of a permanent limited conservator of a protected individual
- Appointment of a permanent general conservator of a protected individual
- Appointment of a special conservator of a protected individual
- Entry of a protective order
- Other \_\_\_\_\_

and the Court makes the following preliminary findings:

A. The following were present at the hearing (check appropriate boxes):

- Judge \_\_\_\_\_ (Name)
- Petitioner \_\_\_\_\_ (Name)
- Attorney for petitioner \_\_\_\_\_ (Name)
- Attorney for the Subject of the Proceeding \_\_\_\_\_ (Name)
- Examiner \_\_\_\_\_ (Name)
- Visitor \_\_\_\_\_ (Name)
- Guardian ad litem \_\_\_\_\_ (Name)
- Subject of the Proceeding was present



- Subject of the Proceeding was not present, good cause having been shown for his or her absence
- The following persons were also present who have been granted permission to participate in the proceeding after determination by the Court that the best interests of Subject would be served thereby:

---

(Name)

---

(Name)

- B. Subject of the proceeding is an adult.
- C. The Court has jurisdiction over this Proceeding because (check appropriate box(es)):
  - The individual to be protected, or who is incapacitated is domiciled in the District of Columbia
  - The individual to be protected, while not domiciled in the District, nevertheless owns property located in the District of Columbia
  - Property is coming, or has come into the control of a guardian or conservator who is subject to the laws of the District of Columbia.
- D. Subject of Proceeding was personally served at least fourteen (14) days prior to the hearing date.
- E. All notices required by law have been given or have been waived by interested persons.
- F. The hearing was  open  closed at the request of counsel and/or Subject of the Proceeding.
- 2. After consideration of the petition, the reports filed herein and the testimony and evidence adduced at the hearing, the Court makes the following findings of fact:
  - A. If a conservator is being appointed, check appropriate box(es):
    - the incapacitated individual has property that will be wasted or dissipated unless property management is provided
    - and/or
    - Money is needed for the support, care, and welfare of the said individual, and protection is necessary or desirable to obtain

and/or

Money is needed for those entitled to said individual's support, and protection is necessary or desirable to obtain and provide money.

B. The incapacity of the subject of this proceeding  
 does  does not arise out mental retardation.

C. A current comprehensive evaluation or habilitation plan  
 does not exist  does exist and  is on file herein  
or  may be located at \_\_\_\_\_

D. Special Findings of Fact: \_\_\_\_\_

E.  The Subject of the Proceeding is not incapacitated.

3. The Court therefore makes the following:

**FINDINGS OF FACT**

(Check appropriate box(es))

Subject of the proceeding is an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to take actions necessary to

(Check appropriate box(es))

obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income;

provide health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness is more likely than not to occur;

acquire and maintain those life skills that enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment and to raise the level of his or her physical, intellectual, social, emotional, and economic efficiency or meet all or some essential requirements for his or her therapeutic needs.

(Select one)

without court-ordered assistance

or

without appointment of

Check appropriate box(es)

a guardian as a means of providing continuing care and supervision of said incapacitated individual

and/or

a conservator.

1. The Court therefore makes the following:

CONCLUSIONS OF LAW  
(Select A or B)

1.  That \_\_\_\_\_ is an incapacitated individual whose best interests would be served by

Check appropriate box(es)

appointment of a guardian as a means of providing continuing care and supervision of said individual

and/or

appointment of a conservator as a means of property management

entry of a protective order.

or

B.  The subject of proceeding is not incapacitated and the petition should be dismissed.

5. On consideration of the forgoing the Court this \_\_\_\_\_ day \_\_\_\_\_ 19\_\_\_\_ makes the following order:

ORDER  
(Check appropriate boxes)

A.  That \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone No.)

is appointed permanent  limited guardian  
 general guardian  successor guardian of

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

and letters shall issue upon acceptance of appointment and consent to jurisdiction.

A copy of guardianship reports to be filed herein pursuant to SCR PD 328 shall be served on all parties, upon any person who has filed an effective request for notice as provided in SCR PD 304, and upon the following persons:

\_\_\_\_\_  
\_\_\_\_\_  
(Service of reports on additional persons may be required by subsequent order of Court or as determined by the Register of Wills.)

- B.  The guardian of the incapacitated individual is responsible for the care, custody and control of the Ward and shall be governed by the general powers and duties enumerated in D.C. Code §21-2047 (a), (b), and (c)  subject to the following limitations which shall be endorsed on the guardian's letters: \_\_\_\_\_

- C.  That \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone No.)

is appointed permanent  limited conservator  
 general conservator  special conservator of

\_\_\_\_\_  
(Name)

and letters shall issue upon filing of bond, acceptance of appointment and consent to jurisdiction.

- D.  Bond with approved surety is set at \$ \_\_\_\_\_ and shall be filed forthwith.

E. [ ] Special bonding provisions \_\_\_\_\_  
\_\_\_\_\_

F. [ ] The conservator of the protected individual shall observe the standards of care applicable to trustees and shall account to the Court as provided by statute and rule of the Court. Said Conservator shall be governed by those powers in administration enumerated in D.C. Code §21-2070 and those distributive duties and powers as enumerated in D.C. Code §21-2071

[ ] subject to the following enlargements and/or limitations which shall be endorsed on the Conservator's letters: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

G. [ ] The Court makes the following protective order:  
\_\_\_\_\_  
\_\_\_\_\_

H. [ ] The Specific Instruction Sheets to guardians/conservators provided through the Office of the Register of Wills are incorporated herein by reference, as applicable, and the guardian(s)/conservator(s) are admonished to review same.

I. [ ] The following persons shall hereafter continue as parties in this matter:  
\_\_\_\_\_  
\_\_\_\_\_

J. [ ] The following persons shall hereafter continue as participants in this matter:  
\_\_\_\_\_  
\_\_\_\_\_

K. [ ] The petition be, and is hereby dismissed.

\_\_\_\_\_  
J U D G E

Copies mailed to:

Parties to the above captioned case and persons granted permission to participate pursuant to SCR-PD 303 and persons who requested notice pursuant to SCR PD 304.

counting

# Superior Court of the District of Columbia PROBATE DIVISION

state of \_\_\_\_\_

No. \_\_\_\_\_

\_\_\_\_\_ Accounting of \_\_\_\_\_  
(First, Second, etc.) (Name of Fiduciary) (Fiduciary Capacity)

or period beginning \_\_\_\_\_ 19\_\_\_\_, and ending \_\_\_\_\_ 19\_\_\_\_

NOTE: The following "Summary of Transactions" should be used for all Guardianships, Conservatorships, Committeeships and the Income portion of trusts. Transactions affecting trust principal (corpus) should be recorded in the "Summary of Transactions" on Page 2.

SUMMARY OF TRANSACTIONS	Debit(s) (Receipts)	Credit(s) (Disbursements)
<b>Receipts:</b>		
Total from Schedule "A"		
Beginning Balance .....	\$	
Total from Schedule "B"		
Dividend Income .....		
Total from Schedule "C"		
Interest Income .....		
Total from Schedule "D"		
Annuity Income .....		
Total from Schedule "E"		
Rental Income .....		
Total from Schedule "F"		
Other collections .....		
Total from Schedule "G"		
Gain .....		
<b>Disbursements:</b>		
Total from Schedule "G"		
Losses .....		\$
Total from Schedule "H"		
Administrative Expenses .....		
Total from Schedule "I"		
Rental Property Expenses .....		
Total from Schedule "J"		
Other Disbursements .....		
Total from Schedule "K"		
Maintenance and care Expense—Distributions .....		
Total from Schedule "L"		
Ending Balance .....		
<b>Totals (Columns must agree) .....</b>	<b>\$</b>	<b>\$</b>

**SCHEDULE "A"**  
**BEGINNING BALANCE**

below the assets held at the beginning of the accounting. In the First Accounting, these would be assets held or in existence on the date of Appointment or Qualification. Each asset must be listed separately and described fully. In Guardianship, Conservatorship and Committeeship cases, include all personal property. In Trusteeship cases, include personal and real property.

example:

600 shares XYZ Co., common stock

Carrying value  
\$8,000.00

**NOTE:** In Trust cases if both Principal and Income items are included they should be stated separately and carried forward to the proper summary.

	Carrying Value
	\$
continuation sheet(s) are used, enter total of same here .....	\$
total (carry forward to summary) .....	\$

**SCHEDULE "D"**  
**ANNUITY INCOME**

List below each annuity pension, etc., identifying each as to source, period or months covered and the rate same.

Example:

Social Security benefits for the  
Calendar months of June 19\_\_ through May 19\_\_  
12 months as follows:

5 at	\$130.00 (136.70 Less 6.70 Insurance Premium)	\$650.00	
7 at	140.00 (146.70 Less 6.70 Insurance Premium)	980.00	\$1,630.00

	<b>Receipts</b>
	\$
continuation sheet(s) are used, enter total of same here .....	\$
Total (carry forward to summary) .....	\$

**SCHEDULE "E"**  
**RENTAL INCOME**

List below each parcel of real estate, or rental unit, the period covered, the gross rent collections and the amount of same. If the property is not rented or was only partially rented, please indicate and explain the reason(s) therefor:

Example:

1111 - 99th Street, for the months of  
June 19\_\_ through May 19\_\_, at \$300.00 \$3,600.00

	<b>Receipts</b>
	\$
If continuation sheet(s) are used, enter total of same here .....	\$
Total (carry forward to summary) .....	\$



**SCHEDULE "G"**  
**GAINS AND LOSSES**

Set in detail below, all security or other transaction(s). If same resulted in a gain or loss, the amount of each gain or loss should be extended to the appropriate column.

Example:

19__			
9/30		100 shares XYZ Co., common sold for \$3,000.00	
		100 shares XYZ Co., common carried	
		at	<u>2,500.00</u>
		<b>Net Gain</b>	<b>\$500.00</b>

NOTE: In Trust cases if both Principal and Income items are included they should be stated separately and carried forward to the proper summary.

	Gains	Losses
	\$	\$
Continuation sheet(s) are used, enter total of same here .....	\$	\$
Total (carry forward to summary) .....	\$	\$

**SCHEDULE "J"**  
**OTHER DISBURSEMENTS**

in detail below, all other disbursements or credits which cannot properly be included in Schedules "G", "I", or "K".

E: In Trust cases if both Principal and Income items are included they should be stated separately and carried forward to proper summary.

	Disbursements
	\$
continuation sheet(s) are used, enter total of same here .....	\$
<b>Total (carry forward to summary) .....</b>	<b>\$</b>

**SCHEDULE "K"**  
**MAINTENANCE AND CARE EXPENSES-DISTRIBUTIONS**

list in detail below, all expenditures related to the maintenance and care of Wards in Guardianship, Conservatorship and Committeeship cases. In Trust cases, list all distributions to beneficiaries.

NOTE: In Trust cases if both Principal and Income items are included they should be stated separately and carried forward to proper summary.

	Disbursements
	\$
if continuation sheet(s) are used, enter total of same here .....	\$
<b>Total (carry forward to summary) .....</b>	<b>\$</b>

Lot 4008, Square 42, improved  
 by premises 722 Easy Lane,  
 Washington, D. C. Rented  
 for \$250.00 per month.

**REAL ESTATE**  
 (IF NOT INCLUDED IN SCHEDULE "L")

\$10,000                  None                  Unknown

COMPLETE LOCATION AND DESCRIPTION	Assessed Value	Encumbrance (Mortgage Lien, Etc.)	Market Value If Known
	\$	\$	\$
<b>LUMN TOTALS</b> .....	\$	\$	\$

The foregoing securities are kept or deposited at \_\_\_\_\_  
 in the name of \_\_\_\_\_

The penalty of my undertaking is \$ \_\_\_\_\_  
 The original undertaking was filed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
 The surety is \_\_\_\_\_

**istrict of Columbia. to wit:**

I/we the undersigned, \_\_\_\_\_  
 (Type or Print Plainly)

do solemnly swear that the foregoing accounting is just and true, and that \_\_\_\_\_  
 have bona fide paid, or secured to be paid, the several sums for which \_\_\_\_\_ claim credit  
 and allowance.

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Address)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_

\_\_\_\_\_  
 Notary Public/Register of Wills/Clerk

**Superior Court of the District of Columbia**  
**PROBATE DIVISION**

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_  
 the foregoing account, being now presented for approval, the same is, after examination by the Court, approved  
 and passed.

\_\_\_\_\_  
 Judge.

Superior Court of the District of Columbia

II-R

PROBATE DIVISION

IN RE:

\_\_\_\_\_
An Adult

Intervention Proceeding
No. \_\_\_\_\_

\_\_\_\_\_
(Address)
\_\_\_\_\_

CONSERVATOR'S REPORT

Name of conservator \_\_\_\_\_

Address \_\_\_\_\_
\_\_\_\_\_

Describe significant changes, if any, in the capacity of the
subject of this proceeding to meet the essential requirements for
his or her physical health or safety:

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

The services being provided to the subject of this proceeding
are: \_\_\_\_\_
\_\_\_\_\_

The significant actions taken by the conservator during this
reporting period are: \_\_\_\_\_
\_\_\_\_\_

The significant problems relating to the conservatorship which have arisen during the reporting period are: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The reasonable and necessary expenses incurred by the conservator are as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The reason, if any, why the appointment should not be terminated or why no less restrictive alternative will permit the subject of this proceeding to meet the essential requirements for his or her physical health or safety are: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Attached is an accounting of the financial resources under the control and/or supervision of the conservator for the period indicated.

I certify that notice of the filing of this report and account has been sent to the following persons (name):

The subject of this proceeding:

The attorney of record:

The guardian:

The individuals most closely related to the subject of the intervention proceeding by blood or marriage:

The guardian ad litem, if any:

The individual(s), if any, appointed or proposed by appointment as guardian ad litem:

The individual or facility, if any, having custody of the subject of the intervention proceeding:

The Veterans' Administration (Veterans' Affairs Officer):

---

I further certify that this report has been explained to the subject of this intervention proceeding.

---

(Signature of conservator)

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
**PROBATE DIVISION**

II-N

In re: \_\_\_\_\_ Intervention Proceeding No. \_\_\_\_\_  
An Adult

CONSERVATORSHIP PLAN

I, \_\_\_\_\_, appointed conservator in the above-captioned proceeding on \_\_\_\_\_, hereby submit the following conservatorship plan and attached inventory.

THE FOLLOWING SERVICES ARE NECESSARY TO MANAGE THE FINANCIAL RESOURCES DESIGNATED BY THE ORDER OF THE COURT: (Collecting assets; depositing and investing same; continuing or participating in the operations of businesses or other enterprises, etc.).

THE MEANS BY WHICH THESE SERVICES WILL BE PROVIDED ARE:  
(Employment of persons such as investment advisors to advise or assist with conservator's duties.)

THE MANNER IN WHICH THE INCAPACITATED INDIVIDUAL, GUARDIAN, CONSERVATOR, OR ANY OTHER INDIVIDUAL WHO HAS BEEN APPOINTED TO SERVE IN THAT CAPACITY WILL EXERCISE AND SHARE THEIR DECISION-MAKING AUTHORITY IS: (Report agreements regarding how decision-making authority will be shared.)

THE POLICIES AND PROCEDURES GOVERNING THE EXPENDITURE OF FUNDS ARE: (Report agreements reached regarding expenditures of funds.)

OTHER ITEMS THAT WILL ASSIST IN THE MANAGEMENT OF THE DESIGNATED FINANCIAL RESOURCES AND IN FULFILLING THE NEEDS OF THE INCAPACITATED INDIVIDUAL, THE TERMS OF THE COURT'S ORDER, AND THE DUTIES OF THE CONSERVATOR ARE: (Report the need, if any, for the Court to assign to conservator any duties or powers which the disabled person lacks the capacity to perform.)

Attach a complete inventory of financial resources designated by the order of the Court.

A COPY OF THIS INDIVIDUAL CONSERVATORSHIP PLAN AND INVENTORY HAS BEEN SENT TO (insert names):

The incapacitated individual: \_\_\_\_\_

Each party and their attorney of record: [anyone given party status by Court order pursuant to SCR-PD 303 (c) (f)]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The individual most closely related to the subject by blood or marriage unless that individual's name or whereabouts is unknown and cannot be reasonably ascertained:

\_\_\_\_\_

The individual or facility, if any, having custody of the subject:

\_\_\_\_\_

The individual, if any, proposed for appointment *by will* as a guardian:

\_\_\_\_\_

The individual, if any, appointed or proposed for appointment as guardian *ad litem*:

\_\_\_\_\_

The duly appointed guardian, if any:



---

If no persons listed above exist, notice should be sent to the previously appointed visitor:

---

Persons who have filed an effective request for notice pursuant to SCR-PD 304:

---

The Veterans Administration, if veterans benefits are being received:

---

I, the undersigned \_\_\_\_\_ do solemnly swear or affirm that the foregoing report is, to the best of my knowledge and belief, complete and accurate.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

District of Columbia, S.S.

Or

State of \_\_\_\_\_, County of \_\_\_\_\_

---

Notary Public  
Deputy/Register of Wills  
Deputy Clerk

Certificate of Service

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of the foregoing \_\_\_\_\_ was served by first class mail, postage prepaid, upon the following parties to the above-captioned case and persons granted permission to participate pursuant to SCR-PD 303 and person who requested notice pursuant to SCR-PD 304.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

Signature

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**Probate Division**

Estate of

\_\_\_\_\_ )  
An Incapacitated Individual ) INTVP No. \_\_\_\_\_

**APPOINTMENT OF AGENT TO ACCEPT SERVICE OF PROCESS**

I, \_\_\_\_\_, Conservator  
of the Estate of \_\_\_\_\_, an  
incapacitated person, do hereby designate \_\_\_\_\_  
\_\_\_\_\_ as my agent, in the District of  
Columbia, with the mailing address shown below, on whom  
service of process may be made in like manner with like  
effect as if it were personally served on me.

AS WITNESSED my hand and seal this \_\_\_\_\_ day of  
\_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
Conservator  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Agent in the District of Columbia  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_

## Petitions for Compensation

### DC Code §21-2060; SCR-PD 308

1. D.C. Code §21-2060 (a) provides:

As approved by order of the court, any visitor, attorney, examiner, conservator, special conservator, guardian ad litem, or guardian is entitled to compensation for services rendered either in a guardianship proceeding, protective proceeding, or in connection with a guardianship or protective arrangement.

a. **DO NOT pay, or accept payment of, compensation from the assets of the subject without prior court approval!!**

b. While a conservator has authority to "employ attorneys," D.C. Code §21-2070(c) (23), trial court decisions state that a conservator must obtain prior court approval before paying counsel.

- The same is probably true for payment to paralegals.

*In re Bessie Mae Johns*, Int. 200-90 (J. Wolf, 11/27/92).

c. Proposed amendments to SCR-PD 308, clarify that compensation paid from the assets of the subject of the proceeding or from the Guardianship Fund must be first approved by the court.

2. Payment For Guardianship Fund

a. Pursuant to section 149(c) of the District of Columbia Appropriations Act, 2001 (Pub. L. 106-522), the courts established standards for determining whether petition for compensation from the Guardianship Fund under D. C. Code 21-2060 are complete.

b. Beginning on February 20, 2001, the court shall deem a petition "complete" if it is filed out accurately, is legible, and includes the following information:

- (1) Attorney name, bar number, tax identification number, mailing address and telephone Number:
- (2) Case name and docket number:
- (3) All information required under SCR-PD 308;
- (4) All information necessary to justify claims for compensation for substantial amounts or research, waiting, travel, investigative or other work time and;
- (5) Attorney certification that statements on the petition are true.

c. The court shall deem a petition "incomplete" when it does not contain the above described information. The "incomplete" petition must be returned by the courts within 7 calendar days and not otherwise be considered a completed petition for the purpose of computing interest under section 149, until a petition correcting the cited defects is received. The courts will include with the returned petition a cover letter which identifies all defects that prevents payment.

d. Beginning on February 20, 2001, the Districts of Columbia Courts will pay interest on a completed petition that has not been "paid" (i.e. date on which check issued or electronic funds transfer) within 45 days of receipt.

3. When filed--with the annual accounting or at any time prior to approval of the annul accounting.

Service--at least twenty (20) calendar days prior to filing.

Exceptions or Objections--filed within twenty calendar days from the mailing of the Petition and Notice of Petition for Compensation.

4. Petitions for compensation are carefully reviewed by the court and auditors.

a. As a general rule, compensation is paid out of funds of a person who either did not know the case existed or who did not want a case brought, and who clearly did not select the advocates in the case. Also, the usual restraints (a paying client with full capacity or adult heirs of an estate) often do not exist in an intervention matter. The court will therefore be extremely careful about requests for compensation.

i. Provide detailed explanation of services and time expended. Non-specific or generalized petitions will more likely be questioned or the full amount of compensation requested may not be granted.

ii. Time may be rounded, but not more than one-tenth of an hour. Rounding above one-tenth of an hour WILL result in a reduction in compensation. *In re Torchiana*, Admin. 431-95 (J. Wolf, 11/17/93) (121 D. Wash. L. Rptr. 2477; 12/7/93) .

iii. Compensation for travel time is not automatic, and is generally disfavoured but vary among probate judges.

iv. Travel time to and from court; and parking fees at court, are not allowed. *In re Margaret B. Allen*, Int. 146-92 (J. Wolf, 11/12/92) (120 D. Wash. L. Rptr. 2721; 12/24/92) .

v. Routine consultation with court personnel is often disallowed.

vi. Secretary and paralegal time may be included if for specific

tasks and if appropriately justified. Requests for compensation for mere clerical or secretarial services, however, will not be granted.

- The rate of pay for a paralegal should be justified.

5. "Reasonable" compensation is allowed. It is wise to take care to seek compensation based on the nature of services rendered. (An attorney appointed as conservator and guardian may request compensation at that attorney's usual hourly rate for preparing pleadings, accounts, etc., but may want to avoid charging an attorney's usual hourly rate for ordinary guardian functions such as shopping or picking up prescription medication, absent very special circumstances which should be explained in detail in the petition for compensation.)

- a. In many cases, judges have, distinguished between "conservatorship services," which are paid at the attorney's normal hourly billing rate, and "guardianship services," which are paid at a significantly reduced rate (\$35.00 per hour) .

6. Compensation is paid from the assets of the subject, unless the subject's assets will be "depleted" by payment of compensation, in which case compensation will be paid from the Court's guardianship fund. D.C. Code §21-2060(a) .

- a. SCR-PD 308(3) sets out the requirements for requests for payment from the guardianship fund.

b. In re Lizzie Mitchell, Int. 56-90 (J. Wolf, 1/22/93) (121 D. Wash. L. Rptr. 541; 3/19/93) sets out a definition of the "estate" of the subject and a definition of "depleted."

7. Compensation may be paid even if an intervention proceeding is not completed, either because of the death of the subject or settlement.

a. In re E.R., Int. 110-93 (J. Wolf, 2/1/94) (122 D. Wash. L. Rptr. 501; 3/17/94) is authority for payment of compensation from estate of subject even if intervention petition is dismissed.

b. If appropriate, guardianship fund compensation may be paid from the guardianship fund.

c. The court may be more circumspect when considering requests for compensation of counsel for the petitioner, to be paid from assets of a deceased subject. Clear justification will be required, and the Court will consider (1) whether there was clear need for a fiduciary, (2) whether there was any other person to come forward and seek protection, (3) whether the petitioner has the ability to pay his or her own legal fees, and (4) whether the petitioner's actions were of critical importance. In re Robert Hollander, Int. 32-99 (J. Long, 8/23/99) (Clear justification for compensation of counsel for the petitioner from a deceased subject's assets will be found if, among other things, the filing of the petition was an act virtually rescuing an incapacitated person when no other help was

in sight.)

8. Non-attorney conservators and guardians may be compensated for services. The same rules apply with respect to providing detailed explanations of services rendered and time expended. The petitioner should include some justification for a claimed hourly rate. (The Register of Wills generally uses a rate of \$25.00 per hour absent justification for some other rate.)

9. Compensation may be paid to conservator or guardian after death of the subject. However, the process may differ among the various probate judges. Orders of compensation will either (1) permit payment from the conservatorship to the extent assets remain in the control of the conservator; or (2) require that the award of compensation be presented as a claim against the estate of the subject.

10. Counsel fees maybe award to attorneys representing other interested persons. Sections 21-204(i) and 20-2054(f) state that any person may apply for permission to participate . *In re Ripley* Intervention 30-92, August 7, 1992, outlines the standard for compensation for attorneys representing interested person permitted to participate.



## PROPOSED AMENDMENTS TO SCR-PD 308

### COMPENSATION OF GUARDIANS, CONSERVATORS, ATTORNEYS, GUARDIANS AD LITEM, EXAMINERS AND VISITORS

EXPLANATORY NOTE: Since there is substantial new language in the rule, the entire rule is treated as new and no attempt is made show the deleted language.

(a) *Compensation by order of the Court.* Any visitor, attorney, examiner, conservator, special conservator, guardian *ad litem*, or guardian is entitled to reasonable compensation for services rendered in an intervention proceeding. Compensation paid from the assets of the subject of the proceeding, protected individual or ward, or from the Guardianship Fund (D.C. Code §21-2060(b)), must be approved by Order of the Court before being paid.

(b) *Petition for Compensation.*

(1) A guardian, conservator, guardian *ad litem* or attorney shall file a verified petition for compensation which shall set forth the following in reasonable detail:

- (A) the character and summary of the services rendered;
- (B) the amount of time spent;
- (C) the basis of any hourly rate(s) of compensation;
- (D) the size of the estate administered;
- (E) the benefits that accrued to the estate of the subject of the proceeding as a result of the services;
- (F) the nature, extent and costs of services performed by others that are fiduciary obligations, such as accounting and tax preparation services;
- (G) the amount and source of compensation previously allowed to all persons; and
- (H) a certificate of service, attesting that the petition and the Notice required by subsection (f) of this Rule were served at least twenty (20) calendar days prior to the filing of the petition.

~~(I) Whether the petitioner has been or has an agreement to be compensated from a source other than the estate or the Guardianship Fund.~~

(2) *Requests for Payment from the Guardianship Fund.* In addition to the requirements set forth in subsection (b)(1) above, when payment is sought from the Guardianship Fund, a guardian, conservator, guardian *ad litem* or attorney shall set forth the following information in the petition:

- (A) The nature and extent of the subject's assets, including contingent assets and noting which assets are liquid;
- (B) The nature and extent of the subject's income;
- (C) The character and extent of the subject's debts;

- (D) Whether the subject owns a residence, and if so, whether the subject or the subject's dependent(s) reside therein, but if not, whether the subject or the subject's dependent(s) expect to return to that residence;
- (E) Whether the subject has a burial fund or has prepaid funeral or burial expenses, and if so, the value of such fund or amount of prepayment; and
- (F) A description of the subject's expenditures. Where any information called for herein is not supplied, the petitioner shall state what efforts have been made to obtain the same.

(3) An examiner or visitor shall file a verified petition for compensation which shall set for the following in reasonable detail:

- (A) the character and summary of the services rendered;
- (B) the amount of time spent;
- (C) the basis of any hourly rate(s) of compensation.

(4) A Petition which does not conform to the requirements of this subparagraph 2 or 3 shall be deemed incomplete (as defined in the D.C. Court Standards for Submission of Petitions for Compensation Under the Guardianship Fund) and, within seven calendar days from the submission of the petition, shall be returned to the petitioner without being filed.

*(c) Petitions: when filed.*

(1) Petitions for Compensation shall be filed either with the annual accounting or at any time prior to approval of the annual accounting. An interim petition for compensation for establishing a guardianship, conservatorship or entry of a protective order shall be filed promptly upon conclusion of the hearing but not later than 90 days after the conclusion of the hearing.

(2) A petition for compensation may not be filed unless it has been served at least twenty (20) calendar days prior to the filing of the petition. The certificate of service shall include a provision showing compliance with this requirement.

*(d) Service of Petition.* The petition for compensation, accompanied by the Notice of Petition for Compensation set forth in subsection (f) of this Rule, shall be served on:

- (A) the subject, ward or protected individual;
- (B) the parties to the proceeding and persons granted permission to participate in the proceeding, as provided in Probate Rule 303;
- (C) any person who has filed an effective request for notice; and
- (D) any other person as directed by the Court or the Register of Wills.

*(e) Exceptions or Objections.* Within twenty calendar days from the mailing of the Petition



The person filing a petition for compensation or any person who timely filed an objection or exception to such petition may seek reconsideration of any order disposing of that petition for compensation. A motion for reconsideration shall be filed not later than ten days from the date of the order disposing of the petition for compensation and may seek reconsideration only on the grounds set forth in SCR-PD 430(a). A motion for reconsideration shall be served on those persons who were served with the petition for compensation. A response to a motion for reconsideration must be filed within ten days of service of the motion. The Court may rule on a motion for reconsideration with or without a hearing.

(i) *Payment from the Guardianship Fund.*

(1) The Court shall enter an order disposing of any request for payment from the Guardianship fund, including a petition to which exceptions or objections are filed or a motion for reconsideration of an order for payment from the Guardianship Fund, within 30 days of the filing of such request.

(2) The acceptance of a payment from the Guardianship Fund made under any order for payment entered pursuant to this Rule shall not prejudice the petitioner's right to reconsideration or appeal of such order and shall not be deemed to have *res judicata* or estoppel effect on such reconsideration or appeal.

COMMENT

This rule is intended to implement the public policy of protecting incapacitated adults, and therefore no compensation may be paid from the assets of the subject without first being approved by the Court. Counsel retained pursuant to Rule 305(b) is subject to this requirement. For purposes of the Prompt Payment Act, a motion for reconsideration filed pursuant to Paragraph (h) of this Rule shall be deemed a new "request" for payment.

# THE DAILY WASHINGTON Law Reporter

Established 1874

J.C. Superior Court

## GUARDIANSHIPS

### ATTORNEYS FEES

Guardianship fund may be used to pay attorney fees where resources of subject are all but exhausted, when only asset is burial fund or home occupied by subject, or is contingent or theoretical.

*IN RE LIZZIE MITCHELL, ETC.*, Super. Ct. D.C. Interv. Nos. 56-90, 34-91, 230-91, 18-92, 90-92 & 114-92, January 22, 1993. *Opinion per Wolf, J.*

WOLF, J.: The court has before it six cases, each of which has a pending request for this court to authorize payment of attorney's fees from the Guardianship Fund, D.C. Code §21-2060 (1989 Repl.). The court has decided to address these motions in a joint order because of their common issues, the complications of how and when to authorize payment from the Guardianship Fund, and because of the lack of law and guidance in the District of Columbia on the permissible use of the Guardianship Fund. This opinion decides the motions in these six cases and lays out some general guidelines stating when in the future this court will authorize payments to be made from the Guardianship Fund.

In *In re Lizzie Mitchell*, Intervention No. 56-90, the permanent limited guardian for the subject, Bonita T. Rudd, Esq., petitions for compensation for guardian fees for 14 hours and 3 minutes at her standard rate of \$130 per hour (\$1,825.50) and expenses of \$110.20, including \$100 for the cost of her bond. An objection to this request was filed by Jessica Cabness, MSW, Director of Resident Services at the Washington Center for Aging Services where the subject is a resident. The basis of this objection is that since the subject's sole assets are a burial trust fund valued at \$1,500, a residential fund account of \$745.26, and \$70 per month in income from Supplemental Security Income, acquiescing to the petition would extinguish the subject's assets. Payment from the Fund would total \$772.75 at \$55 per hour plus the expenses.

In *In re Elsie Hall*, Intervention No. 34-91, counsel for the subject, Ethel A. Ollivierre, Esq., petitions for reconsideration of a court order dated August 11, 1992 which denied her petition for compensation from the Guardianship Fund without prejudice to resubmission after the subject's real estate is sold pursuant to the court's order of June 16, 1992. Counsel now petitions for compensation for attorney's fees from the Guardianship Fund for 6 hours of work at the Fund rate of \$55 per hour and expenses of \$9, totalling \$339. Though she states that her usual fee is \$150 per hour, Ms. Ollivierre has never petitioned the court for payment at that rate. The subject lives in the Wellington Manor Nursing Home in Clinton, Maryland and owns unencumbered real property located at 1549 4th Street, N.W., assessed at \$55,628. Petitioner alleges that due to the con-

dition of the house, the neighborhood in which it is located, and the state of the housing market, it is unlikely that the house will be sold within the next two years. She attaches to her petition for reconsideration a July 27, 1992 order by Judge Hamilton, Presiding Judge of the Probate and Tax Division, in *In re Donald H. Goss*, Intervention No. 95-92, ordering payment to a psychologist-examiner from the Guardianship Fund in the sum of \$1,078 "provided that the District of Columbia will be repaid this sum by the subject, the conservator or the subject's personal representative when liquid assets are available."

In *In re Edith Jenkins*, Intervention No. 230-91, the conservator/guardian for the subject, Robert Bunn, Esq., petitions the court for compensation from the Guardianship Fund for 14.8 hours of work at a reduced rate of \$85 per hour plus expenses of \$40.17, totalling \$1,298.17. Petitioner is in the process of initiating a law suit against J.B. Johnson Nursing Home for personal injuries sustained by the subject. The subject is currently living in a different nursing home and her assets consist of a \$1,500 burial fund and \$1,100 in a general fiduciary account, some of which has been committed to defray expenses of the law suit that has now been approved by the court after counsel's petition for compensation was filed. Payment from the Fund, at \$55 per hour, would total \$814 plus the expenses.

In *In re Mamie Page Botts*, Intervention No. 48-92, counsel for the subject, Lennox J. Simon, Esq., has already been awarded attorney's fees of \$1,146.58 (including \$37.20 in expenses) by this court on June 16, 1992. He now petitions for payment from the Guardianship Fund. The subject owns the following real property: a house and land located at 913 43rd Place, N.E. (her former residence with a market value of approximately \$20,000) and an unimproved lot at 4614 47th Street, N.E. with an assessed value of \$5,391. Petitioner informs the court that he was told by conservator's counsel that the real property required major repairs and would not be sold in the near future. Payment from the Fund, at \$55 per hour, would total \$487.85.

In *In re Mary F. Clayton*, Intervention No. 90-92, counsel for the subject, Robert J. Pleshaw, Esq., petitions for his attorney's fees of \$600 (6 hours at his normal rate of \$100 per hour) plus \$19.50 in expenses to be paid from the Guardianship Fund. The subject's assets consist of a one-quarter share—as a beneficiary of her mother's estate along with her two brothers and sister—of real property assessed at \$81,000 located at 617 10th Street, N.W. The subject currently resides at the Grant Park Care Center in Washington, D.C. The petitioner seeks payment from the Fund because of the illiquidity of the subject's assets. Payment from the Fund, at \$55 per hour, would total \$330 plus expenses.

In *In re Frank Figliozzi*, Intervention No. 114-92, counsel for the subject, Scott A. Nuchow, Esq., petitions for his attorney's fees to be paid from the Guardianship Fund. On September 28, 1992 this court awarded him a attorney's fees totalling \$1,094.50 to be paid from the subject's estate. These fees have not been paid. The subject's main asset was an inheritance of a one-fifth interest, worth approximately \$8,000, in real property located at 24

4th Street, N.E. Control of this property had not yet passed to the subject by the time of his death on September 6, 1992. Petitioner states that creditors to the subject's estate could swallow the estate's assets and leave nothing for his services. Payment from the Fund, at \$55 per hour, would total \$547.25.

The common thread running through these six intervention cases is that an attorney is owed money for his or her legal services, the subject's estate is illiquid and cash-poor, and the attorney desires payment from the Guardianship Fund. The only provisions within the D.C. Code pertaining to the Fund are set out at section 21-2060:

(a) As approved by order of the court, any visitor, attorney, examiner, conservator, special conservator, guardian ad litem, or guardian is entitled to compensation for services rendered either in a guardianship proceeding, protective proceeding, or in connection with a guardianship or protective arrangement. Any guardian or conservator is entitled to reimbursement for room, board, and clothing, personally provided to the ward from the estate of the ward, but only as approved by order of the court. *Compensation shall be paid from the estate of the ward or person or, if the estate of the ward or person will be depleted by payouts made under this subsection, from a fund established by the District.*

(b) There is established within the General Fund of the District of Columbia a separate account to be known as the "Guardianship Fund" ("Fund") and to be administered by the court. There is authorized to be appropriated funds necessary for the administration of this section.

(Emphasis added).

Proper application of section 21-2060 depends on an accurate understanding of the word "depleted" in subsection (a). According to *The American Heritage Dictionary* 354 (1976) deplete is to "use up or exhaust, to empty." The primary definition of "deplete" in *Webster's II New Riverside University Dictionary* 364 (1984) is to "lessen or reduce in quantity, value or effectiveness: exhaust." The secondary definition is "to empty." Interpreting these definitions to mean merely to *lessen or reduce* would mean that any reduction in the estate of a subject would allow payment from the Fund. Thus the sensible interpretation of "depleted" would appear to be to "exhaust" or "empty."

The scant legislative history of this D.C. Code provision provides some support for this view. The "Guardianship Protective Proceedings and Durable Power of Attorney Act of 1986" was a comprehensive revision of the law governing guardianship proceedings. The District of Columbia Council Committee on the Judiciary, in its section-by-section analysis of the act prior to passage, wrote that section 21-2060

Requires reasonable compensation, as directed by the court, for any visitor, attorney, examiner, conservator or special conservator for services rendered in a protective proceeding. The compensation shall come from the estate itself, or from a fund established by the District of Columbia for that purpose.

Council of the District of Columbia, Committee on the Judiciary, *Report on the District of Columbia Guardianship, Protective Proceedings and Durable Power of Attorney Act of 1986* 10 (June 18, 1986).

The Committee had heard testimony from Thomas F. Bastow, then Chief of the Legisla-

tion and Opinions Section, Legal Counsel Division. Office of the Corporation Counsel, who in part commented on his problems with the term "depleted."

Section 2-210 [now 21-2060] provides that the District may be required to pay for services rendered by a visitor, attorney, examiner, conservator or special conservator if the estate of the protected person will be "depleted" by payments from the estate. Without some limitations as to what the word "depleted" means this provision could be interpreted to require the District to foot the bills of even wealthy persons who benefit from the services of a visitor, attorney, examiner, conservator, or special conservator.

We believe the intent here is to prevent relatively small estates from being exhausted, leaving protected individuals with little or no money or other assets with which to provide for their own support. We will, of course, be happy to work with the Committee to draft language which more clearly reflects this intent.

*Id.*, Attachment 3 (public round-table, September 18, 1985). The Committee noted in its report that "Mr. Bastow made some specific recommendations on Bill 6-7. Section 2-210 should be amended to explicitly state the definition of 'depleted.'" *Id.* at 12. The Committee made some revisions, but for some unknown reason did not attempt to define "depleted." This problem was not corrected in subsequent changes made to the provision, but perhaps this was because the Council was satisfied that the apparent dictionary definitions sufficed.

This court interprets section 21-2060 so as not to permit payment from the Fund by the taxpayers for legal services unless the subject's estate would be exhausted or emptied by payment from his or her estate. "Estate" means the property of the individual whose affairs are subject to this chapter," D.C. Code §21-2011(6), and obviously includes non-cash assets, as is demonstrated by the repeated use of "estate" in the provisions pertaining to the power of the conservator in section 21-2070(c).

In 1990 the Probate Division of the Superior Court began to develop eligibility criteria for payment of compensation from the Guardianship Fund. Rules were never promulgated except that the hourly rate for payment from the Fund was set, by order of the Chief Judge, at \$55 per hour. Memorandum to John F. Schultheis, Fiscal Officer Superior Court of the District of Columbia (January 18, 1991). Those proposed rules were patterned in part on the Criminal Justice Act guidelines and vouchers (D.C. Code §11-2601 *et seq.*) and on Medicaid criteria. They would have taken into account the U.S. Department of Labor's Consumer Price Index for Washington, D.C. Gross income plus a ceiling of \$5,000 of allowable liquid assets would have been compared to the Lower Living Standard Income Level Schedule for Washington, D.C. to determine eligibility for court-funded services. Part of the equity in real or personal property, the sale of which would cause unreasonable hardship, but which could be taken into account as the amount which could be obtained by a secured loan on those non-liquid assets, would have been considered as part of that \$5,000. These proposed rules have assisted the court in issuing the rulings in the cases under consideration. At some point in the future the court may revisit this issue to decide appropriate and specific monetary levels which should be utilized for indigent subjects before this Division. At this time, however, in order to decide the pending motions, the court will state some general prin-

ciples pertaining to the Fund.

This court feels very strongly that taxpayer funds should not be dealt with lightly. The Fund was set up to compensate attorneys and other participants in guardianship and protective proceedings, but it was not set up for the convenience of those parties.

All of these cases involve estates which are cash-poor—there are insufficient liquid assets to pay the petitioning party his or her fees. As a general principle, if the estate consists of some unsold real property, the court cannot find that the estate is bereft of all assets such as to justify payment from the Fund in this situation, regardless of the condition of the property, the neighborhood in which it is located, or the length of time believed to be required to sell the property, the real property will have to be sold for the petitioner to be paid. The court believes it inappropriate for an attorney to be paid—ever at a lower rate of pay per hour—simply because real property allegedly will not be sold for some time. This principle specifically applies to *Hall, Botta, Clayton*.

This rule would not apply, however, to a situation where the subject is living in the property. The court would not wish to obligate an attorney-petitioner to act in opposition to the best interests of a subject by forcing a sale of property and risk putting the ward "out on the street." There will be a different result if the subject has moved from his or her home to a nursing home or other facility, there is an expectation that she or he will return to private dwelling, and the subject leaves a spouse or dependent child in the house.

This bifurcated approach—which turns on whether the subject is or is not living in the privately owned residence—is consistent with Federal Medicaid and Supplemental Security Income provisions. In those programs a subject in which the subject currently lives is excluded from the determination of an individual's resources. 42 U.S.C.A. §1382b(a)(1) (1992); 20 C.F.R. §416.1210(a) (1991).

If an individual (and spouse, if any), moves out of his or her home without the intent to return, the home becomes a countable resource because it is no longer the individual's principal place of residence. If an individual leaves his or her home to live in an institution, we still consider the home to be the individual's principal place of residence, irrespective of the individual's intent to return, as long as a spouse or dependent relative of the eligible individual continues to live there. The individual's equity in the former home becomes a countable resource effective with the first day of the month following the month it is no longer his principal place of residence.

20 C.F.R. §416.1212(c) (1991). In such a situation involving an intervention proceeding, the court will order that the attorneys be paid from the estate, not the Fund.

If a lawsuit is to be filed on behalf of the subject, a successful conclusion to that lawsuit clearly be an asset to the estate. Payment of the estate solely on the basis of a lawsuit, however, would be speculative. If any such resolution, if this prospect is justified, then payment from the Fund will be justified, as in *Jenkins*. Expenses of the lawsuit, however, will be paid from the subject's estate.

The problem presented in *Figlio* is a combination of these two issues, complicated by the fact that the subject is deceased. The subject had an interest in real property which he had through an inheritance; however, the complications and at the time of his c-

property had not yet been transferred to the subject's estate. This interest, although of course not currently accessible to the deceased subject, is still an asset of his estate. It is more concrete than a speculative lawsuit discussed above. In this instance, since the subject has died, the petitioner has an enforceable claim upon the subject's estate arising from the court's prior order approving fees of \$1,094.50. The request to pay fees from the Fund must be denied without prejudice to further developments in the deceased subject's estate.

*Mitchell* is somewhat different because the petitioner did not request payment from the Fund; instead, that request came from an objector to the petition. The case illustrates the definition of depletion adopted in this opinion—to exhaust or use up. The subject's estate consists of a residential account of \$745.26 and a burial fund of \$1,500. That burial fund was established solely for use against funeral costs upon the subject's death; it is at the maximum amount allowable under the District of Columbia and Federal public assistance regulations. See, e.g., D.C. Code §3-217.5(b)(4) (1988 Repl.) and 20 C.F.R. §416.1210(1) (1991). The court when examining requests for Guardianship Fund payments will ignore such a burial fund if it is within the amount allowed by public assistance.

Petitioner's requested compensation of \$1,936.20 is considerably more than the subject's residential account and would completely deplete her non-burial assets. For these reasons, petitioner's attorney's fees will be paid from the Guardianship Fund, though her expenses are appropriately paid from the subject's estate. In this situation, none of the subject's \$745.26 in cash assets will be taken for attorney's fees. The court can foresee a situation where there might be a much larger request for attorney's fees, significantly more liquid assets possessed by the subject, but still not enough assets to pay all the attorney's fees. In such a case, the court might award partial payment from the subject's assets and partial payment from the Guardianship Fund. Indeed, here the court has differentiated between payment of expenses (from the estate) and attorney's fees (from the Fund) in both *Mitchell* and *Jenkins*. It is also conceivable that periodic payments from an estate could be ordered where it is clear that the estate is operating with a steady surplus of income over expenses. The court is unwilling to draw definitive lines at this point without such a case before it.

The court has considered using the Guardianship Fund as a revolving fund for the convenience of the petitioner seeking payment for services—paying his or her fees at the lesser rate of \$55 per hour, ordering the Fund to be repaid if liquid assets become available, and then allowing the lawyer to petition the court for payment of the difference between his or her standard hourly rate and the amount the lawyer was earlier compensated from the Fund when a subject's assets become available. The original payment from the Fund could also become a claim upon the estate of a deceased subject. Indeed, this approach has been utilized in the past by some judges within the Superior Court, of which the attachment of an order of Judge Hamilton in the *Jenkins* petition is an example. Nonetheless, complexities about who would assume the role of claimant (the District of Columbia government? the Register of Wills?), what happens if the estate is probated in another jurisdiction, and the risk that the absence of someone with a sufficient self-interest in being paid would result in inaction, have caused this court to reject the concept of a revolving fund.

Moreover, as previously noted, was not set up for the convenience of lawyers but to ensure their payment in cases where a ward's estate would be "depleted." The attorneys in these cases were all appointed from a list of volunteers for such appointments maintained by the Register of Wills/Clerk of the Probate Division. Delays in payment of fees for private practitioners is a common occurrence and burden of the legal profession. Criminal Justice Act lawyers appointed to represent indigent criminal defendants may wait many months for payment between their initial appointment, the final disposition of a case, and the processing of a voucher for payment. Lawyers practicing in the Probate Division are not exempt from such vicissitudes and are paid considerably more per hour than the Criminal Justice Act rate of \$35, D.C. Code §11-2604(a) (1989 Repl.)—whether paid from a subject's estate or from the Fund.

Instead, the general approach that this court will take in these and future cases requesting payment from the Fund is to use a "snapshot" approach to examine the current nature of the subject's estate and determine if the subject's assets will be "depleted"—approaching the point of being exhausted or used up. The court will then make decisions regarding appropriate disbursement from the Fund under the current facts known to it; what happens later to an estate is irrelevant to usage of the Fund. The only deviation from this principle might be if an unknown element of an estate is later discovered—for instance, in a situation where this court has approved payment from the Guardianship Fund and it is later discovered that the subject had assets about which it was unaware at the time of the order of payment from the Fund. In such a situation the court may take appropriate corrective action.

In summary, utilizing this snapshot approach, the court will authorize use of the Fund in any of the following situations where the resources of the subject are all but exhausted: when the subject's only asset is the home in which he, she, or a dependent relative is living; when the subject's only asset is a contingent or theoretical one, such as the chance of prevailing in a lawsuit; or when the only asset is a burial fund containing a maximum of \$1,500. Approval for expenditures from the Fund will not be entered in the following situations: where the subject has unsold real property, even if difficult to sell; or when the subject owns a home in which she or he formerly lived, but the subject is now living elsewhere and is unlikely to return.

In the petitions before this court at this time the court therefore makes the following decisions: In *Mitchell*, Ms. Rudd's petition will be granted in part; payment will be made from the Guardianship Fund at a rate of \$55 per hour for attorney's fees; reimbursement of expenses shall be paid by the subject's estate. In *Hell*, Ms. Ollivierre's petition that she be paid for attorney services from the Guardianship Fund will be denied. In *Jenkins*, Mr. Bunn's petition for funds will be granted and payment will be made from the Guardianship Fund except for expenses. In *Botts*, Mr. Simon's petition for payment from the Guardianship Fund will be denied. In *Clayton*, Mr. Pleshaw's petition for counsel fees will be granted in part—the subject's estate will be ordered to pay him for his attorney services—but denied as to payment from the Guardianship Fund. Finally in *Figliozzi*, Mr. Nuchow's petition for counsel fees to be paid from the Guardianship Fund will be denied.

Orders consistent with this opinion are filed on this date.

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## 3. Superior Court

### ADMINISTRATION OF ESTATES

#### SEE APPLICATIONS

Probate Court will no longer approve rounding of hours in fee applications where rounding of hours exceeds one tenth of an hour.

ESTATE OF TORCHIANA. Super.Ct. of D.C. Adm. No. 431-92, November 17, 1993. *Opinion per Wolf, J.*

WOLF, J.: The court has before it the Requests for Compensation for Services filed by the co-personal representatives Riggs National Bank of Washington, D.C. and Stephen Kurzman, Esq. in the amounts of \$40,042.35 and \$5,681.25 respectively. The court has previously approved the fee request of Riggs National Bank.

Mr. Kurzman petitions for fees for 21.75 hours of services rendered to the estate at his usual rate of compensation of \$260 (1992) and \$275 (1993) per hour. The court observes that counsel's hours are all rounded off to the nearest quarter hour. Of 41 entries noted in the statement of services, the co-personal representative listed 25 entries (23 in 1992 and 2 in 1993) on which he expended one-quarter hour only, totalling 6.25 hours or \$1,632.50. It is even more striking that there are 13 telephone calls (11 in 1992 and 2 in 1993) which are billed at one-quarter hour each, totalling 3.25 hours and billed at \$852.50.

As a judge assigned to the Probate Division, the undersigned passes upon dozens of fee petitions per month—in administration cases such as this one, intervention cases, guardianship cases, and other miscellaneous fiduciary matters. Most fee petitions are accompanied by a statement of services by the attorney listing the date, amount of time expended, and service or services performed for each entry. Most list the times expended in tenths of an hour or less. For some fee petitions a statement of services is not required, *cf.* Probate Rule 124(c)(2)(A), but it may be requested by the court *sua sponte*, and usually is whenever objections to a fee request are filed. Probate Rule 124(d)(3). This judge has seen many examples of quarter-hour rounding in his 23-month tenure in the Probate Division, and occasionally rounding to the half hour. The court has the impression that the higher the hourly rate, the more common the high rounding practice, as in this case where counsel's rates are very high.

It is difficult to know how to respond to this practice. The court may appear to be nitpicking, as the sums involved can be small (though "small" is a relative term). In this case a single quarter-hour telephone call comes to \$67.75 at the 1993 hourly rate of \$275. In this era of electronic calculators and computers, it is arguable that counsel should bill to the minute. Indeed Criminal Justice Act (CJA) attorneys and investigators in Superior Court, paid by public funds, have been required to record and bill their times to the minute for about 25 years, including a statement of the actual clock time begun and ended for each separate service per-

formed. For many years this judge has cut such fee requests by 5 to 10 percent whenever consistent rounding of clock times and elapsed times was detected. In this probate case *all* entries on counsel's bills are rounded to a quarter hour, not just single telephone calls. The court cannot help but be aware of the natural human tendency, and pull of billable hours, to round up.

The court took the unusual step on July 16, 1993 of forwarding a copy of a draft opinion to the parties in this case and one other (*Estate of Sara Poll*, Admin. No. 357-92), soliciting responses on this troublesome practice. Mr. Kurzman responded that he believed his fee request was appropriate "based as it is on time records which I maintained as accurately and responsibly as possible in accordance with the firm's practices." He further stated

For as long as the firm has maintained daily time records (and the firm is 118 years old), it has done so in 15-minute increments. The computerization of the firm's time records, which began years ago, did not change this practice . . . .

Recognizing that some tasks, such as a short telephone call, may require less than 15 minutes, the firm's express policy is to require attorneys and legal assistants to use good judgment and to cumulate smaller time increments and record them in a single 15-minute entry, rather than, as the Court assumes, charging a minimum quarter-of-an-hour for each task in a mechanical way or "rounding up."

Of course it is just longstanding practice the court has profound doubt about. When any counsel (including CJA attorneys) submit time records—or anything else—to the court, it has



right to expect accuracy. "Cumulat[ions] of smaller time increments" that are listed as single telephone calls on particular dates dealing with particular subjects imply that the court must "read between the lines." This demands more of the court than is appropriate when—to repeat—it has a right to assume that any submission to the court is accurate. To presume otherwise provides no basis for presupposing that inaccuracies are to the client's detriment on the one hand, or in the client's favor on the other.

It is common, of course, for beneficiaries to consent to most fee requests. That is the case here, though there is only one such beneficiary. And the overall fees for the co-personal representatives amount to only 4.1 percent of the estate's assets and income. (The bank's fee, as is customary, is based upon its graduated fee schedule dependent on the size of the estate and a percentage of estate income.) It is, nevertheless, the court's duty under D.C. Code §20-751 (1989 Repl.) to approve fees, and that implies disapproval, if appropriate, in spite of a consent or consents. The court recalls well a letter of thanks it received recently on behalf of several beneficiaries in an estate after it lowered a consented-to attorney's fee: They recited how grateful they were because the attorney had been their deceased father's friend, they thought his fee was too high, but they were most reluctant to object to it.

The court feels that it owes an explanation to attorneys whose fees are cut to ensure that they know that fee reductions are not arbitrary. Mr. Kurzman argues

The Court can always require an explanation for a particular fee application, as it has in this instance . . . . But if the Court concludes that a wholesale change in billing practices is necessary, it should order the change prospectively only, perhaps by promulgating an amendment to the Court's Probate Rules. The Court should not retroactively penalize attorneys who have already billed their time in good faith in accordance with long-standing practice and with no prior notice that there was anything improper in that practice.

However, sheer numbers of fee petitions make it impossible for the court to write an opinion or order or wait for a further explanation every time such significant rounding problems appear. Counsel has admitted, as he must, that his and his firm's time records are imprecise. Why should the court in such rounding cases issue orders to have counsel explain how and why records submitted to the court are inaccurate? Why should the Probate Rules be amended to require accuracy of counsel? Nor do courts customarily issue prospective orders. They decide real cases and controversies, as this petition presents, where the governing statutes and rules require and always have, *cf.* Probate Rules 1(b) and 14(f), court approval of fees. Finally, while the disapproval of the rounding and approximations evident in this case may require "wholesale" revision of Mr. Kurzman's firm's billing practices, the court has the distinct impression that will not be the case for most lawyers or firms.

An attorney may argue—and did in *Estate of Poll*—as follows:

Obviously, the true number of telephone calls made by the attorney far exceeded the number of calls claimed in the fee request. However, following the practice of this office, telephone calls that lasted only a few minutes were not billed. The only telephone calls that appear on the bill are calls that were involved, substantive and lengthy. There is no doubt that if the undersigned had truly billed for every minute of telephone time, as suggested by the Court, the amount of time charged for telephone calls would have far exceeded the time claimed on the bill submitted.

To this the court can only reply that it opts for accuracy. That some telephone calls are not worth billing does not give license for rounding others.

The court will no longer accept rounding to the extent evidenced in this case. The court feels that the maximum rounding that should be permitted (except in CJA cases), and which the vast majority of attorneys practice, is to a tenth of an hour. A tenth-of-an-hour (at a minimum) telephone call in this case is, to state the mathematically obvious, \$41.25 cheaper than a quarter-hour phone call. The court hereby gives notice to the Probate Bar that when the court observes consistent rounding to more than one-tenth of an hour, as in the captioned case, it will cut the fee request by 5 to 10 percent or more. There is simply no more refined approach workably available in evaluating the relationship of the proposed compensation to the nature of the work performed, the reasonableness of the time expended, the usual hourly rate, and the results achieved under Probate Rules 124 and 308 and D.C. Code §§20-751(c) and 21-2060 (1989 Repl.).

Accordingly it is this 17th day of November, 1993

**ORDERED** that the court will allow fees to Stephen Kurzman, Esq. in the amount of \$5,113.12 (\$5,681.25 less 10 percent), and it is further

**ORDERED** that the auditor shall adjust the first and final account accordingly and resubmit it to the court for approval.

*Lucia A. Rapley, Adult Ward, INTVP No. 30-92 (8/7/92)*  
(Wolf, J.).

The attorney who represented an intervenor filed a petition for compensation for services (approximately \$6,200) and reimbursement of nominal expenses from the ward's assets. The intervenor was the niece of the ward and the court had appointed her as the ward's guardian. The intervenor, who had been granted permission to participate in the proceeding pursuant to SCR-PD 303, had opposed the appointment of the party who initiated the proceeding. The subject's assets consisted of a cooperative apartment valued at \$50,000 and liquid assets of \$175,000, and her monthly income was \$1,900. The court noted that the petitioner was not serving in any court-appointed capacity and was not serving as counsel for the ward. Generally, the court stated, persons who engage the services of counsel to represent them in proceedings in court should bear the cost of such representation. D.C. Code § 21-2060(a) and SCR-PD Rule 308(a), however, permit the court to award compensation to any attorney for services rendered in an intervention proceeding. Neither the statute nor the rule contains any requirement that counsel serve in a court-appointed capacity or as counsel for the ward in order to be paid out of the ward's estate. The court, however, circumscribed the circumstances under which such payment may be made, stating: "[W]here the actions of the intervenor are taken out of legitimate care and concern of the intervenor for the health and welfare of the Ward, produces significant benefit for the Ward, succeeds in having the intervenor placed in a Court appointed capacity, and payment of fees would not deplete the assets of the Ward's Estate, an Order granting payment of attorney fees may be appropriate." The court concluded by stating that the intervenor's attorney in the case at hand was entitled to compensation as requested for her services and reimbursement for her expenses. D.C. Code § 21-2060(a); SCR-PD Rule 308(a).