

DISTRICT OF COLUMBIA SUPERIOR COURT
PROBATE DIVISION

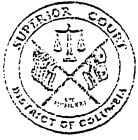
Probate Training Seminar



Volume III

October 2002

Juror's Lounge
3rd 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) 874-1600

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", followed by a small square mark.

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

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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,

A handwritten signature in black ink, appearing to read "Kaye K. Christian".

Kaye K. Christian, Presiding Judge
Probate Division

A handwritten signature in black ink, appearing to read "Jose M. Lopez".

Jose M. Lopez, Deputy Presiding Judge
Probate Division

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

I. The Probate Division /Office of the Register of Wills

A. **The Probate Division** has jurisdiction over 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 three 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;
- The Small Estates Branch, which processes petitions in decedents estates have assets of \$40,000 or less;
- The Administrative Services 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 the Presiding 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 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 meet with attorneys and the general public from 9 a.m. to 4 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. However, advance discussion with lead counsel regarding proposals for solutions to unusual or complex issues is encouraged to minimize delays in processing.
3. **Processing Times.** 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.** Most filings may be made by mail but this practice is not encouraged because it eliminates the opportunity for an exchange of information that may be useful in the preparation of recommendations to the judges. Filing in person also affords one the opportunity to make minor adjustments in pleadings during the review process. Ultimately, the mailing of a pleading may cause the delay that it is intended to avoid.
 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, examines requests for compensation for attorneys and fiduciaries, and prepares recommendations to the judges on the disposition of these matters.
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.** Information on the duty to maintain records and on the preparation of accounts is available from the Division. There is a free pamphlet entitled "Record Keeping and Filing Duties in the Superior Court of the District of Columbia." A comprehensive manual entitled "A Guide to Fiduciary Accounting in the District of Columbia" is available for \$35.00. Plans are underway to make this information available on the Superior Court website.
- D. **Intervention Proceedings.** These cases are processed through the intervention and trusts section of the Administrative Services Branch in the Division.
1. **Assignments.** Intervention cases are assigned to the two (2) 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 Fiduciary List.** The Office of the Register of Wills maintains the list of attorneys available for court appointments. The judges make appointments to cases.

1. **Attorneys** volunteering to serve may submit an application through the Register of Wills.
2. **Changes of address or availability** must be noticed to the Register of Wills.
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.

**GUARDIANSHIP
OF
MINORS**

Faculty

ANNE MEISTER

Anne Meister is a sole practitioner whose practice is generally divided between domestic relations and probate law. A 1973 graduate of the University of Delaware, Meister received her law degree from the Antioch School of Law in 1976 and a Masters in Public Administration from Harvard University in 1989. She has been in private practice since 1989. Prior to private practice, either alone or as a partner in Helm & Meister, she worked for the Council of the District of Columbia from 1976 to 1988. During her 12 years of District government service she served as Legislative Counsel, Deputy General Counsel, Codification Counsel, Staff Director to the Chair of the Judiciary Committee, Director of the Criminal Code Project and staff attorney for the Committee on the Judiciary. Ms. Meister is active in the District of Columbia Bar, currently serving as co-chair of the Estates, Trusts and Probate Section. She previously served two terms on the Bar's Board of Governors (1985-1991), has also served as a subcommittee chair of the Long Range Planning Commission, and as chair of the District of Columbia Affairs Section. She is a member of the Thurgood Marshall American Inn of Court and of the District of Columbia, Maryland and New Jersey Bars.

BARBARA R. MILLER

Barbara R. Miller is a sole practitioner who specializes in estate planning and administration, probate litigation, and guardianship and conservatorship law. She is a 1974 graduate of Yale University and a 1977 graduate of Stanford Law School. Prior to entering private practice in 1985, Miller clerked on the United States Court of Appeals for the Ninth Circuit (1977-1979); served as a staff attorney at the D.C. Public Defender Service (1979-1984); and taught at Antioch School of Law (1984-1985). She has served on the Steering Committee of the Estates, Trusts and Probate Law Section of the D.C. Bar since 1999 and recently completed her second term as a hearing committee member for the Board on Professional Responsibility. Ms. Miller has practiced in the Probate Division of D.C. Superior Court since 1985 and has served on the Court's Fiduciary List since 1987. She is a member of the District of Columbia, Maryland and California Bars.

JOEL C. WEINGARTEN

Joel C. Weingarten specializes in probate and tax matters and is trained as a certified public accountant as well as an attorney. He has been handling guardianship cases in the Probate Division of Superior Court for more than 12 years. A graduate of the State University of New York, Harpur College, Mr. Weingarten earned his law degree in 1972 from the University of Illinois College of Law (1972). Prior to entering private practice in 1984, he was an attorney at the Legal Aid Society of the District of Columbia (1973-1974); the Interstate Commerce Commission (1974-1979); and the Washington Metropolitan Area Transit Commission (1973-1974). Mr. Weingarten has spoken at the Office of Personnel Management regarding tax matters

annually since 1998 and has appeared as a speaker at a number of other tax seminars. He is a member of the District of Columbia, Maryland and New York Bars.

KAREN J. MILLER

Karen J. Miller is associated with the law firm of Jordan Keys & Jessamy, LLP. She practices in the areas of trusts and estates, general corporate law, commercial real estate, commercial litigation, employment law, professional liability and product liability. Ms. Miller, who is trained as a Certified Public Accountant and an attorney, received a Bachelor of Business Administration degree, with a concentration in Accounting, from George Washington University in 1978 and a Juris Doctor from the Georgetown University Law Center in 1987. Ms. Miller has practiced extensively in the Probate Division of Superior Court since 1992 and has served as personal representative and/or counsel in numerous complex estate matters. She also serves as Trustee and Guardian/Conservator of minors and incapacitated adults. Ms. Miller has served on the Court's Fiduciary List since 1995. Prior to her association with Jordan Keys & Jessamy, LLP, Ms. Miller was involved in the utility regulatory litigation process, practicing before the District of Columbia and Maryland Public Service Commissions. Before commencing her legal career, Ms. Miller was a financial analyst with Potomac Electric Power Company and an auditor with Arthur Andersen & Co. She is a member of the District of Columbia, Maryland and Pennsylvania Bars.

GUARDIANSHIP OF MINORS

- I. **Overview**
 - A. Guardianship of the person of a minor.
 - B. Guardianship of the estate of a minor.
- II. **When must a guardian be appointed?**
- III. **Where should a guardianship be established?**
- IV. **Who has statutory priority for appointment as guardian?**
- V. **Procedure for having a guardian appointed.**
- VI. **Expenditure of guardianship funds**
- VII. **Purchase of real property**
- VIII. **Tax Issues**
- IX. **Investment of guardianship funds**
- X. **Inventories and Accounts**
- XI. **Compensation of guardians and their counsel**
- XII. **Termination of guardianships**

GUARDIANSHIP OF MINORS

I. OVERVIEW

A. GUARDIANSHIP OF THE PERSON OF A MINOR.

1. Parents are the natural guardians of the persons of their minor children. When one parent dies, natural guardianship devolves upon the other [D.C. Code § 21-101(a)].
2. A court of competent jurisdiction may appoint someone other than a parent as guardian of the person of a minor when it appears the welfare of the minor requires it [D.C. Code § 21-101(b)].
3. The Probate Division will generally not appoint a guardian of the person of a minor unless both parents are deceased **and** there are assets to be administered by a Guardian of the Minor's Estate.
4. Where there are no assets to be administered, an action for legal custody should be filed in the Family Court of the D.C. Superior Court.

B. GUARDIANSHIP OF THE ESTATE OF A MINOR.

1. A Guardian of a Minor's Estate is an individual or trust company appointed by the Court to serve in a fiduciary capacity. The Guardian of the Minor's Estate is responsible for the proper administration of a minor's assets during his minority.
2. A Guardian must be bonded, is subject to continuing court supervision, and is required to file inventories and accounts.

II. WHEN MUST A GUARDIAN BE APPOINTED?

- A. When a minor is entitled to receive net proceeds in excess of \$3,000 from a civil action [D.C. Code § 21-120 (b)].
- B. When a minor is to receive a distribution from a decedent's estate and

no other form of distribution is authorized under D.C. Code § 20-1106.

- C. When a minor is entitled to the proceeds of an insurance policy and the insurer will not make distribution except to a duly appointed Guardian.
- D. When a minor acquires real or personal property by gift or purchase [D.C. Code § 21-106 (a).]

III. WHERE SHOULD A GUARDIANSHIP BE ESTABLISHED?

- A. A Guardianship should be established in the jurisdiction where the minor is domiciled.
- B. The fact that a lawsuit is filed in the District of Columbia on behalf of of a non-resident minor does not confer jurisdiction on the courts of the District of Columbia to appoint a Guardian of the Minor's Estate [*In re Ribeiro*, Gdn. 38-96 (Order of 7/10/96 per J. Haywood)].
- C. When a minor who is the subject of a Guardianship in the District of Columbia moves to another jurisdiction, the Guardian should seek appointment in that jurisdiction and, upon appointment, may seek termination of the District of Columbia proceeding.

IV. WHO HAS STATUTORY PRIORITY FOR APPOINTMENT AS GUARDIAN?

- A. The parent or parents of a minor under the age of 14 have priority for appointment, provided the parent is a suitable person to manage the minor's estate [D.C. Code § 21-107].
- B. A minor 14 years of age or older may select his or her own Guardian [D.C. Code § 21-108]. Upon attainment of the age of 14, a minor may, subject to Court approval, select a new Guardian, notwithstanding a previous appointment by the court.

V. PROCEDURE FOR HAVING A GUARDIAN APPOINTED.

- A. SCR-PD 201 (a) sets forth the information to be included in a petition for the appointment of a Guardian of a Minor. The petition **must** be signed under oath before a notary or Deputy Register of Wills.
- B. If both parents do not petition for appointment, the written consent of the non-petitioning parent(s) must be filed with the petition.
- C. A non-consenting, non-petitioning parent must be personally served with a copy of the petition and a summons, in accordance with SCR-Civ 4. An affidavit of service must then be filed.
- D. If the non-consenting parent cannot be located, service by publication may be permitted upon filing of an affidavit evidencing diligent efforts by the petitioner to ascertain the missing parent's whereabouts [SCR-Civ. 4].
- E. The amount of the proposed Guardian's bond is determined by staff in the Register of Wills Office. A bond in the requisite amount must be filed along with the Petition. A bonding company may decline to bond a Guardian who is not an attorney, or may require the proposed Guardian's attorney to take joint control of Guardianship assets.
- F. Interview in the Office of the Register of Wills.
 - 1. Prior to appointment a proposed Guardian must attend an interview in the Register of Wills' Office. The minor should also be present.
 - 2. During the interview the proposed Guardian is instructed as to his responsibilities as a fiduciary.
 - 3. The court may set a hearing for the purpose of inquiring about the proposed Guardian's background and fitness to serve.

VI. EXPENDITURE OF GUARDIANSHIP FUNDS

- A. All expenditures from a minor's estate, except for bond premiums, taxes

and court costs, **require prior court approval.**

- B. Prior Court approval must be obtained before hiring an accountant or other service provider.
- C. The format to be followed in petitioning for authority to expend funds is set forth in the Appendix to the Probate Rules as Form 1.
- D. Where a parent who is Guardian of the Minor petitions for authority to expend funds, the parent's financial statement must accompany the petition.

VII. PURCHASE OF REAL PROPERTY

- A. Where a Guardian seeks to expend estate funds to purchase real property, the Court will appoint a Guardian *ad litem* to investigate and make recommendations as to whether the proposed purchase is in the minor's best interests [D.C. Code § 21-149].
- B. The Court will hold a hearing to determine whether the petition for authority to purchase real property should be granted.

VIII. TAX ISSUES

- A. A Guardian of a Minor is generally responsible for preparing and filing federal and D.C. tax returns on the minor's behalf.
- B. A child under the age of 14 who is claimed as a dependent on a parent's tax return is subject to taxation at the same rate as the parent. Thus, to prepare the child's tax return, the Guardian will need a copy of the parent's tax return.
- C. Court authority must be obtained before paying an accountant to prepare a minor's tax returns.
- D. If a child is claimed as a dependent on his parent's tax return,

he may not claim himself as an exemption on his own return.

IX. INVESTMENT OF GUARDIANSHIP FUNDS

- A. Guardianship funds must be deposited in a federally insured bank account or accounts in the District of Columbia.
- B. Before investing in stocks, bonds, mutual funds or other securities, Court approval must be obtained.
- C. Investments of Guardianship funds are subject to the standards set forth in SCR-PD 5.
- D. A Petition for Authority to Invest Guardianship Funds should be accompanied by supporting documentation such as a prospectus.
- E. The format to be followed in petitioning for authority to invest Guardianship funds is set forth in the Appendix to the Probate Rules as Form 2.
- F. A Guardian may petition for approval of a comprehensive investment plan, as opposed to a single investment. The format to be followed in petitioning for approval of an investment plan is set forth in the Appendix to the Probate Rules as Form 3.

X. INVENTORIES AND ACCOUNTS

- A. An inventory must be filed within 90 days after qualification [SCR-PD 204 (a)(2)]. A successor Guardian must file an inventory reflecting assets over which he or she has assumed control.
- B. Accountings must be filed annually, within 30 days of the anniversary of qualification [SCR-PD 204 (a)(4)].

XI. COMPENSATION OF GUARDIANS AND THEIR COUNSEL

- A. Compensation of Guardians and Counsel is governed by SCR-PD 225.
- B. Ordinary services are compensable solely by a commission which shall not exceed five (5) percent of disbursements [SCR-PD 225 (a)]. The term "ordinary services" is broadly defined by Court Rule to include marshalling of assets, collection of income, payment of bills and support costs, supervision and oversight of investments, and the preparation of inventories and accounts.
- C. A Guardian may request compensation for "extraordinary services" by Petition.
- D. Attorney's fees may be requested for services such as the preparation of pleadings and representation at hearings. If, however, an attorney renders ordinary services as defined in SCR-PD 225 (a), he may be compensated only by assignment of the Guardian's commission.
- E. Attorney's fees are generally requested by a Petition filed with the annual account. However, a petition for fees for legal services rendered in connection with the appointment of a Guardian may be filed at any time [SCR-PD 225 (e)].
- F. A Guardian need not petition for the payment of the annual commission provided for in SCR-PD 225 (a). The commission need only be listed in the annual accounting as a proposed disbursement.

XII. TERMINATION OF GUARDIANSHIPS

- A. A Guardianship terminates when the minor turns 18.
- B. The Guardian shall file a final account and, upon approval of the final account, shall deliver the assets of the estate to the former minor ward [D.C. Code § 21-158].

- C. A "turnover commission" not exceeding five (5) per cent of the net assets to be turned over to the former ward may be claimed in the Guardian's final account [SCR-PD 225 (d)].
- D. In most instances it is not necessary to file a petition or statement of services in support of a request for a turnover commission, and is sufficient to merely list the turnover commission as a proposed expenditure in the final account.
- E. However, if a Guardianship terminates within three (3) years of the Guardian's appointment, and the assets to be turned over exceed \$100,000 in value, an itemized statement of services must be filed.

GUARDIANSHIP OF MINORS
TABLE OF CONTENTS
PRESENTATION

1. SUBSTANTIVE OUTLINE RE: GUARDIANSHIP OF MINORS
2. STATUTES
 - D. C. Code, sec. 21-101 et seq.
 - D. C. Code, sec. 20-1106
 - D. C. Code, sec. 21-301 et seq.- Table of contents listing
3. COURT RULES
 - SCR-PD 221-225, Conservators (Pre 1989 Act and Guardians of Minors)
 - SCR-PD 201-211, Rules Applicable to all Proceedings under the 200 Series
 - SCR-PD 5, Investments by fiduciary.
4. FORMS AND SAMPLES
 - Form 1, Petition for authority to expend funds
 - Form 2, Petition for authority to invest
 - Form 3, Petition for approval of investment plan or program
 - Sample 1: Petition for Appointment of Guardian/Order
 - Sample 2: Consent to Appointment of Guardian
 - Sample 3: Petition for authority to expend funds/order
 - Sample 4: Petition for authority to invest/order
 - Sample 5: Petition for authority to invest
5. RELEVANT CASES -- DIGEST

STATUTES

CHAPTER 1
GUARDIANSHIP OF INFANTS.

Subchapter I. Appointment of Guardian; Bond.

- Section**
- 21-101. Natural guardians of the person.
 - 21-102. Testamentary guardians of the person.
 - 21-103. Appointment of guardians of the person by court; limitation of number of wards.
 - 21-104. Termination of guardianship of the person.
 - 21-105. Appointment by deed or will for child inheriting from parent.
 - 21-106. Guardian of estate.
 - 21-107. Preferences in appointment of guardian of estate.
 - 21-108. Selection of guardian by infant.
 - 21-109. Spouse as guardian of estate.
 - 21-110. Service on nonresident guardian; failure to give power of attorney.
 - 21-111. Ancillary guardian of estate of nonresident infant.
 - 21-112. Suits by ancillary guardian.
 - 21-113. Enjoining spouse, parent, or testamentary guardian from interfering with minor's estate.
 - 21-114. Bond from parents of child entitled to property.
 - 21-115. Bond of guardian of estate.
 - 21-116. One bond for several wards.
 - 21-117. Additional bond.
 - 21-118. Counter security; petition by surety.
 - 21-119. Allowances made before bond given.
 - 21-120. Settlement of actions involving minor children; appointment of guardian of estate.

Subchapter II. Property of Infants.

- 21-141. Possession of property.
- 21-142. Inventory.
- 21-143. Duties; accounts; maintenance and education; sales; compensation.
- 21-144. Property subject to liens.
- 21-145. Property subject to executory contract.
- 21-146. Contract for sale by adult in behalf of himself and infant.
- 21-147. Sale of infant's principal for maintenance or education.
- 21-148. Sale or exchange of real estate; proceedings.
- 21-149. Parties.
- 21-150. Proof.
- 21-151. Decree of sale; costs.
- 21-152. Terms of sale; lien.
- 21-153. Exchanges; appointment of trustees.
- 21-154. Ratification of sales by court.
- 21-155. Sale or exchange of particular estate or remainder; application of income.
- 21-156. Lease of infant's estate.
- 21-157. Mortgage of infant's estate.
- 21-158. Final account.

Subchapter III. Indigent Boys.

- 21-181. Enlistment of indigent minor children.
- 21-182. Preparation of guardianship papers.

§ 21-101

FIDUCIARY RELATIONS AND THE MENTALLY ILL

SUBCHAPTER I. APPOINTMENT OF GUARDIAN: BOND.

§ 21-101. Natural guardians of the person.

(a) The father and mother are the natural guardians of the person of their minor children. When either dies or is incapable of acting, the natural guardianship of the person devolves upon the other.

(b) This section does not affect the power of a court of competent jurisdiction to appoint another person guardian of the children when it appears to the court that the welfare of the children requires it.

(Sept. 14, 1965, 79 Stat. 737, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-101.

1973 Ed., § 21-101.

Cross References

Adoption, see § 16-301 et seq.

Infant owners of condemned buildings, appointment of guardian, see § 6-909.

Life estate and contingency remainder sale, guardian ad litem, see § 42-1402.

Nonresident infants, appointment of ancillary guardian, see §§ 21-111, 21-112.

Trust companies, authority to act as guardian, see § 26-1309 et seq.

Library References

Key Numbers

Guardian and Ward Ⓒ10.

Westlaw Key Number Search: 196k10.

Encyclopedias

C.J.S. Guardian and Ward §§ 16 to 19.

Notes of Decisions

- Adopted children 5
- Children-out-of-wedlock 4
- Conflicting interests of appointed guardian 9
- Construction and application 1
- Divorced parents 6
- Jurisdiction 2
- Medical treatment 10
- Presumptions and burden of proof 11
- Public policy 3
- Rights of nonparents 8
- Testamentary provisions 7

1. Construction and application

Whenever our statutes use the term "guardian," the father, although in one sense the natural guardian, is never to be included, unless there be something more which imperatively demands that it should be embraced by the expression. *Barney v. De Kraft*, 1862, 30 F.Cas. 961, No. 18230. Guardian And Ward Ⓒ4

The child's mother having died, father was its only natural guardian and custodian, and was entitled to custody and control unless it was alleged and established that he was unfit, and

that welfare of child required its removal from such custody, and in absence of charge of unfitness, a grandparent is a "third person" without legal standing to demand custody. *Municipal Court Rules*, § 5 rule 5. *Jackson v. Fitzgerald* (Cr.App. 1962) 135 A.2d 724, 98 A.L.R.2d 322. Guardian And Ward Ⓒ4; Parent And Child Ⓒ2(2)

Subsection (a) deals with guardianship and financial matters, and not child custody in the domestic relations area of the law. *Moorehead v. Moorehead*, 118 WLR 637 (Super. Ct. 1990).

2. Jurisdiction

Jurisdiction over guardianship matters is given to United States District Court holding Probate Court, while Domestic Relations jurisdiction is vested in Domestic Relations Branch of the Municipal Court. D.C.Code 1951, §§ 11-758 et seq., 21-101 et seq. *Johnson v. Austin* (Cr.App. 1960) 162 A.2d 495. Federal Courts Ⓒ1039, 1051

3. Public policy

In proceedings involving custody of child, paramount concern is child's welfare and all the

considerations, including rights of parent to child, must yield to its best interest and well-being, but application of that broad principle does not demand that right of a parent be ignored. D.C.Code 1951, § 21-101. *Davis v. Journey* (Cr.App. 1958) 145 A.2d 846. *Parent And Child* ⇨ 2(3.1)

4. Children-out-of-wedlock

In habeas corpus proceeding brought by illegitimate child's mother who sought control and custody of child who was in control of nonparent, awarding of custody of child to mother was not an abuse of discretion, where mother had made persistent efforts to obtain child and evidence indicated that she was a presently fit mother. D.C.Code 1951, §§ 16-202, 16-808, 21-101. *Bell v. Leonard*, C.A.D.C.1958, 251 F.2d 890, 102 U.S.App.D.C. 179. *Habeas Corpus* ⇨ 798

A mother is the natural guardian of her child, even though the child be illegitimate, and as mother and natural guardian she has right to writ of habeas corpus directed to any person unlawfully detaining her minor child to end that child be produced before court which shall determine which of parties is entitled to custody of child. D.C.Code 1951, § 16-808. *Bell v. Leonard*, C.A.D.C.1958, 251 F.2d 890, 102 U.S.App.D.C. 179. *Guardian And Ward* ⇨ 4; *Habeas Corpus* ⇨ 532(1)

Evidence supported finding that both father of child out-of-wedlock and maternal grandmother were fit and capable of caring for minor child and because record did not contain clear and convincing evidence that remaining in her father's custody would be against child's best interests, statutory presumption tipped the balance in favor of placing custody of child with father. D.C.Code 1981, § 21-101(a, b). *Shelton v. Bradley*, 1987, 526 A.2d 579. *Children Out-of-wedlock* ⇨ 20

5. Adopted children

Adoptive father was entitled, in action by biological parents of children to recover custody, to same legal presumption of custody enjoyed by all other natural parents, including provision that upon death of one parent natural guardianship devolved upon the other. D.C.Code 1981, § 21-101(a). *A.J. v. L.O.*, 1997, 697 A.2d 1189. *Guardian And Ward* ⇨ 4; *Parent And Child* ⇨ 2(8)

6. Divorced parents

When divorced wife, to whom custody of child of marriage had been awarded in divorce proceeding, died, divorced husband became natural guardian of his son. Code 1950,

§§ 20-108, 31-1. *Judd v. Van Horn*, 1954, 81 S.E.2d 432, 195 Va. 988. *Guardian And Ward* ⇨ 4

7. Testamentary provisions

The will of the maternal grandfather, which declares that his estate should be held by trustees, in trust for his daughter and heirs, free from the control or disposal of any husband she might have, and exempt from his debts, contracts, or engagements, does not affect the right of the husband to the guardianship of his infant children. *Barney v. De Kraft*, 1862, 30 F.Cas. 961, No. 18230. *Guardian And Ward* ⇨ 4

8. Rights of nonparents

Grandmother's claim that court should have appointed her as guardian for all eight of her grandchildren following the mother's death and not for only seven of them was mooted by the consent of the father of the eighth child to the grandmother's appointment as guardian for the person of his son and the probate court's willingness to now consider the matter. In re *Guardianship of J.L.N.*, 1989, 557 A.2d 1313. *Action* ⇨ 6

9. Conflicting interests of appointed guardian

New counsel should have been appointed to represent child in adoption proceeding, where guardian ad litem, who had been appointed as advocate for child, was called as witness for one of the opposing parties. D.C.Code 1981, §§ 16-309, 16-309(b)(3), 16-918(b), 16-2304(b)(1); Rules of Prof.Conduct, Rule 3.7. *S.S. v. D.M.*, 1991, 597 A.2d 870. *Infants* ⇨ 78(1)

10. Medical treatment

Courts may authorize blood transfusions for infant minors over the religious objections of their parents who are Jehovah's Witnesses. In re *B.B.H.*, 111 WLR 1929 (Super. Ct. 1988).

11. Presumptions and burden of proof

Fundamental presumption is that children and their natural parents should remain together. D.C.Code 1981, § 21-101(a). In re *D.G.*, 1990, 583 A.2d 160. *Infants* ⇨ 172

Strong statutory presumption that, upon death of one parent, surviving parent will have custody of any minor children can be rebutted only by clear and convincing evidence of abandonment, unfitness, or other circumstances which render parent's custody detrimental to best interests of child. D.C.Code 1981, § 21-101(a, b). *Shelton v. Bradley*, 1987, 526 A.2d 579. *Parent And Child* ⇨ 2(8)

§ 21-102. Testamentary guardians of the person.

When one parent is dead, the other, whether of full age or not, may, by last will and testament, appoint a guardian of the person to have the care, custody,

§ 21-102

FIDUCIARY RELATIONS AND THE MENTALLY ILL

and tuition of his infant child, other than a married infant; and if the person so appointed refuses the trust, the Probate Court may appoint another person in his place.

(Sept. 14, 1965, 79 Stat. 737, Pub. L. 89-183, § 1; Oct. 1, 1976, D.C. Law 1-87, § 27, 23 DCR 2544.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-102.

1973 Ed., § 21-102.

Legislative History of Laws

Law 1-87, the "Anti-Sex Discriminatory Language Act," was introduced in Council and as-

signed Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Cross References

Abuse of adults, duty to report, see § 7-1903.

Library References

Key Numbers

Guardian and Ward ☞11.

Westlaw Key Number Search: 196k11.

Encyclopedias

C.J.S. Guardian and Ward § 15

§ 21-103. Appointment of guardians of the person by court: limitation of number of wards.

(a) When an infant has neither a natural nor testamentary guardian, a guardian of the person may be appointed by the Probate Court in its own discretion or on the application of a next friend of the infant.

(b) Only trust companies may act as guardian of the person for more than five infants at one time, unless the infants are members of one family.

(Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-103.

1973 Ed., § 21-103.

Cross References

Abuse of adults, duty to report, see § 7-1903.

Probate Court, jurisdiction, pleadings and practice, see §§ 11-921, 16-3101 et seq.

Library References

Key Numbers

Guardian and Ward ☞9.5, 10.

Westlaw Key Number Searches: 196k9.5;
196k10.

Encyclopedias

C.J.S. Guardian and Ward §§ 9 to 10, 16 to
19.

Notes of Decisions

Jurisdiction of district court 1

1. Jurisdiction of district court

The United States District Court holding Probate Court has jurisdiction to grant custody of minors in guardianship cases. D.C.Code 1951, §§ 11-512, 11-516, 16-808, 21-103. *Johnson v. Austin* (Cr.App. 1960) 162 A.2d 495. Federal Courts ⇨ 1039

Where United States District Court holding Probate Court once assumed jurisdiction over parties to proceedings involving guardianship of child, that jurisdiction continued for all purposes, and if either party felt aggrieved by the orders of the court his remedy lay with that court or on appeal therefrom. D.C.Code 1951, §§ 11-512, 11-516, 16-808, 21-103. *Johnson v. Austin* (Cr.App. 1960) 162 A.2d 495. Federal Courts ⇨ 1039

§ 21-104. Termination of guardianship of the person.

A natural guardianship or an appointive guardianship of the person of an infant ceases when said infant becomes 18 years of age or marries.

(Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1; July 22, 1976, D.C. Law 1-75, § 4(d), 23 DCR 1181; Apr. 7, 1977, D.C. Law 1-107, title I, § 115, 23 DCR 8737.)

Historical and Statutory Notes

Prior Codifications

- 1981 Ed., § 21-104.
- 1973 Ed., § 21-104.

Legislative History of Laws

Law 1-75, the "District of Columbia Age of Majority Act," was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and

transmitted to both Houses of Congress for its review.

Law 1-107, the "Marriage and Divorce Act," was introduced in Council and assigned Bill No. 1-89, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on amended first readings on July 27, 1976, and September 15, 1976, and second readings on November 22, 1976, and December 7, 1976. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-193 and transmitted to both Houses of Congress for its review.

Library References

Key Numbers

- Guardian and Ward ⇨ 20.
- Westlaw Key Number Search: 196k20.

Encyclopedias

- C.J.S. Guardian and Ward § 39.

Notes of Decisions

Persons for whom guardians may be appointed 1

1. Persons for whom guardians may be appointed

Under law of District of Columbia, 18-year-old petitioner alone had power over her person and was entitled to consent for herself to any form of medical treatment; thus, her applica-

tion for appointment of a special guardian, after receiving information from hospital that it would not permit use of its facilities to perform scheduled therapeutic abortion unless it received written consent of a parent or guardian or a court order of similar legal effect, would be denied. D.C.C.E. § 21-104. *In re Guardianship of Boe*, 1971, 322 F.Supp. 872. Guardian And Ward ⇨ 9.5

§ 21-105. Appointment by deed or will for child inheriting from parent.

(a) In case of the death of either parent from whom his or her minor children inherit or take by devise or bequest, the parent may by deed or last will and testament appoint a guardian of the property of the children, subject to the approval of the proper court of the District of Columbia.

§ 21-105

FIDUCIARY RELATIONS AND THE MENTALLY ILL

(b) This section does not limit or affect the power of a court of competent jurisdiction to appoint another person guardian of the children when it appears to the court that the welfare of the children requires it.

(Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-105.

1973 Ed., § 21-105.

Library References

Key Numbers

Guardian and Ward ☞11.

Westlaw Key Number Search: 196k11.

Encyclopedias

C.J.S. Guardian and Ward § 15.

§ 21-106. Guardian of estate.

(a) Subject to sections 21-101 to 21-104, when land descends or is devised to an infant under 18 years of age, or the infant is entitled to a distributive share of the personal estate of an intestate or to a legacy or bequest under a last will, or acquires real or personal property by gift or purchase, the Probate Court may appoint a guardian of the infant's estate; and if there is a guardian of the person of the infant the guardian of the estate so appointed may be the same or a different person.

(b) The appointment may be made at any time after the probate of the will or the grant of administration when the infant is entitled as a devisee, legatee, or next of kin.

(c) Only trust companies may act as guardian of the estate of more than five infants at one time, unless the infants are entitled to shares of the same estate.

(Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1; July 22, 1976, D.C. Law 1-75, § 4(e), 23 DCR 1181.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-106.

1973 Ed., § 21-106.

Legislative History of Laws

For legislative history of D.C. Law 1-75, see Historical and Statutory Notes following § 21-104.

Library References

Key Numbers

Guardian and Ward ☞9.5, 10, 36.

Westlaw Key Number Searches: 196k9.5;
196k10; 196k36.

Encyclopedias

C.J.S. Guardian and Ward §§ 9 to 10, 16 to
19, 70.

§ 21-107. Preferences in appointment of guardian of estate.

In appointing a guardian of the estate of an infant, unless said infant be over 14 years of age as hereinafter directed in section 21-108, the court shall give preference to—

(1) the parents, or either of them, if living; or

(2) the spouse if the infant is married to a person 18 years of age or older—when in the judgment of the court the parent or spouse is a suitable person to have the management of the infant's estate.

(Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1; Oct. 1, 1976, D.C. Law 1-87, § 28, 23 DCR 2544.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-107.
1973 Ed., § 21-107.

Legislative History of Laws

For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 21-102.

Library References

Key Numbers

Guardian and Ward ☞10.
Westlaw Key Number Search: 196k10.

Encyclopedias

C.J.S. Guardian and Ward §§ 16 to 19.

§ 21-108. Selection of guardian by infant.

(a) When a guardian, either of the person or the estate, of an infant is appointed, the infant shall, if practicable, be brought before the court, and, if over 14 years of age, shall be entitled to select and nominate his or her guardian.

(b) When a guardian has been appointed before the infant has attained the age of 14 years, the infant, upon arriving at that age, may select a new guardian, notwithstanding the appointment before made.

(c) The court shall pass upon the character and competency of the guardian selected by the infant, and the guardian shall be:

- (1) required to give bond as in other cases;
- (2) subject to the control of the court; and
- (3) under the same obligations and discharge the same duties—as if selected by the court.

(d) When, after a guardian of the estate has been appointed, the infant selects a new guardian upon arriving at the age of 14 years, and the new selection is approved by the court, and the person selected is duly appointed and qualified, the guardian previously appointed shall settle his final account and turn over his ward's estate to the newly appointed guardian.

(Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-108.
1973 Ed., § 21-108.

Library References

Key Numbers

Guardian and Ward ☞10, 13.

Westlaw Key Number Searches: 196k10;
196k13.

§ 21-108

FIDUCIARY RELATIONS AND THE MENTALLY ILL

Encyclopedias

C.J.S. Guardian and Ward §§ 11, 16 to 29.

§ 21-109. Spouse as guardian of estate.

When an infant to whom a guardian of his or her estate has been appointed marries, he or she may select his or her spouse as the guardian of his or her estate, with the approval of the court; and after he is duly appointed and qualified by giving bond, as is required in other cases, the powers of the guardian previously appointed shall cease, and he shall settle his final account and turn over his ward's estate to his or her spouse, according to the order and directions of the court.

(Sept. 14, 1965, 79 Stat. 739, Pub. L. 89-183, § 1; Oct. 1, 1976, D.C. Law 1-87, § 29(a), 23 DCR 2544.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-109.

1973 Ed., § 21-109.

Legislative History of Laws

For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 21-102.

Library References

Key Numbers

Guardian and Ward ☞10.

Westlaw Key Number Search: 196k10.

Encyclopedias

C.J.S. Guardian and Ward §§ 16 to 19.

§ 21-110. Service on nonresident guardian; failure to give power of attorney.

Before original or ancillary letters of guardianship are issued, the person designated, if a nonresident of the District of Columbia, shall file in the office of the Register of Wills an irrevocable power of attorney designating the Register of Wills and his successors in office as the person upon whom all notices and process issued by a competent court in the District may be served, with like effect as personal service, in relation to all suits, matters, causes, or things affecting or pertaining to the estate in which the letters are to be issued. The Register of Wills shall forthwith forward by registered or certified mail to the address of the guardian, which shall be stated in the power of attorney, all notices or process served upon the Register under this section.

If the person fails to file the power of attorney within 10 days after the entry of the order of appointment, the order shall stand revoked, and he shall forfeit all rights to the office.

(Sept. 14, 1965, 79 Stat. 739, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-110.

1973 Ed., § 21-110.

Cross References

Trust company fiduciaries, bonding, see §§ 26-1333 and 26-1334.

Library References**Key Numbers**

Guardian and Ward ☞171.
Westlaw Key Number Search: 196k171.

Encyclopedias

C.J.S. Guardian and Ward §§ 187, 191.

§ 21-111. Ancillary guardian of estate of nonresident infant.

When an infant residing outside the District of Columbia is entitled to property or to maintain an action in the District of Columbia, a general guardian or committee of his estate, appointed by a court of competent jurisdiction in the State or territory where the infant resides, or a person at the request of the guardian or committee, may petition the court for ancillary letters as guardian or committee. The petition shall be under oath, accompanied by certified copies of as much of the record and proceedings as shows the appointment of the guardian or committee and that he has given a sufficient bond to account for all property and money that may come into his hands by virtue of the authority conferred. The court may thereupon issue to the guardian or committee ancillary letters as such guardian or committee, without citation, or may cite such persons as it believes proper to show cause why the application should be refused; and the court shall require the security required by law in like cases from a resident guardian or committee.

(Sept. 14, 1965, 79 Stat. 739, Pub. L. 89-183, § 1.)

Historical and Statutory Notes**Prior Codifications**

1981 Ed., § 21-111.
1973 Ed., § 21-111.

Library References**Key Numbers**

Guardian and Ward ☞167.
Westlaw Key Number Search: 196k167.

Encyclopedias

C.J.S. Guardian and Ward §§ 186, 192.

§ 21-112. Suits by ancillary guardian.

(a) Upon the granting of ancillary letters, the guardian may institute and prosecute to judgment any action in the courts of the District of Columbia, take possession of all property of his ward, and collect and receive all moneys belonging and due to him therein, give full receipt and acquittances for debts, and release all claims, liens, and mortgages belonging to the ward, on property in the District of Columbia, in the same manner as if his authority had been originally conferred by the Probate Court.

(b) The guardian shall give security for the costs which may accrue in an action brought by him, in the same manner as other nonresidents bringing suit in the courts of the District.

(Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title 1, § 150(a)(1).)

§ 21-112

FIDUCIARY RELATIONS AND THE MENTALLY ILL

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-112.
1973 Ed., § 21-112.

Library References

Key Numbers

Guardian and Ward ☞170.
Westlaw Key Number Search: 196k170.

Encyclopedias

C.J.S. Guardian and Ward §§ 187, 191.

§ 21-113. Enjoining spouse, parent, or testamentary guardian from interfering with minor's estate.

On application of a friend of an infant entitled to real or personal estate, or in the exercise of its own discretion, the court may enjoin a parent or spouse or testamentary guardian from interfering with the infant's estate without being appointed and giving bond as guardian of the estate.

(Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1; Oct. 1, 1976, D.C. Law 1-87, § 30(a), 23 DCR 2544.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-113.
1973 Ed., § 21-113.

Legislative History of Laws

For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 21-102.

§ 21-114. Bond from parents of child entitled to property.

When an infant whose father or mother is living becomes entitled to property, the Probate Court may require the father or mother, as guardian, to give bond and security to account for the property, and on his or her failure or refusal so to do may appoint another person guardian, who shall give bond as in other cases.

(Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-114.
1973 Ed., § 21-114.

Cross References

Undertaking in lieu of fiduciary bond, see § 16-601.

Library References

Key Numbers

Guardian and Ward ☞15.
Westlaw Key Number Search: 196k15.

Encyclopedias

C.J.S. Guardian and Ward §§ 31 to 33.

§ 21-115. Bond of guardian of estate.

A guardian appointed by the court, other than a corporation authorized to act as guardian, and a testamentary guardian, unless otherwise directed by the will

making the appointment, before entering upon or taking possession of or interfering with the estate of the infant, shall execute a bond in such penalty and with such surety as the court approves, to be recorded and to be liable to be sued upon for the use of a person interested, with the condition that if he, as guardian, faithfully accounts to the court, as required by law, for the management of the property and estate of the infant under his care, and delivers up the property agreeably to the order of the court or the directions of law, and in all respects performs the duty of guardian according to law, then the obligation shall cease; it shall otherwise remain in full force.

(Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(a)(2).)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-115.
1973 Ed., § 21-115.

Cross References

Undertaking in lieu of fiduciary bond, see § 16-601.

Library References

Key Numbers

Guardian and Ward ☞ 15.
Westlaw Key Number Search: 196k15.

Encyclopedias

C.J.S. Guardian and Ward §§ 31 to 33.

Notes of Decisions

Appeal of orders 1

1. Appeal of orders

Appeal from order setting the filing of a bond as a condition of appointment as guardian of

estate was premature where there were currently no assets in the estate, and thus no need for the guardian of the estate to function. D.C.Code 1981, § 21-115. In re Guardianship of J.L.N., 1989, 557 A.2d 1313. Guardian And Ward ☞ 15.

§ 21-116. One bond for several wards.

When a person is guardian to a number of persons entitled to shares of the same estate the court may accept one bond instead of separate bonds for each ward, and the bond shall be liable to be sued upon for the use of all or any of the wards as fully as separate bonds might be.

(Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-116.
1973 Ed., § 21-116.

Library References

Key Numbers

Guardian and Ward ☞ 15.
Westlaw Key Number Search: 196k15.

Encyclopedias

C.J.S. Guardian and Ward §§ 31 to 33.

§ 21-117 FIDUCIARY RELATIONS AND THE MENTALLY ILL

§ 21-117. Additional bond.

The court may at any time require a guardian to give bond or additional bond, when the interests of the infant require it, and on his failure or refusal so to do, may revoke his appointment and appoint another guardian in his place, and require the estate of the infant to be forthwith delivered to the newly appointed guardian, and may direct the latter to bring suit upon the bond of his predecessor.

(Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-117.

1973 Ed., § 21-117.

Library References

Key Numbers

Guardian and Ward \approx 15.

Westlaw Key Number Search: 196k15.

Encyclopedias

C.J.S. Guardian and Ward §§ 31 to 33.

§ 21-118. Counter security; petition by surety.

If a surety of a guardian by petition sets forth that he apprehends himself to be in danger of loss in consequence of his suretyship, and prays the court to be relieved, the court, after summoning the guardian to answer the petition, may require him to give counter security to indemnify his original surety or to deliver his ward's estate into the hands of the surety or of another person. In either case, the court shall require sufficient security for the proper management and application of the estate to be given by the person into whose hands the estate is delivered, and make such other order as seems just.

(Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-118.

1973 Ed., § 21-118.

§ 21-119. Allowances made before bond given.

An allowance made to a guardian for the clothing, support, maintenance, education or other expenses incurred for the ward or his estate, before the guardian gives bond or is appointed, has the same effect in law as if made subsequently to the appointment of the guardian and his giving bond.

(Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-119.

1973 Ed., § 21-119.

§ 21-120. Settlement of actions involving minor children; appointment of guardian of estate.

(a) A person entitled to maintain or defend an action on behalf of a minor child, including an action relating to real estate, is competent to settle an action so brought and, upon settlement thereof or upon satisfaction of a judgment obtained therein, is competent to give a full acquittance and release of all liability in connection with the action, but such a settlement is not valid unless approved by a judge of the court in which the action is pending.

(b) A person may not receive money or other property on behalf of a minor in settlement of an action brought on behalf of or against the minor or in satisfaction of a judgment in the action, where, after deduction of fees, costs and all other expenses incident to the matter, the net value of the money and property due the minor exceeds \$3,000, before he is appointed by a court of competent jurisdiction as guardian of the estate of the minor to receive the money or property, and qualifies as such.

(Sept. 14, 1965. 79 Stat. 741, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

- 1981 Ed., § 21-120.
- 1973 Ed., § 21-120.

Notes of Decisions

- In general** 1
- Actions for negligence or wrongful acts** 2
- Appointment of special master** 4
- Dismissal of action** 3

of a cause of action, thus clearly providing a basis for damages. D.C.Code 1981, § 21-120(a). *Swann v. Waldman*, 1983, 465 A.2d 844. Attorney And Client ⇨ 129(4)

1. In general

In appropriate case, trial court should rule so as to preserve rights of minor who would otherwise suffer significant loss due entirely to default of representative who was supposed to be, but was not, acting in minor's best interest. D.C.Code 1981, § 21-120(a, b). *Godfrey v. Washington*, 1995, 653 A.2d 371. Infants ⇨ 73

By adopting the Uniform Transfers to Minors Act, including the accompanying comments of the Commissioners, the legislature increased the nominal amount which does not require a judicially supervised guardianship to \$10,000. It has imposed, nonetheless, specific fiduciary standards on the individual receiving the funds from a tort obligor such as those imposed by § 21-312, 21-314, 21-317 and 21-319. *K.A.E. v. Manuel*, 115 WLR 2589 (Super. Ct. 1987).

2. Actions for negligence or wrongful acts

Where wrongful death claim, whose settlement did not require court approval to be valid, was merged into settlement agreement which attorneys negotiated and no longer existed as a viable cause of action, client was therefore free to assert that attorneys' negligence deprived her

3. Dismissal of action

When civil action on behalf of minor was dismissed because minor's next friend failed to cooperate in discovery, dismissal should have been without prejudice. D.C.Code 1981, § 21-120(a, b). *Godfrey v. Washington*, 1995, 653 A.2d 371. Federal Courts ⇨ 1052.1

4. Appointment of special master

Although District of Columbia statute providing for guardian of property for proceeds of settlement recovered by minor plaintiff and local rule recovering examination by auditor master of accounts of fiduciaries were not applicable to action brought against aircraft corporation and third-party defendant United States on behalf of 45 infant plaintiffs who alleged they suffered compensable injury when military transport airplane crashed near Saigon, Vietnam, policies underlying statutes and rule, with their concern for extra scrutiny by court where property of minors is involved, did apply and created need for appointment of special masters. D.C.Code 1981, § 21-120; U.S. Dist. Ct. Rules D.D.C., Civil Rule 1-25; Fed. Rules Civ. Proc. Rule 17(c), 28 U.S.C.A. *Friends For All Children, Inc. v. Lockheed Aircraft*

§ 21-120
Note 4

FIDUCIARY RELATIONS AND THE MENTALLY ILL

Corp., 1983, 567 F.Supp. 790. Federal Civil Procedure ⇨ 1891

SUBCHAPTER II. PROPERTY OF INFANTS.

§ 21-141. Possession of property.

On the execution of his bond, a guardian is entitled to an order of the court directing the real and personal estate of the ward to be delivered into his possession, and all legacies and distributive shares to which the ward is entitled to be paid or delivered to him when they are properly payable or distributable according to law.

(Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-141.
1973 Ed., § 21-141.

Library References

Key Numbers

Guardian and Ward ⇨ 35.
Westlaw Key Number Search: 196k35.

Encyclopedias

C.J.S. Guardian and Ward § 72.

Notes of Decisions

Executor as legatee 3
Right to possession 1
Rights resulting from control of property 2
Trust relationship 4

1. Right to possession

Requiring adult children of ward to transfer to conservators alleged testamentary document entrusted to children by ward was not improper on ground that will was not part of ward's estate in his lifetime. D.C.C.E. § 21-141. Price v. Williams, C.A.D.C.1968, 393 F.2d 348, 129 U.S.App.D.C. 239. Mental Health ⇨ 219

Upon appointment of minor's stepmother as guardian of the minor, the stepmother became entitled to the possession of all property of the minor. Dunlap v. Jones, D.D.C.1941, 38 F.Supp. 593, affirmed 128 F.2d 763, 76 U.S.App.D.C. 422. Guardian And Ward ⇨ 35

Where infant's funds were in custody of guardian who was under adequate bond, and litigation between guardian and another claimant concerning right to administer the fund for the infant was pending, district court, which decided that guardian was required to bear burden of litigation over conflicting claims concerning right to administer the fund, would in exercise of its discretion order custody of fund to remain in guardian during pendency of litigation, so as to avoid additional expense to the

infant's estate which would be incurred if custody of fund were changed, since there was no "vested right" to custody of fund during litigation and district court had duty to protect the infant's interests. In re Dunlap's Guardianship, D.D.C.1941, 36 F.Supp. 545. Guardian And Ward ⇨ 35

2. Rights resulting from control of property

The control of a guardian of the real estate of his ward constitutes a sufficient entry to invest the ward with actual seisin. McKnight v. McKnight, 1853, 16 F.Cas. 229, No. 8867A. Guardian And Ward ⇨ 35

3. Executor as legatee

The law effects the necessary transfer of a fund from one holding it as executor to himself as guardian. No formal transfer is necessary. U.S., to Use of Lang v. May, D.C.Supp.1885, 15 D.C. 4. Executors And Administrators ⇨ 292; Guardian And Ward ⇨ 35

4. Trust relationship

Where insured designated his daughter as beneficiary of life policy unless daughter should be under 21 years of age at time of payment, in which event money should be payable in trust for daughter to trustee, whose receipt and release should constitute full discharge of all liability, insurance money was daughter's property

to be administered by daughter's guardian, and there was no ground for trustee's claim that trustee was entitled to money for herself. *Jones v. Dunlap*, 1942, 128 F.2d 763, 76 U.S.App.D.C. 422. Guardian And Ward ⇨ 35; Trusts ⇨ 136
 Where designation of life policy beneficiary which named insured's daughter as beneficiary and provided that if daughter should be under 21 years of age at time of payment, money should be payable in trust for daughter was construable as creating a dry trust or passive trust, merely for purpose of enabling some one

sui juris to execute receipt and release to insurer without which the daughter if then a minor could not obtain the money, a guardian appointed for the daughter who was a minor at time of payment of proceeds of policy was entitled to possession of proceeds which were required to be expended by guardian for benefit of the daughter under direction of court and protected by guardian's bond. *Dunlap v. Jones*, D.D.C.1941, 38 F.Supp. 593, affirmed 128 F.2d 763, 76 U.S.App.D.C. 422. Guardian And Ward ⇨ 35

§ 21-142. Inventory.

Within three months after the execution and approval of his bond, a guardian shall return to the court, under oath, an inventory of the real and personal estate of his ward and of the probable annual income thereof, and the court may direct the estate to be appraised and the annual income thereof to be ascertained by two competent persons, to be appointed by the court, who shall report their appraisal and finding under oath.

(Sept. 14, 1965. 79 Stat. 741. Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-142.

1973 Ed., § 21-142.

Cross References

Married infant property rights, see § 46-601.

Library References

Key Numbers

Guardian and Ward ⇨ 32.

Westlaw Key Number Search: 196k32.

Encyclopedias

C.J.S. Guardian and Ward § 74.

§ 21-143. Duties; accounts; maintenance and education; sales; compensation.

A guardian shall manage the estate for the best interests of the ward, and once in each year, or oftener if required, he shall settle an account of his trust under oath. He shall account for all profit and increase of his ward's estate and the annual value thereof, and shall be allowed credit for taxes, repairs, improvements, expenses, and commissions, and he is not answerable for any loss or decrease sustained without his fault. The court shall determine the amounts to be expended annually in the maintenance and education of the infant, regard being had to his future condition and prospects in life; and if it deems it advantageous to the ward, may allow the guardian to exceed the income of the estate and to make use of the principal and sell it or part thereof, under the court's order, as provided by this subchapter; but a guardian may not sell any property of his ward without an order of the court previously had therefor. The court shall allow a reasonable compensation for services ren-

§ 21-143

FIDUCIARY RELATIONS AND THE MENTALLY ILL

dered by the guardian not exceeding a commission of five per centum of the amounts collected, if and when disbursed.

(Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-143.

1973 Ed., § 21-143.

Cross References

Capacity of minor to contract for life, health, and accident insurance, see § 31-4330.

Care for minor children, failure to provide, see §§ 22-1101 and 22-1102.

Child labor and work permits, see § 32-201 et seq.

Consent to marriage of minor, see § 46-411.

Enforcement of personal property taxes by distraint or levy, see § 47-1601.

Real estate leases involving minors, see § 42-3225 et seq.

Tax sale redemption rights of minors, see § 47-1304.

Library References

Key Numbers

Guardian and Ward \ominus 3e, 137 to 165.

Westlaw Key Number Searches: 196k36:

196k137 to 196k165.

Encyclopedias

C.J.S. Guardian and Ward §§ 70, 146 to 152,

154 to 169, 196.

Notes of Decisions

Compensation of guardian 1

1. Compensation of guardian

Use of figure of 5% as rule of thumb for fixing reasonable compensation to guardians ad litem and conservators appointed pursuant to statute governing guardians of property of mentally incompetent persons is permissible. D.C.C.E. §§ 21-143, 21-1503, 21-1504. *Mitchell v. Ensor*, C.A.D.C.1969, 412 F.2d 155, 134 U.S.App. D.C. 24. *Mental Health* \ominus 181

Under evidence that commission paid to substitute conservator of estate was based on character of services rendered, amount of time spent, and size of estate administered, and that commission did not exceed statutory limit of 5% of disbursements, trial court did not abuse its discretion in approving payment of such commission to conservator. D.C.C.E. §§ 21-143, 21-1503. *Rosendorf v. Toomey*, 1975, 349 A.2d 694. *Mental Health* \ominus 182

§ 21-144. Property subject to liens.

When an infant is entitled to real or personal estate in the District of Columbia which is liable to a mortgage, trust, or lien, or is in any way charged with the payment of money, the court may decree in the case as if the infant were of full age.

(Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-144.

1973 Ed., § 21-144.

Cross References

Mortgages, rights of infants, see §§ 42-808 and 42-809.

§ 21-145. Property subject to executory contract.

When an infant is:

(1) entitled to real or personal estate in the District of Columbia bound by executory contract entered into by the person from whom the infant derived title; or

(2) claims a right or interest in property under such a contract—

the court may decree the execution of the contract or enter a just and proper decree, as if the parties were of full age.

(Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1.)

Historical and Statutory Notes**Prior Codifications**

1981 Ed., § 21-145.

1973 Ed., § 21-145.

Library References**Key Numbers**

Guardian and Ward §§ 36 to 47.

Westlaw Key Number Searches: 196k36 to 196k47.

Encyclopedias

C.J.S. Guardian and Ward §§ 70, 72 to 75,

76, 92 to 97.

§ 21-146. Contract for sale by adult in behalf of himself and infant.

When a contract is made for the sale of real estate by persons interested therein jointly or in common with an infant, for and in behalf of all the persons so interested, which the court, upon a hearing and examination of the circumstances, considers to be for the interest and advantage both of the infant and of the other persons interested therein to be confirmed, the court may confirm the contract and order a deed to be executed according to it. Sales and deeds made in pursuance of the order are sufficient in law to transfer the estate and interest of the infant in the real estate.

(Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1.)

Historical and Statutory Notes**Prior Codifications**

1981 Ed., § 21-146.

1973 Ed., § 21-146.

Cross References

Partition of lands, tenements, or hereditaments on the complaint of a tenant in common, effect of this section, see § 16-2901.

§ 21-147. Sale of infant's principal for maintenance or education.

When it appears, upon the verified petition of a guardian, or in a case of his refusal to act, a next friend of an infant, and the appearance and answer of the infant by guardian to be appointed by the court, and proof by deposition of one or more disinterested witnesses, that a sale of the principal of the infant's estate, or of a part thereof, whether real or personal, is necessary for his

§ 21-147

FIDUCIARY RELATIONS AND THE MENTALLY ILL

maintenance or education, regard being had to his condition and prospects in life, the Probate Court may decree the sale on terms which to it seem proper. (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-147.
1973 Ed., § 21-147.

Cross References

Nonresident infants, appointment of ancillary guardian, see §§ 21-111, 21-112.
Probate court proceedings, see § 16-3101 et seq.

Library References

Key Numbers

Guardian and Ward ☞77.
Westlaw Key Number Search: 196k77.

Encyclopedias

C.J.S. Guardian and Ward § 111.

§ 21-148. Sale or exchange of real estate; proceedings.

When a guardian or, in case of his refusal to act, a next friend, deems that the interests of the ward will be promoted by a sale of his freehold or leasehold estate in lands, for the purpose of reinvesting the proceeds in other property or securities, or by an exchange of the property for other property, he may file a verified petition in the court, setting forth all the estate of the ward, real and personal, and all the facts which, in his opinion, tend to show whether the ward's interest will be promoted by the sale or exchange.

(Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-148.
1973 Ed., § 21-148.

§ 21-149. Parties.

The infant, together with those who would succeed to the estate if he were dead, shall be made parties defendant in the proceeding provided by section 21-148; and the court shall appoint a fit and disinterested person to be guardian ad litem for the infant, who shall answer the petition under oath. The infant also, if above the age of 14 years, shall answer the petition in proper person, under oath.

(Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-149.
1973 Ed., § 21-149.

GUARDIANSHIP OF INFANTS

§ 21-151
Note 1

Library References

Key Numbers

Guardian and Ward Ⓒ83.
Westlaw Key Number Search: 196k83.

Encyclopedias

C.J.S. Guardian and Ward §§ 115 to 116.

§ 21-150. Proof.

Every fact material to determine the propriety of a sale or exchange shall be clearly proved, in a proceeding brought pursuant to section 21-148, by disinterested witnesses, whose testimony shall be taken in writing in the presence of the guardian ad litem or upon interrogatories agreed upon by him.

(Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-150.
1973 Ed., § 21-150.

Library References

Key Numbers

Guardian and Ward Ⓒ88, 89.
Westlaw Key Number Searches: 196k88;
196k89.

Encyclopedias

C.J.S. Guardian and Ward §§ 113, 115, 119.

§ 21-151. Decree of sale; costs.

When, in a proceeding brought pursuant to section 21-148, the court is satisfied from the evidence that the interests of the infant require a sale or exchange, as prayed, and the rights of others will not be violated thereby, the sale or exchange may be decreed, and the costs of the suit shall be paid out of the infant's estate; otherwise they shall be paid by the complainant.

(Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-151.
1973 Ed., § 21-151.

Library References

Key Numbers

Guardian and Ward Ⓒ90.
Westlaw Key Number Search: 196k90.

Encyclopedias

C.J.S. Guardian and Ward §§ 115, 120.

Notes of Decisions

Order or decree 1

1. Order or decree

The order of the orphans' court permitting the sale to be made, or of the chancery court approving the sale, cannot be collaterally im-

peached on the ground that there is no record of any evidence on which the orders were based, or of any subsequent accounting by the guardian for the proceeds of the sale. *Thaw v. Falls*, U.S. Dist. Col. 1890, 10 S.Ct. 1037, 136 U.S. 519, 34 L.Ed. 531. *Guardian And Ward* Ⓒ 90

§ 21-152 **FIDUCIARY RELATIONS AND THE MENTALLY ILL**

§ 21-152. Terms of sale; lien.

A sale pursuant to a decree issued pursuant to section 21-151 may be made upon such terms as to cash and credit as the court directs, and a lien shall be retained on the property sold for the purchase money.

(Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-152.
1973 Ed., § 21-152.

§ 21-153. Exchanges; appointment of trustees.

In decreeing an exchange of an infant's estate for other property, pursuant to section 21-151, the court need not require equality or sameness in the quantity or character of the estate or interest, and the court may appoint trustees to execute the deeds necessary to carry the exchange into effect.

(Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-153.
1973 Ed., § 21-153.

§ 21-154. Ratification of sales by court.

A sale of property of an infant is not effectual to pass title to the property sold until it is reported to and ratified by the court.

(Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-154.
1973 Ed., § 21-154.

Library References

Key Numbers

Guardian and Ward \approx 102 to 104.
Westlaw Key Number Searches: 196k102 to
196k104.

Encyclopedias

C.J.S. Guardian and Ward §§ 124, 129 to
131, 134.

§ 21-155. Sale or exchange of particular estate or remainder; application of income.

Where an infant is entitled to a particular estate, as for life or years, and another person is entitled to an estate in remainder or reversion or by way of executory devise in the same property, or the other person is entitled to the particular estate and the infant is entitled in remainder or reversion or executory devise, the court may decree a sale or exchange as provided by sections 21-148 to 21-153, having reference solely to the interests of the infant,

GUARDIANSHIP OF INFANTS

§ 21-157

When any other person so interested consents to the sale or exchange and execute the conveyances necessary to carry it into effect. The court shall direct the sale of the real income from the fund or property acquired by the sale or exchange to be applied according to the interests of the respective parties.

(Act of 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Codifications

1965 Ed., § 21-155.

1973 Ed., § 21-155.

§ 21-156. Lease of infant's estate.

Where it appears to the court that it will be to the advantage of the infant that the real estate be demised, the court shall decree that it be demised for a term of years not to exceed the minority of the infant, yielding such rents and on such terms and conditions as the court directs. Where the infant is entitled to a part of the estate, the decree demising the estate shall be made only if all owners of the other interest assent.

(Act of 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Codifications

1965 Ed., § 21-156.

1973 Ed., § 21-156.

Library References

Numbers

C.J.S. Guardian and Ward ¶77, 113.

Westlaw Key Number Searches: 196k77;
196k113.

Encyclopedias

C.J.S. Guardian and Ward §§ 111, 143 to
144.

§ 21-157. Mortgage of infant's estate.

Where it appears to the court by proof that it would be for the advantage of the infant to raise money by mortgage for his maintenance or to improve his property or to pay off charges, liens, or incumbrances thereon, the court may, on the application of the guardian or of the infant by next friend, decree a conveyance of the property, by mortgage or deed of trust, to be executed by the guardian, on such terms as to the court seem expedient. This section also applies where the infant holds jointly or in common with other persons of full age or holds a portion of the estate, as a particular estate, for life or years or in fee simple in reversion, if the other owners interested, all being of full age, assent to the decree and unite in the mortgage or deed of trust.

(Act of 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Historical and Statutory Notes

Codifications

1965 Ed., § 21-157.

1973 Ed., § 21-157.

§ 21-157

FIDUCIARY RELATIONS AND THE MENTALLY ILL

Library References

Key Numbers

Guardian and Ward ☞77, 112.

Westlaw Key Number Searches: 196k77;
196k112.

Encyclopedias

C.J.S. Guardian and Ward §§ 111, 140 to
142.

§ 21-158. Final account.

On arrival of a ward at the age of 18 years the guardian shall exhibit a final account of his trust to the court and shall, agreeably to the court's order deliver up to the ward all the property of the ward in his hands and if he fails to do so, his bond may be sued upon for the use of the party interested, and he may be attached.

(Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(a) (3); July 22, 1976, D.C. Law 1-75, § 4(c), 23 DCR 1181.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-158.

1973 Ed., § 21-158.

Legislative History of Laws

For legislative history of D.C. Law 1-75, see Historical and Statutory Notes following § 21-104.

SUBCHAPTER III. INDIGENT BOYS.

§ 21-181. Enlistment of indigent minor children.

The Probate Court may appoint guardians to indigent minor children for the purpose of securing their enlistment in the naval or marine service of the United States, as provided by law, free of costs on account of the proceeding (Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1; Oct. 1, 1976, D.C. Law 1-87 § 31(a)(2), (3), 23 DCR 2544.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-181.

1973 Ed., § 21-181.

Legislative History of Laws

For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 21-102.

§ 21-182. Preparation of guardianship papers.

The Register of Wills shall prepare papers in connection with appointment of guardians to enable indigent minor children to enlist in the United States Navy as provided by law, without making a charge therefor.

(Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1; Oct. 1, 1976, D.C. Law 1-87 § 31(a)(4), 23 DCR 2544.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 21-182.

1973 Ed., § 21-182.

Legislative History of Laws

For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 21-102.

§ 20-1104

PROBATE AND ADMINISTRATION OF ESTATES

Note 2

trict of Columbia, 1997, 689 A.2d 1217. Descent And Distribution ☞ 87

Lender that acquired, without notice of competing claim, deed of trust interest in property that borrower-husband had transferred to himself from deceased mother's estate, in his capacities as personal representative of mother's estate and as her sole heir, was protected from claims against mother's estate under statute in effect when lender filed deed of trust, which

provided that purchaser for value from distributee with title took title free of claims of estate; therefore, lender had no obligation to satisfy any debt that estate owed to the District of Columbia for Medicaid payments that had been made on mother's behalf. D.C. Code 1981, § 20-1104(c) (1994). Associates Financial Services of America, Inc. v. District of Columbia, 1997, 689 A.2d 1217. Descent And Distribution ☞ 87

§ 20-1105. Petition for purpose of distribution.

When two or more heirs or legatees are entitled to distribution of undivided interests in any property of the estate, the personal representative or one or more of the heirs or legatees may petition the Court, prior to the closing of the estate, to make partition. After notice to the heirs or legatees interested in the property being partitioned, the Court may partition the property, in accordance with the provisions of sections 16-2901 through 16-2925. The Court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 20-1105.

Legislative History of Laws

For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-1102.

Library References

Key Numbers

Partition ☞ 12(1), 32.

Westlaw Key Number Searches: 288k12(1);

288k32

Encyclopedias

C.J.S. Partition §§ 22, 56 to 59.

§ 20-1106. Distribution to a minor.

(a) If a personal representative is required to distribute assets of an estate to a minor, and if the will contains a direction or grants discretion to the personal representative with regard to the manner of making such a distribution, then the personal representative shall make distribution in accordance with that direction or discretion without the need for any order of the Court.

(b) If a personal representative is required to distribute assets of an estate to a minor, and if there is no will or if the will does not give any direction or discretion to the personal representative with regard to such a distribution, then the personal representative may make such distribution as follows:

(1) without the need for any order of the Court, in the following order of priority:

(A) to the guardian of the minor if the guardian has filed with the Court a copy of the guardian's appointment as guardian and an order authorizing

such guardian to receive such distribution authenticated pursuant to 28 U.S.C. § 1738; or

(B) to the custodian selected or approved by the personal representative for the minor under the Uniform Gifts (or Transfers) to Minors Act of any jurisdiction, subject to the limits, if any, under such applicable act on the property which may be received and held by such custodian; or

(2) in any other manner approved by the Court.

(c) When a personal representative distributes assets in accordance with this section, the personal representative shall obtain a voucher, signed by the distributee, indicating receipt of the property distributed.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 12, 1986, D.C. Law 6-87, § 3(b), 33 DCR 278; Mar. 21, 1995, D.C. Law 10-241, § 3(ooo), 42 DCR 63.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 20-1106.

Legislative History of Laws

For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-1102.

Law 6-87, the "District of Columbia Uniform Transfers to Minors Act," was introduced in Council and assigned Bill No. 6-58, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 19, 1985, and December 3, 1985,

respectively. Signed by the Mayor on December 30, 1985, it was assigned Act No. 6-115 and transmitted to both Houses of Congress for its review.

For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-1102.

Miscellaneous Notes

Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-1102.

Cross References

Transfer to minor authorized by will or trust, see § 21-305.

Library References

Key Numbers

Infants ◊22, 28.

Westlaw Key Number Searches: 211k22;
211k28.

Encyclopedias

C.J.S. Infants §§ 126, 135 to 136, 143.

§ 20-1107. Distribution to fiduciary for nonresident person under legal disability other than minority.

If a fiduciary has been appointed for a nonresident person under a legal disability other than minority and if such fiduciary has filed copies of such appointment and an order authorizing such fiduciary to receive such distribution authenticated pursuant to 28 U.S.C. sec. 1738, the personal representative may distribute the disabled person's share of an estate to such fiduciary.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 20-1107.

Legislative History of Laws

For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-1102.

CHAPTER 3

TRANSFERS TO MINORS; UNIFORM LAW.

Section	
21-301.	Definitions.
21-302.	Scope and jurisdiction.
21-303.	Nomination of custodian.
21-304.	Transfer by gift or exercise of power of appointment.
21-305.	Transfer authorized by will or trust.
21-306.	Other transfers by fiduciary.
21-307.	Transfer by obligor.
21-308.	Receipt for custodial property.
21-309.	Manner of creating custodial property and effecting transfer; designation of initial custodian; control.
21-310.	Single custodianship.
21-311.	Validity and effect of transfer.
21-312.	Care of custodial property.
21-313.	Powers of custodian.
21-314.	Use of custodial property.
21-315.	Custodian's expenses; compensation; bond.
21-316.	Exemption of third person from liability.
21-317.	Liability to third persons.
21-318.	Renunciation, resignation, death, or removal of custodian; designation of successor custodian.
21-319.	Accounting by and determination of liability of custodian.
21-320.	Termination of custodianship.
21-321.	Applicability.
21-322.	Effect of existing custodianships.
21-323.	Uniformity of application and construction.
21-324.	Effect of repeal of Uniform Gifts to Minors Act.

UNIFORM TRANSFERS TO MINORS ACT

Table of Jurisdictions Wherein Act Has Been Adopted

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 8B.

Jurisdiction	Statutory Citation
Alabama	Code 1975, §§ 35-5A-1 to 35-5A-24.
Alaska	AS 13.46.010 to 13.46.999.
Arizona	A.R.S. §§ 14-7651 to 14-7671.
Arkansas	A.C.A. §§ 9-26-201 to 9-26-227.
California	West's Ann.Cal.Prob.Code, §§ 3900 to 3925.
Colorado	West's C.R.S.A. §§ 11-50-101 to 11-50-126.
Connecticut	C.G.S.A. §§ 45a-557 to 45a-560b.
Delaware	12 Del. C. §§ 4501 to 4523.
District of Columbia	D.C.Code 2001, §§ 21-301 to 21-324.
Florida	West's F.S.A. §§ 710.101 to 710.126.
Georgia	O.C.G.A. §§ 44-5-110 to 44-5-134.
Hawaii	HRS §§ 553A-1 to 553A-24.
Idaho	I.C. §§ 68-801 to 68-825.
Illinois	S.H.A. 760 ILCS 20/1 to 20/24.
Indiana	West's A.I.C. 30-2-8.5-1 to 30-2-8.5-40.
Iowa	I.C.A. §§ 565B.1 to 565B.25.

COURT RULES

PART I
RULES APPLICABLE TO ALL PROCEEDINGS UNDER
THE 200 SERIES.

Rule 201. Bonds and undertakings.

(a) *Fiduciaries must give undertaking; how amount determined.* In trust estates under the supervision of the Court, where there is not specific statutory provision for the giving of an undertaking, all committees, trustees, guardians and other fiduciaries appointed by the Court, except trust companies as provided in D.C. Code § 26-433 and national banks as provided in 12 U.S.C. § 92a(f), before entering upon the discharge of the duties as such fiduciary shall execute an undertaking with surety approved by the Court in a penalty equal to the amount of the personal property, the annual income therefrom and the yearly rents to be derived from the real estate of such trust estate, conditioned for the faithful performance of such trust. Should it become necessary to sell real estate of the estate, the fiduciary shall execute such additional undertaking as may be required by the Court before accepting in such fiduciary capacity the proceeds from the sale of real estate.

(b) *Persons not acceptable as surety.* No members of the bar in active practice or other officer of the Court will be accepted as surety. (Added, Dec. 5, 1994, eff. Feb. 1, 1995; renumbered, Oct. 22, 1996, eff. Feb. 1, 1997.)

Rule 202. Trustees, conservators, guardians, guardians ad litem, and other fiduciaries.

(a) *To report conflicting interest.* Whenever a trustee, conservator, guardian, guardian ad litem, or other fiduciary has occasion to sue or defend in behalf of an infant or incompetent person concerning a matter in which he has a possible conflicting interest, he shall report the facts in writing to the Court so that it may take appropriate action.

(b) *Guardians ad litem: Members of bar to be appointed.* Except for special cause shown no person other than a member of the bar of this Court shall be appointed guardian ad litem.

(c) Application for the appointment of a successor, substitute or additional trustee shall be by petition with notice to parties, if any, and affected persons, who shall include only all then serving trustees, present income beneficiaries and then living remaindermen who would receive trust assets if all income beneficiaries had died on the date of filing of the petition raising the matter at issue. The Court may modify the foregoing in accordance with Probate Rule 4(b). A guardian ad litem shall not be required for such an appointment.

(d) Except for good cause shown, only a person residing within the area of the subpoena power of the Court or any bank or trust institution authorized to serve in a fiduciary capacity, or a member of the bar authorized to practice law before this Court, shall be appointed by the Court as conservator, committee, or trustee of another.

(e) No fiduciary appointed by this Court shall, without prior Court approval, remove or maintain outside the District of Columbia any personal assets held in a fiduciary capacity, except securities held in book entry form or in the custody of an institution mentioned in Probate Rule 204(d#4).

(f) A fiduciary appointed by this Court who is or becomes a nonresident of the District of Columbia or is continuously absent therefrom for more than sixty days, shall within ten days after qualifying as fiduciary or becoming such nonresident or absentee, file with the Register of Wills a like power of attorney to that provided by D.C. Code § 20-303(b)(7). Failure to file the power of attorney within the time provided shall be cause for removal of the fiduciary from office. (Added, Dec. 5, 1994, eff. Feb. 1, 1995; renumbered and amended, Oct. 22, 1996, eff. Feb. 1, 1997.)

Rule 203. Court sales of real and personal property.

(a) *Sale of real property.* Unless otherwise herein provided, a sale of real estate or any interest in land under an order of this Court shall be governed by the provisions of Title 28, Section 2001, U.S. Code in the same manner as if such provisions were, by the terms thereof, applicable to proceedings in this Court.

(b) *Public sale: Procedure.* Except when the order of Court otherwise provides, the officer making a public sale shall proceed in the manner following:

(1) *Publication.* The officer shall give previous notice of the sale by publication once a week for 4 weeks in a daily newspaper of general circulation in the District of Columbia. The notice shall describe the property substantially as in the order and shall state the time, place, manner and terms of sale and the deposit required.

(2) *Terms of sale.* The terms shall be one-third of the purchase money in cash and the balance in two equal installments, payable on or before one and 2 years from date of settlement of sale, represented by the promissory notes of the purchaser with interest at 6 percent per annum, payable semi-annually, secured by deed of trust on the property, or all cash at the option of the purchaser.

(3) *Place; presence of officer.* The sale shall be held upon the premises, and the officer making the sale shall be present and personally receive the deposit. If there be more than one officer, the presence of one will be sufficient.

(4) *Report; ratification.* A verified report of the sale shall be promptly made to the Court. Thereupon on motion and notice the Court may, in its discretion, ratify the same with or without further notice. If the sale be ratified, settlement shall be made and the real estate conveyed by proper deed.

(5) *Form of order of sale.* The order of sale shall not contain detailed directions as to the manner of proceeding, but shall do so only by reference to this rule.

(6) *Compensation of auctioneer.* The compensation of the auctioneer shall be one and one-half percent of the first \$10,000.00, plus three-eighths of one percent of any amount over \$10,000.00 of the value of the equity in the property being sold. In the event that the property is unencumbered by indebtedness, the auctioneer's compensation shall be computed and paid at the same rate upon the entire sales price. In no case shall the auctioneer's compensation be less than thirty-five (\$35.00) dollars unless the property is withdrawn after being offered for sale, in which event the auctioneer's compensation shall be twenty-five (\$25.00) dollars.

(c) *Private sale: Procedure.* (1) *Order for sale.* A private sale may be ordered after hearing of which notice to all parties and affected persons is given by

publication or otherwise as the Court may direct, if the Court finds the best interests of the estate will be conserved thereby.

(2) Appraisers. Before confirmation of a private sale the Court shall appoint 3 disinterested persons to appraise the property, or different groups of 3 appraisers each to appraise properties of different classes or situated in different locations. Such appraisers are to be appointed from the list maintained by the Register of Wills pursuant to Probate Rule 113.

(3) Minimum sale price. A private sale shall not be confirmed at less than two-thirds of the appraised value.

(4) Order *nisi* increased offer; confirmation. At least 10 days before confirmation of a private sale the terms thereof shall be published in such newspaper or newspapers of general circulation in the District of Columbia as the Court may direct, and the sale shall not then be confirmed if a bona fide offer has been made, under such conditions as the Court may prescribe, which guarantees at least a ten percent net increase over the price specified in such published offer.

(d) *Account; distribution of proceeds.* Except in an old conservatorship proceeding (one not governed by D.C. Code § 21-2001 et seq.), promptly after the settlement of a private or public sale made under this rule a full and detailed account shall be filed and presented to the Court and the proceeds distributed as the Court has directed or may direct.

(e) *Compensation to officer making sale.* The compensation of the trustee or officer making a sale hereunder shall be five (5) percent on the first \$3,000.00, plus two and one-half percent on the next \$10,000.00, plus 1 percent on any amount in excess of \$13,000.00 of the value of the equity in the property being sold. In the event that the property is unencumbered by indebtedness, the compensation of the trustee or officer making the sale shall be computed and paid at the same rate upon the entire sales price. The compensation may be increased or reduced by the Court for special cause shown in writing.

(f) *Sale of personal property.* Unless otherwise herein provided, a sale of personal property under an order of this Court shall be governed by Title 28, Section 2004, U.S. Code, in the same manner as if such provisions were, by the terms thereof, applicable to proceedings in this Court. The officer making sale shall account and distribute as provided by subsection (d) hereof. The officer shall be allowed such compensation and expenses as the Court may fix. (Added, Dec. 5, 1994, eff. Feb. 1, 1995; renumbered, Oct. 22, 1996, eff. Feb. 1, 1997.)

Rule 204. Appraisals, inventories and accounts.

(a) *Appraisals, inventory, and accounts.* The fiduciary shall file an appraisal, inventory and accounts.

(1) Promptly upon qualification, a fiduciary shall engage the services of a qualified appraiser to appraise all tangible personal property in the ward's estate provided the value of said property, in the judgment of the fiduciary, exceeds the value of \$1,000.00. Without the payment of additional court fees and subject to their availability, the standing court appraisers may be engaged for this purpose. If said property, in the judgment of the fiduciary, is valued at \$1,000.00 or less, the fiduciary shall submit with the inventory an affidavit setting forth the description and the value of the tangible personal property.

(2) An inventory and appraisal shall be filed by the fiduciary within ninety days after qualification or within ninety days after the order bringing the

fiduciary under its authority, supervision or direction. If the fiduciary has no assets to collect, the fiduciary shall file an affidavit to that effect in lieu of the inventory.

(3) A fiduciary appointed by the Court or required to file bond with it for faithful discharge of the fiduciary's trust, or otherwise acting under the authority, supervision or direction of the Court, shall account and report as herein provided.

(4) An account, verified by the fiduciary's oath, shall be filed annually with the Register of Wills within thirty days after the anniversary date of the fiduciary's qualification or order bringing the fiduciary under the authority, supervision or direction of the Court. The account shall contain an itemized statement of all receipts and disbursements for the accounting period. The account, to be made on a form substantially in the format approved by the Register of Wills, shall list with detailed particularity (i) all real and personal assets of the estate and the value of each, (ii) a statement of all receipts and disbursements, (iii) any sale, transfer or other disposition of assets, (iv) any investment, or change in form of assets, (v) the amount of the fiduciary's undertaking, and (vi) the name of the surety.

(5) Upon the death of the person for whom the fiduciary is appointed, the fiduciary shall file a suggestion of death forthwith. Upon termination by reason of the ward's restoration of capacity, or attainment of the age of majority, or in the event of the fiduciary's death or incapacity, the fiduciary or his personal representative shall file a final account within sixty (60) days from the date of such event, except that the account shall not be due earlier than the date specified for the filing of the inventory in paragraph (a) (2) of this rule.

(b) *Audit and examination.* Upon filing of an annual account the Register of Wills shall promptly audit the account, examine all securities (except as provided in paragraph (d) (4) hereof), check them with the account, and ascertain the correctness of all reported deposits. After determining that the account is complete and accurate in all respects, the Register of Wills shall submit the account to the Court for approval.

(c) *Notice.* Within five (5) days before or after filing of an account, the fiduciary shall give notice by first class mail of that filing to all parties and affected persons as determined by the Court. However, in guardianships, only notice of the filing of the final account shall be given to the ward. Persons to whom notice is given shall have thirty (30) days within which to file any objections with the Register of Wills and the fiduciary.

(1) The notice shall be substantially in the following form:

In re:)
)
.....) No.

NOTICE OF FILING AN ACCOUNT

..... Account of
(First & Final, Second, etc.) Name of Fiduciary

for the period beginning, 19...., and ending
....., 19....

To:
.....

Notice is hereby given that an account has been or will be filed on or before

You have the right to file objections to the account within thirty (30) days of the stated filing date.

.....
Signature of Fiduciary

Name, address and telephone no. of fiduciary:

.....
.....
.....
.....

Date:

(2) The fiduciary shall attach to the account a certification that a notice of its filing has been provided in accordance with this rule.

(d) *Audit of accounts.* Except as provided in subsection (e), the Court shall conduct an audit of the account. Upon the filing of an account, the fiduciary shall:

(1) Exhibit all checking account bank statements and canceled checks or vouchers evidencing cash transactions during the accounting period.

(2) Exhibit all passbooks, ledger sheets, statements or similar documents issued by a bank, trust company, savings and loan association, brokerage firm, mutual fund, or similar institution, or the U.S. Treasury reflecting the assets of the estate on deposit or on account therein, evidencing the transactions in such assets during the accounting period.

(3) Where not otherwise ascertained in accordance with paragraphs (1) and (2) above, and (4) below, file a written statement by each depository of cash balances on deposit therein and of all other assets (except tangibles) carried in the account as of closing date of the accounting period.

(4) Exhibit certificates or other statement of account of custodian other than the fiduciary (e.g., bank, broker, mutual fund, U.S. Treasury) evidencing ownership of all securities held for future accounting. In those fiduciary cases in which a corporation is acting as fiduciary or the services of a depository have been authorized, in lieu of exhibiting certificates, the corporation or other depository may submit an affidavit executed by an officer of the corporation or depository, other than the officer signing the account, verifying the correctness of the securities and cash accounts held for future accounting and the corporation's or depository's custody thereof.

(e)(1) *Account Approval without audit.* An account of the fiduciary may, in the Court's discretion, be approved without audit upon the filing of a petition with the Court setting forth that parties and affected persons (including remaindermen referenced in Probate Rule 202(c) in a trust case, if applicable) have consented thereto, and attaching to said petition their written waiver of audit in the form prescribed in paragraph (e)(2). A fiduciary may file a waiver as authorized in Probate Rule 205. At the time of filing the petition, the fiduciary shall submit a proposed order. In a conservatorship or guardianship proceeding this rule shall apply only to a final account.

(2) *Form of consent to account.* A consent to an account shall permit approval of an account without audit by the Register of Wills. Such consent

shall be substantially in the following form and, once filed, constitute a waiver of the right to object thereto.

In re:)
)
)
.....) No.

CONSENT TO ACCOUNT

I,, have received a copy of the
..... Account in the above captioned matter.
(First & Final. Second, etc.)

I waive the right to file objections to that account as provided in SCR-PD 207(c) and I waive my right to an audit. I consent to approval by the Court of the account as presented by the fiduciary.

.....
(Signature)

Date:

(f) Statement of distribution and settlement. 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.

(g) Exclusion from accounting requirement. Unless otherwise ordered by the Court for good cause shown, this rule shall not apply to any proceeding, the purpose of which is (i) the appointment of a trustee, substituted trustee or successor trustee under an instrument in which the fiduciary was not otherwise under the authority, supervision or direction of the Court, (ii) the judicial passing and approving of an accounting tendered to the Court by a resigning trustee, (iii) an acting trustee seeking instructions or construction of the governing instrument, or (iv) the appointment of a custodian or successor custodian under the Uniform Transfers to Minors Act. (Added, Dec. 5, 1994, eff. Feb. 1, 1995; renumbered and amended, Oct. 22, 1996, eff. Feb. 1, 1997.)

Rule 205. Fiduciaries who may file consents and waivers.

A guardian, conservator or committee, attorney-in-fact, or any other person acting in a fiduciary capacity may execute a consent or waiver as provided in Probate Rule 225(f) or 204(e) for and on behalf of such person's principal except when he or she is the accounting fiduciary. A waiver signed by one acting in such capacity must be accompanied by a certified copy of a Court appointment, if any, or, if none, by a certified statement (i) indicating such person's status, (ii) setting forth the nature and the date of the instrument creating such fiduciary relationship and the relevant portions thereof, and (iii) representing that the instrument is still in full force and effect. (Added, Dec. 5, 1994, eff. Feb. 1, 1995; renumbered and amended, Oct. 22, 1996, eff. Feb. 1, 1997.)

Rule 206. Register of Wills costs for accounts.

The Register of Wills shall be paid a fee for all audits and examinations made pursuant to this rule according to the fee schedules hereinafter set forth, and in every such case the fee prescribed herein shall be deemed a reasonable fee for the services rendered by the Register of Wills.

(a) Audits and examinations under Probate Rule 204. The fee to be collected by the Register of Wills for audit and examination of an account pursuant to subsection (d) of Probate Rule 204 shall be assessed on the basis of the value of the assets at the following rates:

<i>Value of Assets</i>	<i>Costs</i>
Less than \$2,500	None
\$2,500 but less than \$10,000	\$ 50
\$10,000 but less than \$25,000	\$ 100
\$25,000 but less than \$50,000	\$ 150
\$50,000 but less than \$75,000	\$ 250
\$75,000 but less than \$100,000	\$ 350
\$100,000 but less than \$500,000	\$ 575
\$500,000 but less than \$700,000	\$ 825
\$700,000 but less than \$1,000,000	\$1,275
\$1,000,000 but less than \$2,500,000	\$1,800
\$2,500,000 but less than \$5,000,000	\$2,300
\$5,000,000 and over	\$2,300 plus 0.02% of excess over \$5,000,000

(b) Court costs attributable to real estate in the District of Columbia. Additional court costs in the amount of \$25 shall be assessed in all accounts wherein real property or properties in the District of Columbia, of whatever value, are carried as an asset for the entire period of the account.

(c) Computation of court costs. For the purposes of determining costs under subsection (a) of this rule, the value of the assets shall include:

- (1) The initial gross principal value of the assets; and
- (2) The gross value of any increase in the principal value of any asset realized upon disposition of that asset (other than upon final distribution to a ward who has been restored to competency, or distribution to a successor fiduciary).

(d) Time of payment. The costs shall be collected by the Register of Wills at the filing of the first account by the first appointed fiduciary. The fee for costs shall be a one-time charge based on the assets, excluding real estate, but if there are subsequently acquired assets that increase the value of the estate into a higher bracket, at that time there will be an additional charge on the difference between the fee previously paid and the fee at the higher bracket, and providing that if there is a real estate that is excluded, there will be an additional charge as provided in subsection (b) of this rule. (Added, Dec. 5, 1994, eff. Feb. 1, 1995; renumbered and amended, Oct 22, 1996, eff. Feb. 1, 1997.)

Rule 207. Irregularity or default; sanctions.

(a) *Irregularity.* Failure of a fiduciary to obtain prior Court authority for expenditures, other than those provided by statute and court costs, shall constitute an irregularity in the administration of the estate and such expenditures shall be disallowed as a charge to the estate upon any accounting except for good cause shown.

(b) *Failure to account.* If an appraisal, inventory or account is not filed within the prescribed time or authorized extension of time, such failure shall constitute a default by the fiduciary.

(c) *Action by Court.* Whenever the Register of Wills finds an irregularity or default in the administration of a proceeding under these rules, including but not limited to the matters specified in subsections (a) and (b) above, or that there is an insufficiency in the amount or security of an undertaking, the Register of Wills shall promptly notify the fiduciary responsible that unless the irregularity or default is corrected forthwith, the fiduciary so notified may be removed from office. If the irregularity or default is not remedied, the Register of Wills shall report it to the Court which, after notice to the person and a hearing, shall either remove the fiduciary and appoint a successor or excuse the irregularity or default or take other appropriate action.

(1) In extraordinary cases, the Court, either *sua sponte* or at the request of the Register of Wills, may order a summary hearing without giving the fiduciary prior notice to correct an irregularity or default. After such a hearing, the Court may take any appropriate action including excusing the irregularity or default.

(2) Whenever an irregularity or default in the administration of an estate exists, but no party or affected person appears to be materially and adversely affected, the Register of Wills may request the Court to close the case unless a party or affected person shows cause why the Court should take further action.

(3) Notice of any hearing held hereunder shall be sent by first class mail to the address of record of the fiduciary, the surety, counsel of record, each party and affected person and each creditor with a docketed claim. (Added, Dec. 5, 1994, eff. Feb. 1, 1995; renumbered, Oct. 22, 1996, eff. Feb. 1, 1997.)

Rule 208. Proceedings in contested cases.

(a) *Commencement of action.* An action to contest a petition for the appointment of a guardian of a minor's estate, custodian of a minor, conservator, committee or trustee or to remove a guardian of a minor's estate, conservator, committee or trustee who has been appointed, to ratify and confirm a contract for the sale of a minor's interest in real estate (pursuant to D.C. Code § 21-146), to construe a will after approval of the personal representative's final account, for instructions, to construe, modify, reform or terminate a trust or to declare one dead based on a presumption of death (D.C. Code § 14-701), or any other complaint, regarding the guardian of a minor's estate, custodian of a minor, conservator, committee or trustee may be commenced by any party in interest by filing a verified complaint with the Register of Wills. Except as hereinafter provided, the procedure in such actions, including service of process, shall be governed by the Superior Court Rules of Civil Procedure, as amended.

(b) *Summons.* The Register of Wills shall issue a summons upon the request of the plaintiff in the action. In an action brought pursuant to this Rule to contest a petition for the appointment of, or to remove, a guardian of a minor's estate, custodian of a minor, conservator, committee or trustee, to construe a will after approval of the personal representative's final account, for instructions, or to construe or reform a trust, or to declare one dead based on a presumption of death, the summons shall be directed to all interested persons and all indispensable parties under Civil Rule 19. In any other action against the estate, the summons shall be directed only to the fiduciary thereof and may be directed to others. In such actions against an estate wherein the interested

persons are not named parties, the fiduciary thereof shall notify the interested persons of the pendency of the actions and of the right to intervene. The notice shall be provided by first class mail within 20 days of the service of the action; and the fiduciary shall file a certificate reflecting service of the notice at the time of filing a response.

(c) *Discovery*. When a complaint is filed pursuant to this Rule, the parties may proceed with discovery pursuant to Civil Rules 26 through 37.

(d) *Scheduling and settlement conference*. Within 60 days after a complaint has been filed, the Court shall conduct an initial scheduling and settlement conference pursuant to Civil Rule 16(b).

(e) *Other contested matters*. All other contested matters which are not initiated by complaint, including objection to reports or petitions filed with the Court shall be treated as motions pursuant to Civil Rule 12-I (d) through (n). The Court may permit discovery under this paragraph upon a showing of good cause. (Added, Oct. 22, 1996, eff. Feb. 1, 1997.)

Rule 209. Guardian ad litem.

(a) *Appointment*. The Court may, on its own motion or on request of a guardian of a minor's estate, custodian of a minor, conservator, committee or trustee, or other interested person, appoint a guardian ad litem at any stage of a proceeding to represent the interest of any of the following persons, if the Court determines that representation of the interest otherwise would be inadequate:

- (1) A minor.
- (2) An incapacitated person.
- (3) An unborn person.
- (4) An unascertained person.
- (5) A person whose identity or address is unknown.
- (6) A designated class of persons who are not ascertained or are not in being.

(b) *Representation of several persons or interests*. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(c) *Expenses*. The reasonable expenses of the guardian ad litem, including compensation determined pursuant to SCR-Probate 210 [PBTF 202] shall be determined by the Court and paid as the Court orders, either out of the property of the estate involved or by the petitioner or from such other source as the Court orders. (Added, Oct. 22, 1996, eff. Feb. 1, 1997.)

COMMENT

SCR-Civil 17(c) provides that a representative, next friend, or guardian ad litem appointed by the Court, may sue or defend on behalf of an infant or incompetent person. This Rule supplements 17(c) and recognizes the inherent power of the Court, as an incident of its jurisdiction, to appoint guardians ad litem to represent the interests of all those whose representation would otherwise be inadequate, in-

cluding the interests of unascertained and unborn beneficiaries and unknown persons. See *Hatch v. Riggs National Bank*, 124 U.S. App. D.C. 105, 111-112, 361 F. 2d 559 (1966). Note that SCR-Probate 202(c) provides that a guardian ad litem shall not be required for the appointment of a successor, substitute or additional trustee. (Added, Oct. 22, 1996, eff. Feb. 1, 1997.)

Rule 210. Joinder and representation of persons interested in estates.

(a) *Applicability.* The provisions of this Rule shall apply in any proceeding in which all persons interested in the estate are required to be served with process. For the purposes of this Rule, the term "an interest in the estate" includes both interests in income and interests in principal.

(b) *Representation of class interests.* (1) Where an interest in the estate has been limited as follows, it shall not be necessary to serve process on any other person than as herein provided:

(A) In any contingency to the persons who shall compose a certain class upon the happening of a future event, the persons in being who would constitute the class if such event had happened immediately before the commencement of the proceeding.

(B) To a person who is a party to the proceeding and the same interest has been further limited upon the happening of a future event to a class of persons described in terms of their relationship to such party, the party to the proceeding.

(C) To unborn or unascertained persons, none of such persons, but if it appears that there is no person in being or ascertained, having the same interest, the Court shall appoint a guardian ad litem to represent or protect the persons who eventually may become entitled to the interest.

(2) Where a party to the proceeding has a power of appointment, it shall not be necessary to serve the potential appointees and if it is a general power of appointment it shall not be necessary to serve the takers in default of the exercise thereof.

(c) *Representation of contingent interest.* Where an interest in the estate has been limited to a person who is a party to the proceeding and the same interest has been further limited upon the happening of a future event to any other person, it shall not be necessary to serve such other person.

(d) *Representation of persons under a disability.* If the instrument expressly so provides, where a party to the proceeding has the same interest as a person under a disability, it shall not be necessary to serve the person under a disability.

(e) The decree or order entered in any such proceeding shall be binding and conclusive on all persons upon whom service of process is not required.

(f) In any proceeding in which service of process upon persons interested in the estate may be dispensed with, the complaint shall set forth the nature of the interests of such persons and the basis upon which service of process may be dispensed with, and state whether the fiduciary or any other person has discretion to affect the present or future beneficial enjoyment of the estate and, if so, set forth the discretion possessed and, if exercised, the manner in which it has been exercised. Notwithstanding the provisions of this Rule and any provision of the instrument to the contrary, if the Court finds that the representation of a person's interest is or may be inadequate, it may require that that person be served or that a guardian ad litem be appointed pursuant to SCR-Probate 210. (Added, Oct. 22, 1996, eff. Feb. 1, 1997.)

Rule 211. Rule to show cause for recovery of possession of property of the estate.

(a) *Petition For Rule To Show Cause.* When it is believed that any person is in possession of assets, papers, data or information of or about an estate

subject to the 200 Series of the Probate Rules and is wrongfully withholding the same, a Petition may be filed for a Rule to Show Cause, directing such person to appear and show cause why such person should not disclose all of the assets, papers, data and information in such person's possession belonging to the estate and the location of the same and why such person should not be required by the Court to turn over all of the said assets, papers, data and other information to the representative of the estate, provide access to property or take such other action as ordered by the Court.

(b) *Content of the Petition.* In addition to any other information required to be submitted to the Court under this Rule, the Petition shall set forth with particularity the following facts, points, and authorities: (1) a concise description of the assets, papers, data, or other information concerning the estate that is alleged to be wrongfully withheld by the person named in the petition; (2) the name, address, telephone number and any other pertinent identifying information about the individual whose actions are to be subject to the order to show cause; (3) a statement of the jurisdiction of the Superior Court over the subject matter and such person; (4) the facts and law that would establish the right of the estate to demand production of the subject asset, paper, data or other information (including but not limited to its alleged connection to the assets of the estate or its relevance to the administration of the estate); (5) a concise demand for relief, such as production of a particular asset or data, reimbursement of monies to the estate, or other specific relief; and (6) any other information that the petitioner determines to be relevant to the Court's decision to issue the order to show cause or reasons if any why any of the foregoing information is not supplied.

(c) *Good Faith Effort — Certification of Petitioner.* The Petition for Rule to Show Cause shall contain the petitioner's certificate that despite a good faith effort the petitioner has been unable to obtain the assets, papers, data and information sought. The certification shall set forth specific facts describing the good faith effort.

(d) *Who May Petition the Court.* The representative of the estate (e.g., guardian of a minor's estate, custodian of a minor, conservator or trustee) may file a petition hereunder. Any interested person may also file a petition hereunder against the representative and such petition shall suffice as an "application" for relief, as permitted in D.C. Code § 20-107.

(e) *Form of Order.* The Court may grant the Petition For Rule To Show Cause without waiting for any response to the Petition by executing an Order For Rule To Show Cause substantially in the following form:

In Re: _____ No. _____

ORDER FOR RULE TO SHOW CAUSE

Upon consideration of the Petition of _____ [representative herein], filed the _____ day of _____, 19 _____,

ORDERED, that _____ appear in this Court at _____ A.M./P.M. in Courtroom No. _____, on the _____ day of _____, 19 _____, and show cause, if any there be, why he/she or it should not disclose all the assets, papers, data and information he/she or it has in his/her or its possession belonging to the

above estate and the location of the same, and why he/she or it should not be required by this Court to turn over all of the said assets, papers, data and other information to the representative of this estate, provide access to property or take such other action as ordered by the Court,

PROVIDED, however, that a copy of said Petition and this Order be served upon him/her or it by petitioner on or before the _____ day of _____, 19 ____ in accordance with SCR-Civil 4(c), and it is further

ORDERED that if _____ fails to appear on the date set in this order, the Court may grant the relief requested in the petition without further notice.

JUDGE

Copies to:

Petitioner (address)

Interested Persons (address)

(f) *Service of the Petition and Order.* Upon the issuance of an order to show cause, service of a copy of that order and a copy of the petition shall be made as follows: A copy of the petition and order shall be served upon the person allegedly in possession of the sought material in the manner prescribed by SCR-Civil 4(c). All interested persons shall be served by first class mail.

Neither the fiduciary nor any of the interested persons shall effect service upon the person allegedly in possession of the sought material.

(g) *Proof of Service.* Proof of service of the Petition and Order For Rule To Show Cause shall be by affidavit filed no later than the time set by the Order for cause to be shown.

(h) *Response To Order For Rule To Show Cause.* The person on whom the Petition and Order For Rule To Show Cause is served may file a responsive pleading to the Petition at any time, up to the date therein specified for cause to be shown. If the responsive pleading asserts a plea of title, the Court may treat the Petition For Rule to Show Cause as a complaint, provided the petitioner pays the complaint filing fee within ten (10) days, and may hold a status conference on the date set for cause to be shown and enter such other orders therein pertaining to interested persons and indispensable parties as are just in accordance with SCR-PD 107(b). (Added, Oct. 22, 1996, eff. Feb. 1, 1997.)

COMMENT

If the Petition is treated as a complaint, a jury demand must be made seasonably pursuant to SCR-Civil 38(b) and 39(b). (Added, Oct. 22, 1996, eff. Feb. 1, 1997.)

PART II CONSERVATORS (PRE 1989 ACT) AND GUARDIANS OF MINORS.

Rule 221. Appointment of guardian.

(a) *Petition.* A petition for the appointment of a guardian for an infant or infants shall be typewritten, double spaced, and verified by the petitioner. The petition shall set forth:

(1) The residence, citizenship and freedom from legal disability of the proposed guardian;

(2) The relationship of the proposed guardian to each infant;

(3) By what right the petitioner makes application, and, if the application is not for petitioner's appointment, by what right the proposed guardian may be appointed;

(4) The name, residence and date of birth of each infant;

(5) The names and residence(s) of the parents of each infant and the date of death of any deceased parent;

(6) The nature, location and estimated value of the real and personal property to which the infant is entitled, and the annual rental value of any such real property.

(b) *Presence and selection.* Unless the infant's presence is excused for sufficient cause, the infant shall be present at Court when the guardian is appointed, and, if over 14 years of age, shall be entitled to select the proposed guardian.

(c) Written consents of parents, if non-petitioning party, shall be filed with petition for the appointment of a guardian. If unavailable, a summons and copy of the petition shall be served personally on the parent if whereabouts known, in accordance with Civil Rule 4. Otherwise notice by publication may be substituted for personal service in the manner authorized by applicable statute upon the filing of an affidavit evidencing diligent effort to ascertain the parent's whereabouts. The Court, for good cause shown upon the filing of a petition and affidavit, may provide for a different method of giving of notice or waive notice.

(d) The guardian shall file a bond pursuant to D.C. Code § 21-115 with the Court at the time of the filing of the petition for the appointment of guardian.

(e) *Order appointing guardian.* The order of appointment shall state the date of birth of the infant, and, if the infant is over 14 years of age, shall state that the infant was present and selected the guardian, or that such presence was excused.

(f) *Accounts.* A guardian shall not dispose of the infant's property or encumber it without prior order of the Court. Vouchers shall be obtained for all disbursements, when practicable, and accurate records of all receipts and disbursements shall be maintained for each infant. (Renumbered and amended, Dec. 5, 1994, eff. Feb. 1, 1995; renumbered, Oct. 22, 1996, eff. Feb. 1, 1997.)

Rule 222. Expenditures and sales by a guardian of a minor.

(a) *Expenditures and sales.* All expenditures by a guardian from a minor's estate shall be made only upon prior authorization of the Court, pursuant to a petition on SCR-PD Form 1 or a format substantially consistent with that form.

(b) *Sale of property.* A guardian shall not sell or otherwise dispose of estate property or encumber it without prior order of Court.

(c) *Expenditures and sales for investment.* (1) All expenditures or sales for investment, except those pursuant to a plan or program approved pursuant to paragraph (2) of this rule, shall be made with prior Court order obtained upon a petition on SCR-PD Form 2, or a format substantially consistent with that form.

(2) A guardian may apply for approval by the Court of an investment plan or program in accordance with Civil Rule 306 which, if approved by the Court, may be carried out without the necessity of Court approval of specific transactions, provided the transaction complies with the approved plan or program; Civil Rule 308 shall not apply. The petition shall be on SCR-PD Form 3, or a format substantially consistent with that form.

(d) *Failure to comply.* Failure to comply with the provisions of this rule constitutes an irregularity or default. Such failure may result in personal liability and/or removal from office. (Added, Dec. 5, 1994, eff. Feb. 1, 1995; renumbered, Oct. 22, 1996, eff. Feb. 1, 1997.)

Rule 223. Expenditures and sales.

(a) *Expenditures.* All expenditures from an estate by a conservator, committee or guardian, except court costs and those provided by statute, shall be made only upon prior authorization of the Court.

(b) *Sale of property.* A conservator, committee or guardian shall not sell or otherwise dispose of estate property or encumber it without prior order of Court.

(c) *Expenditures and sales for investment.* A fiduciary who is subject to the supervision of this Court shall obtain a Court order for all expenditures and sales for investment; however, such a fiduciary may apply for approval by the Court of an investment plan or program in accordance with Probate Rule 5 which, if approved by the Court, may be carried out without the necessity of Court approval of specific transactions; provided the same comply with the approved plan or program, and Probate Rule 203(f) shall not apply.

(d) *Failure to comply.* Failure to comply with the provisions of this rule constitutes an irregularity or default. Such failure may result in personal liability and/or removal from office. (Added, Dec. 5, 1994, eff. Feb. 1, 1995; renumbered and amended, Oct. 22, 1996, eff. Feb. 1, 1997.)

COMMENT

A petition for approval of proposed expenditures or for approval of a proposed sale or other disposition of estate property may be submitted to the Court at any time and may request authority continuing beyond a specific accounting or annual period.

Reference should be made to Probate Rule 5 for guidance on the reinvestment of the proceeds of sale of property. Excluding investment in federally insured bank accounts and United States Treasury obligations, a Court order

should be obtained to authorize such reinvestment if the proceeds are subject to Court supervision and such investment is not authorized by the terms of the governing instrument or by statute.

Reference should be made to Probate Rule 207 for the consequences of any failure to secure prior Court authorization for any expenditures of funds, sale of property or the reinvestment of funds, sale of property or the reinvestment of property.

Rule 224. Duties and compensation of a guardian *ad litem* in conservatorship proceedings.

(a) *Appointment.* When the Court in its discretion appoints a guardian *ad litem* in a conservatorship proceeding, no person, other than an active member of the District of Columbia Bar, shall be so appointed except for good cause shown.

(b) *Duties.* A guardian *ad litem* shall appear and represent the best interests of the proposed ward and shall answer allegations set forth in the petition by filing a written report with recommendations not less than seventy-two (72)

hours prior to the hearing date and shall serve a copy on the petitioner. The guardian *ad litem* should compile information sufficient to support the conclusions reached in the written report. The guardian *ad litem* shall:

- (1) Investigate the allegations of the petition.
- (2) Interview the proposed ward on at least one occasion, if feasible and appropriate. During the course of the interview the guardian shall ascertain, if possible, the views of the proposed ward toward a conservatorship over the ward's person and estate.
- (3) Interview such other person or persons including health care providers as may be necessary in the formulation of the report with respect to the necessity for a conservatorship and who should be appointed.
- (4) Prepare a written report which shall make recommendations as to whether the petition should be granted, including when applicable, who should be appointed to serve as a conservator and the amount of bond required, if relevant.

(5) Attend the hearing for the appointment of a conservator.

(c) *Expansion or limitation of duties.* Nothing in this rule shall preclude the Court from expanding or limiting the duties of the guardian *ad litem* in any proceeding as may be appropriate.

(d) *Termination of appointment.* The guardian *ad litem* shall serve until disposition by the Court of the petition for appointment of a conservator at which time the guardian shall automatically be discharged, unless discharged by prior Court order. Nothing in this rule, however, shall preclude the Court from considering at an appropriate time an application for fees and expenses of the guardian for services rendered upon proper application to the Court pursuant to subsection (f) of this rule.

(e) *Reappointment of guardian ad litem.* As circumstances warrant, the Court may reappoint the guardian *ad litem* or appoint another member of the Bar to serve as guardian *ad litem* for a specified purpose at any time during the administration of the conservatorship.

(f) *Compensation.* (1) *Petition.* Allowance by the Court of compensation to a guardian *ad litem* shall be made only upon petition supported by a detailed statement of services describing the work undertaken in performing the duties prescribed under subsection (b) of this rule and containing a certification that the written report was filed not less than seventy-two (72) hours prior to the hearing or if not so filed, an explanation for late filing.

(2) *Notice.* When a claim is made by a guardian *ad litem* against any estate, notice need be given only to the conservator unless the Court directs that notice be given to others. When a claim is against a particular party to the suit, notice shall be given to the conservator and to that party and that party's attorney and to such affected persons as the Court may determine. Persons entitled to notice shall have twenty (20) days from the date of mailing of said notice in which to file objections with the Court. (Added, Dec. 5, 1994, eff. Feb. 1, 1995; renumbered, Oct. 22, 1996, eff. Feb. 1, 1997.)

COMMENT

The appointment of a guardian *ad litem* under this rule is not intended to preclude the retention by the proposed ward of independent

counsel to oppose the petition for conservatorship.

Performance of excessive service is not

looked upon with favor. However, if special circumstances exist, such as inadequate records or apparent conflict of interest, the guardian ad litem may consider ascertaining the following:

- (a) Verification of names and addresses of heirs at law and next of kin;
- (b) Names, addresses, and telephone numbers of physicians involved in the care and treatment of the proposed ward, including references to substantive medical and psychological reports and tests, including dates of examination;

(c) Description of the information obtained from interviews with persons having knowledge of the proposed ward and any other person of importance to the proposed ward, including name, address and telephone number of persons interviewed, the date of the interview, and a summary of the information obtained.

The petition for compensation should ordinarily be filed within sixty (60) days after entry of the order granting or denying appointment of a conservator or disposing of the matter at issue.

Rule 225. Compensation of conservators and guardians of minors.

(a) *Compensation to a conservator or guardian for ordinary services.* Compensation to a conservator or guardian for ordinary services shall be by commission which shall not exceed 5% of amounts disbursed from the estate. Ordinary services shall be those normally performed by a fiduciary in administering such an estate and shall include, but not be limited to, the following:

- (1) Qualification as the fiduciary;
- (2) Collection of the ward's assets and income;
- (3) Payment of the ward's debts and costs of maintenance, as authorized or ratified by the Court;
- (4) General supervision of the ward's investments and policy relating thereto, including safekeeping; and
- (5) Preparation and filing of all inventories, accounts, and reports to the Court.

(b) *Time and method for claiming compensation for ordinary services.* A claim for commission for ordinary services may only be made in an annual account and, except as otherwise provided in these rules, no statement of services is required. The amount or percentage of commission claimed need only be reflected in the account itself.

(c) *Compensation to fiduciary for extraordinary services.* At the time of filing an annual account or at any other time upon the showing of good cause, a conservator or guardian may petition the Court for compensation for extraordinary services rendered. Extraordinary services shall be in addition to those services set forth in subsection (a). The petition shall include the following:

- (1) Statement of jurisdiction and controlling Court rule;
- (2) Statement of services rendered sufficiently complete on its face to establish that the requested payment is reasonable and, as appropriate, that the services are in fact extraordinary;
- (3) The time devoted thereto, and the normal hourly rate of the fiduciary, if any;
- (4) Evidence of the necessity or purpose of the services;
- (5) Results achieved, including the benefit to the estate or ward, if any;
- (6) Statement of all prior allowances from the estate to the claimant or other fiduciary or counsel, to the extent known;
- (7) The ability of the estate to meet future needs of the ward and to compensate fairly the fiduciary, and;
- (8) Statement that notice in accordance with Probate Rule 225(f) has been given and to whom given.

(d) *Turnover commission.* A turnover commission may be claimed in a fiduciary's final account not exceeding five percent of the net assets to be turned over to the successor fiduciary or to the former ward, as the case may be. A turnover commission is in addition to the commission for ordinary services based on disbursements actually made during the accounting period. As a general rule, no statement of services is required in support of a claim for a turnover commission. The amount and percentage claimed need only be reflected in the final account. The exceptions to this general rule are as follows:

(1) The fiduciary's death, resignation or incapacity. If services by the fiduciary are terminated by the fiduciary's death, resignation, or incapacity, a statement of services shall be filed in support of the turnover commission claimed. That statement shall indicate what has been done by the fiduciary, what remains to be done by the successor fiduciary and such other information as would justify the commission claimed.

(2) The ward's death, restoration to competency or attainment of majority. If within three (3) years of the fiduciary's appointment, a conservatorship or guardianship terminates because of the ward's death, restoration to competency or attainment of majority, and if the net assets to be turned over exceed \$100,000.00, the fiduciary shall either file a statement of services in support of the turnover commission claimed or apply for a waiver of the requirement for a statement of services by filing a written request with the Court.

(e) *Compensation to attorneys.* (1) Attorney fees. At the time of the filing of an annual account or at any other time upon the showing of good cause, an attorney may petition for allowance of reasonable attorney's fees for preparing pleadings filed with the Court and for other necessary legal services rendered to the fiduciary in the administration of the estate, including, but not limited to, instructing and advising the fiduciary in regard to applicable laws so that the fiduciary may properly administer the estate for which he or she is responsible and reviewing and advising with respect to inventories, accounts and other reports to the Court to assure that they comply with the requirements of the law. A petition for fees for legal services in connection with the qualification of the fiduciary may be submitted at any time, however. The petition for fees shall be accompanied by a statement of services which shall include those matters set forth in subsection (c) above with respect to a petition for compensation for extraordinary services.

(2) Performance of fiduciary's ordinary services; assignment of commission. If an attorney performs on behalf of a conservator or guardian any of the above ordinary services in administering the estate, the Court may authorize the attorney to be compensated from the estate in the conservatorship or guardianship proceeding only by the conservator's or guardian's written assignment of the fiduciary's commission in whole or in part, which assignment shall be filed with the Court.

Assignment of Commission as used in this rule shall refer to those instances in which an attorney has, pursuant to an agreement with the fiduciary, performed some or all of the services normally expected of the fiduciary in administering the estate and has obtained an assignment from or written consent of the fiduciary to receive part or all of the fiduciary's commission as compensation for the attorney's services.

(f) *Notice of and consents to petitions for compensation for extraordinary services or for attorney fees.* Notice of the filing of a petition for compensation

for extraordinary services by the fiduciary or for attorney's fees (other than for ordinary commissions) and a copy of the petition shall be given to the fiduciary (if appropriate) and to all other parties and affected persons as determined by the Court by first class mail within five (5) days before or after the filing. The petition shall have attached to it a certification that copies and a notice of its filing have been provided in accordance with this rule.

(1) Form of notice. The notice required shall be substantially in the following form and appended to the petition:

In re:)
)
) No.

NOTICE TO PARTIES AND AFFECTED PERSONS

To:

Notice is hereby given that a Petition for Compensation for Extraordinary Services and/or for Attorney's Fees has been or will be filed with the Court on or before, 19..... You have the right to file objections to that Petition within twenty (20) days of the stated filing date.

.....
Signature of Fiduciary

Name, address and telephone no. of fiduciary:
.....
.....
.....
.....

Date:

(2) Form of consent. Consents to the petition shall be in the following form and, once filed, constitute a waiver of the right to object thereto:

In re:)
)
) No.

CONSENT TO COMPENSATION AND/OR FEES

I,, have received a copy of the petition for compensation in the amount of \$..... for and \$..... for I consent to the payment of the amounts requested.

I waive the right to file objections to the above stated amounts and I consent to the approval by the Court of payment of such amounts.

.....
Signature

Date:

(g) Reference to Register of Wills of petition for compensation for extraordinary services or for attorney fees. All petitions for compensation to a fiduciary for extraordinary services and attorney's fees shall be referred to the Register of Wills for appropriate recommendations.

(h) *Discretion reserved to Court.* The Court may, at any time, require a statement of services or any additional verified documentation in determining an appropriate commission in any particular case.

(i) *Objections to petition for compensation.* Within twenty (20) days of mailing of notice, parties and affected persons may file with the Register a written objection to the petition for compensation for extraordinary services by the fiduciary or for attorney's fees. The written objection shall include specific statements of the grounds for contesting the petition and shall be mailed to the fiduciary and the fiduciary's attorney. If a written objection is not filed within the prescribed time, the Court may treat the petition as conceded. A party or affected person may specifically request an oral hearing by endorsing at the bottom of the objection, above the signature, "Oral Hearing Requested"; but the Court, in its discretion, may decide the matter without a hearing. (Added, Dec. 5, 1994, eff. Feb. 1, 1995; renumbered and amended, Oct. 22, 1996, eff. Feb. 1, 1997.)

COMMENT

No compensation shall be awarded for supervision of a ward's person.

Generally, the preparation and filing of routine tax returns and accountings are considered to be ordinary services. If the services involved were in whole or in part extraordinary, compensation for such services may be claimed by petition pursuant to subsection (c) of this rule. If the fiduciary retains the services of a tax preparer, payment of the tax preparer's fee may be made subject to the Probate Rule 223 requirement that expenditures be made only upon prior authorization of the Court. (Amended, Oct. 22, 1996, eff. Feb. 1, 1997.)

The Court will be cautious in awarding turnover commissions claimed under subsection (d)(1) of this rule, by reason of the death, resignation or incapacity of a fiduciary. The Court will take into account the fact that the ward's funds will be disbursed again and will reserve a sufficient portion of the commission as is likely, under the facts and circumstances of the particular case, to compensate the successor fiduciary fairly.

With respect to compensation for extraordi-

nary services under subsection (c) of this rule, the amount of commission for ordinary services will be taken into account, but not be the sole determining factor.

Conservators and guardians serve as officers of the Court. There can be no assurance in any given case that a fiduciary will receive compensation or commissions which the fiduciary considers adequate.

Payments for attorney fees under subsection (e) of this Rule are independent of the fiduciary's commission for ordinary and extraordinary services and are designed to compensate the attorney for legal services consistent with the value of the services rendered and ability of the estate to pay. The fact that the fiduciary is an attorney will not preclude the fiduciary from petitioning for attorney fees for legal services rendered.

Committee note to (c) and (e)(1). — The reference to "good cause" in subsections (c) and (e)(1) is to mean upon a showing of extreme hardship, tax considerations, or other significant factors.

PART III CUSTODIANSHIP (UTMA).

Rule 231. Custodian of minors.

(a) *Petition for Successor Custodian.* A petition for the appointment of a successor custodian pursuant to D.C. Code § 21-318(d) shall be typewritten, double-spaced, and verified by the petitioners. The petition shall set forth:

(1) The residence, citizenship and freedom from legal disability of the proposed successor custodian;

(2) The relationship of the proposed successor custodian to the minor;

The verification of a corporate fiduciary may be made by an authorized officer of said corporation. (Amended, Dec. 5, 1994, eff. Feb. 1, 1995.)

Rule 4. Notice requirements.

(a) *Recipients of notice.* Except as otherwise expressly provided by statute or these rules, persons to whom notice must be given in a particular matter include all the parties in a case, interested persons in decedent's estate cases, as prescribed in D.C. Code § 20-101(d) and affected persons in all other cases as the Court shall direct. Notice may be effectuated by sending the petition by first class mail postage prepaid to the prescribed person or persons.

(b) *Court may modify notice.* The Court may modify the requirements of notice under these rules when the parties and affected persons are very numerous and it appears that the time, labor, and expense of complying will be disproportionate to the distributive shares of those having an interest in the matter. (Added, Dec. 5, 1994, eff. Feb. 1, 1995.)

Rule 5. Investments by a fiduciary.

(a) *Investment standards.* (1) When investing, reinvesting, purchasing, acquiring, exchanging, selling and managing property for the benefit of another, a fiduciary shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, specifically including, but not by way of limitation, the general economic conditions and the anticipated needs of the trust and its beneficiaries, or the ward or the probate estate and its creditors and interested persons, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, to attain the goals of the settlor as determined from the trust instrument or will, or the objectives of the ward as determined by the Court.

(2) Within the limitations of the foregoing and considering individual investments as part of an overall investment strategy, a fiduciary is authorized to acquire every kind of property, real, personal, or mixed, and every kind of investment. In the absence of express provisions to the contrary in any will or trust instrument, a fiduciary may without liability continue to hold property received into a trust or an estate at its inception or subsequently added to it or acquired pursuant to proper authority or previously held by the ward if and as long as the fiduciary, in the exercise of good faith and of reasonable prudence, discretion and intelligence, may consider that retention is in the best interests of the trust or the ward or probate estate or in furtherance of the goals of the settlor or testator as determined from any trust instrument or will or the objectives of the ward as determined by the Court.

(3) In the absence of express provisions to the contrary in any trust instrument or will, a deposit of funds at interest in any bank or other depository (including the trustee) shall be a permissible investment to the extent that such deposit is insured under any present or future law of the United States, is collateralized pursuant to any present or future law of the District of Columbia or the United States, or to such greater extent as the Court may authorize. Nothing in this rule shall be construed as limiting the right of fiduciaries in proper cases to make deposits of moneys in banks, subject, in the case of interest-bearing deposits, to such notice or other

conditions respecting withdrawal as may be prescribed by law or governmental regulation affecting such deposits.

(4) Nothing in this rule shall abrogate or restrict the power of the Court in proper cases to direct or permit the fiduciary to deviate from the terms of the trust or will regarding the making or retention of investments.

(5) The provisions of this rule shall apply to all fiduciaries under the supervision of the Court. Terms such as "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "investments acquired using the judgment and care which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," and other words of similar import used in defining the powers of a fiduciary relative to investments, in the absence of other controlling or modifying provisions of a trust instrument or will shall be construed as authorizing any investment permitted, and imposing the standard of prudence required, by the terms of paragraph (1) of this rule.

(6) The term "property" as used in this rule includes life insurance, endowment, and annuity contracts issued by legal reserve companies.

(b) In all cases where a fiduciary is required to obtain Court authority prior to making investments, an order of Court so authorizing investments under this rule shall not constitute Court approval of the particular investments nor shall the fiduciary be relieved of any fiduciary responsibility for having made the investments.

(c) No fiduciary, without prior Court approval, shall purchase for the fiduciary's personal account or for any account in which the fiduciary is personally interested any asset held by the fiduciary, nor shall the fiduciary sell to himself or herself, as fiduciary, any asset in which the fiduciary has any personal or financial interest. Upon a petition by the fiduciary disclosing all pertinent facts and showing that either the trust instrument or will authorizes such a transaction, or that the beneficiary or ward has knowingly consented or that the transaction is in the best interest of the estate, trust, ward or beneficiary and after notice of the petition to all parties and affected persons and a hearing, the Court may approve the transaction. (Added, Dec. 5, 1994, eff. Feb. 1, 1995.)

COMMENT

Subsection (a) of this rule maintains "the prudent investor" standard as expressed in *Johns v. Herbert*, 2 App. D.C. 485 (1894) but makes clear that a prudent investor uses a total asset management approach in light of the investment objectives for the beneficiary and allows the Court to permit generally accepted practices of risk allocation embodied in modern portfolio management theory. Resort may be had to ALI Restatement (Third), Trusts §§ 227 through 229 and comments for further expli-

tion of current fiduciary investment practices with respect to trusts.

The District of Columbia Code recognizes that the Court may allow the sale of estate property to a fiduciary by providing under § 21-2068 (Guardianship, Protective Proceedings and Durable Power of Attorney Act of 1986) that such transactions otherwise voidable may be approved by the Court after a hearing with notice to enumerated individuals.

tations. *Varela v. Hi-Lo Powered Stirrups, Inc.*, 1365 (1987); *In re B.B.R.*, App. D.C., 566 A.2d App. D.C., 424 A.2d 61 (1980). 1032 (1989); *Johnson v. Cuccias*, 120 W.L.R. 737 (Super. Ct. 1992).
Cited in *In re Boyd*, App. D.C., 403 A.2d 744 (1979); *Farmer v. Farmer*, App. D.C., 526 A.2d

Rule 3-I. Actions involving real property.

Any pleading the adjudication of which may affect title to or interests in real property, including pleadings in change of name cases, shall bear immediately below the title of the pleading the inscription "ACTION INVOLVING REAL PROPERTY". Upon the filing of such a pleading the Clerk shall place after the number assigned to the case the suffix "RP".

COMMENT

Rule 3 identical to Federal Rule of Civil Procedure 3.

Cited in *First Md. Fin. Servs. Corp. v. District-Realty Title Ins. Corp.*, App. D.C., 548 A.2d 787 (1988).

Rule 4. Summons.

(a) *Form*. The summons shall be signed by the Clerk, bear the seal of the Court, identify the Court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The Court may allow a summons to be amended. Whenever service is made pursuant to a statute or rule of Court which provides (1) for service of a summons, or notice, or order in lieu of summons upon a party not an inhabitant of or found within the District of Columbia, or (2) for service upon or notice to a party to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of the party's property located within the District of Columbia, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the statute or rule.

(b) *Issuance*. A prepared summons, with copies for each defendant named in the complaint, shall be delivered to the Clerk at the time the complaint is filed. If additional process is required, a prepared summons for such process shall also be delivered to the Clerk. Upon receipt and due notation thereof, the Clerk shall return all but one copy of the summons to the plaintiff or the plaintiff's agent for service of process in accordance with paragraph (c) of this Rule, recording on all copies the date of such return to the plaintiff or the plaintiff's agent.

(c) *Service with complaint; by whom made*. (1) A summons shall be served together with a copy of the complaint and initial order. The plaintiff is responsible for service of a summons and complaint and initial order within the time allowed under subdivision (m) and shall furnish the person effecting service with the necessary copies of the summons, complaint and initial order.

FORMS/SAMPLES

Superior Court of the District of Columbia
PROBATE DIVISION

In Re: _____
A Minor
Guardianship No. _____

PETITION FOR AUTHORITY TO EXPEND FUNDS (SCR-PD 202)

1. _____, Guardian of the
(Name of petitioner)
estate of _____, hereby requests the
(Name of Minor)
Court for authorization to make average monthly/annual expenditures
from and after _____ for the maintenance of the
minor and for the preservation of the minor's estate.

2. Petitioner hereby provides the following information:

- a. Age of minor: _____
(Give age and birth date)
b. Residence of minor: _____
c. Current assets: _____
d. Income: _____
e. Past expenditures authorized: _____

3. The average monthly/annual expenditures for which
authorization is sought are as follows: _____
[Set forth by categories (e.g.,

housing, food, clothing, medical, educational) the expenditures per month/annum for
which authorization is sought and provide explanation for need to expend the funds.]

4. The following expenditures are necessary for the support and maintenance of the following dependents of the minor: _____ [List

dependents, if any; relationship to minor; dollar amount and specific category of requested expenditures.]

5. The following expenditures of an unusual or extraordinary nature for which authorization is sought are as follows: _____ [Set forth

such expenditures, if any. Explain how such unusual or extraordinary expenditure(s) will benefit the minor and/or his/her estate.]

6. If the petitioner is a parent of the minor, the expenditure(s) are not being borne by the parent(s) for the following reasons: _____ [Explain why the parent(s) are unable to make the

expenditure. Attach parent(s) financial statements of current assets and liabilities and annual income and expenses if one has not been submitted within the past twelve-month period.]

7. The expenditures for the minor's maintenance or education for which authorization is sought will/will not require a sale of all or part of the principal of the minor's estate. [If a sale of principal is required, the provisions of D.C. Code §21-147 must be complied with.]

Signature

Signature

Counsel for petitioner

Petitioner

Address of counsel

Address of petitioner

FIDUCIARY OBLIGATIONS

FIDUCIARY OBLIGATIONS

- I. **Fiduciary Obligation to Post Surety Bond**
 - A. Probate Proceedings
 - B. Guardianship of Minors
 - C. Intervention and Fiduciary Proceedings
- II. **Conflicts of Interest**
- III. **Reporting and Avoiding Conflicts of Interest**
- IV. **Fiduciary Obligation to Segregate Assets**
- V. **Fiduciary Obligation to Account**
- VI. **Consequences of Breach of Fiduciary Duty**

FIDUCIARY OBLIGATIONS

I. Fiduciary Obligation to Post Surety Bond

A. **Probate Proceedings**

1. Post July 1, 1995 and April 27, 2001 Probate Estates:

- a. D.C. Code § 20-502(a): Bond required to cover entire value of estate assets if will fails to waive bond or waivers of bond have not been filed by all interested persons. (If waivers have been provided by some interested persons, the value of the bond can be reduced by the value of the waiving interested person's share in the estate.)
 - i. D.C. Code § 20-502(a) bond can be reduced by value of estate realty and personalty provided that a restriction on the right to sell estate realty without prior court approval is prescribed in the abbreviated probate order and on the letters of administration.
 - ii. D.C. Code § 20-502(a) bond is set with a proviso to increase bond upon receipt of additional estate assets. Accordingly, the Personal Representative must petition to increase (or decrease) bond as appropriate.
- b. D.C. Code § 20-502(a-1): Bond can be requested by a creditor or a person having an interest in the estate in excess of \$1,000.00. Can request that the Personal Representative post a bond sufficient to protect that creditor or individual's interests in the estate.
- c. A bond is set with a six (6) percent add-on as a matter of practice to protect annual interest and any annual income.

2. Post 1981 – July 1, 1995 Probate Estates:

- a. D.C. Code § 20-502(a): If Will waives bond or waivers of bond have been filed by all interested persons, then a nominal bond is filed sufficient to protect the unsecured debts and unpaid funeral expenses. Otherwise, a general bond has to be filed sufficient to protect the estate

personal property to the extent necessary to protect the interests of any non-waiving interested persons. Real property is not bonded per D.C. Code § 20-502(d)(3).

- i. A general bond is set with a proviso to increase bond upon receipt of additional estate assets. Accordingly, the Personal Representative must petition to increase (or decrease) bond as appropriate.
- ii. A general bond is set with a six (6) percent add-on as a matter of practice to protect annual interest and any annual income.
- iii. No bond is required for national banks or trust companies serving as Personal Representative.
- iv. SCR-PD 112 (b) requires the filing of a bond in the appraised value of estate realty for a petition to confirm bond filed in connection with the sale of estate realty. D.C. Code § 20-742(c) requires the filing of a petition to confirm bond only if a general bond is in place in an estate proceeding, or when a nominal bond is in place, if the will fails to authorize sale of estate realty or the p.r. cannot obtain the consent in writing of all interested persons to the sale of the estate realty.

- 1.) Office of the Register of Wills advises that principles of statutory construction require that D.C. Code § 20-742(c) be applied prospectively only from its passage on April 27, 1994.

3. Pre-1981 Probate Estates:

- a. A general bond must be filed to protect all estate personal property if any Interested Persons are not petitioners in the petition for probate and require notice pursuant to SCR-PD 11.
- b. A special bond may be granted if all Interested Persons consent, or the Petitioner is the sole heir or legatee. A special bond only applies to estate debts or claims or all damages recoverable against the fiduciary. Court approval of the filing of a special bond has the effect of waiving the requirement of the filing of inventory and accounts in the probate estate, but the special bond makes the fiduciary personally answerable for all estate debts, claims, and damages recovered against him/her. (See Mersch, Volume I, Section 1171.)

4. Foreign Estate Proceedings:

- a. D.C. Code §§ 20-343 (b) and (c): If personal or real property in a foreign estate proceeding is sold, exchanged, or transferred within the six-month creditor claims period, then the foreign Personal Representative must post a bond with penalty amount equal to the value of the property to extend for the six (6) months during which a creditor may file a claim. Accordingly, if the six-month creditor claims period has expired, the foreign Personal Representative is no longer required to post a bond.
 - i. It is observed that a bond in a foreign estate proceeding is not posted with the Office of the Register of Wills.

B. Guardianship of Minors

1. D.C. Code § 21-115 requires the filing of a guardianship bond sufficient to protect all the assets of a minor. Where no statutory formula for bond is prescribed, SCR-PD 201 requires bond equal to the personal property, the annual income, and the yearly rents from real property, which takes the form of a six (6) percent add-on to the bond for the annual income/rents.
 - a. A petition to increase or decrease bond must be filed as appropriate, as D.C. Code § 21-117 permits the Court to require a guardian to provide additional bond when the interests of the minor require it.

N.B. – The bond agents at the Court have generally (but not always) required counsel to serve as Guardians for the estate instead of *pro se* petitioners, and accordingly, have not always been written Guardianship bonds for *pro se* petitioners. *Pro se* petitioners who seek appointment may attempt to secure bond from other bond agencies outside the Court if they do not wish to have an attorney serve as Guardian for the estate. In some instances, bond agents will allow counsel to serve as co-signatories on an estate bank account, and as a result, will write a bond for a *pro se* petitioner. This, however, is problematic where counsel is not appointed as a co-fiduciary.

C. Intervention and Fiduciary Proceedings

- a. Bond is set by the Court at the general proceeding pursuant to D.C. Code § 21-2058 to protect the aggregate capital value of the estate property and one (1) year's estimated income, minus the value of securities or real property for which there is an express limitation preventing sale, conveyance, or removal without prior court approval.
- b. Pursuant to In re: Nettie Wise, Int. 67-99 (J. Long, 5/18/00), a

conservator in an intervention proceeding may arrange an increase or decrease in bond with a bond agent without filing a petition and without obtaining prior court approval at a petition post-appointment hearing. This is because D.C. Code § 21-2058 does not require the filing of a petition and a hearing to increase or decrease bond (see pp. 8 – 9 of Wise opinion), but instead sets a statutory formula for the conservator to follow at all times during the administration of the estate to protect the estate assets. The Court only requires a petition to decrease bond where the conservator seeks to reduce bond below the value of the assets held by him/her as calculated by the statutory formula. (See pg. 9 of Wise opinion.)

- i. It appears that this logic would also apply to fiduciary and guardianship of minor proceedings since D.C. Code § 21-1503 (1973 Ed.) and D.C. Code § 21-115 also have no petition and hearing requirements, and SCR-PD 201 creates a formula for bond in all fiduciary proceedings, where no statutory bond formula is prescribed. However, the Court has not yet ruled on whether this logic is also applicable to non-intervention proceedings; the Wise decision only discusses the application of intervention statutes to an intervention proceeding.

1. Fiduciary Proceedings (Pre-1989 Fiduciary Estate Proceedings):

- a. D.C. Code § 21-1503 (1973 Ed.) requires bond to be filed in such amount as the Court orders.
- b. D.C. Code § 21-1503 and D.C. Code § 21-117 (1973 Ed.) require additional bond to be filed when the interests of the estate require it. Currently, petitions to increase or decrease bond are filed, as the Court has not ruled on whether the logic in the Wise opinion extends also to a fiduciary proceeding (see C (1)(b)(i) above).

N.B. – As a general rule, where petitions to decrease bond are required to be filed, such petition can only apply to an ending balance of an account previously approved by the Court, and cannot be granted with respect to a recently filed account that has not yet been approved by the Court. Such petitions are generally denied by the Court without prejudice to the filing of a supplemental petition to decrease bond upon approval of the (recently filed) account.

II. Conflicts of Interest

A. In Dealing with Beneficiaries

[Rearden v. Riggs, 677 A.2d 1032 (1996); In Re Estate of King, 769 A.2d 771 (2001); In Re Mildred Powell, Adm. 2434-97.]

B. In Dealing with Other Fiduciaries

[Rearden v. Riggs, 677 A.2d 1032 (1996); In Re Estate of King, 769 A.2d 771 (2001)]

C. In Dealing with Third Parties

*D.C. Code § 20-743. Improper exercise of power; breach of fiduciary duty.
[D.C. Law 3-72, § 101 (June 24, 1980), 27 DCR 2155; D.C. Code § 20-743 (1981 Ed.);
In Re Benjamin Land, Intervention No. 30-97.]*

If any Personal Representative's exercise of power concerning the estate is improper, such representative is liable for breach of fiduciary to Interested Persons for resulting damage or loss to the same extent as a trustee of an express trust. The exercise of power in violation of a Court order, or contrary to the provisions of the will may be a breach of duty. The rights of purchasers and others dealing with a personal representative are determined as provided in D.C. Code § 20-744 and are not necessarily affected by the fact that the Personal Representative breached a fiduciary duty in the transaction.

*D.C. Code § 20-743.01. Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.
[D.C. Code § 20-743.1 (1982 Ed.); D.C. Law 10-241, § 3 (bbb) (Mar. 21, 1995), 42 DCR 63.]*

Any sale, lease, or encumbrance to the Personal Representative, the Personal Representative's spouse, agent or attorney, or any corporation, trust, or other entity in which such individual has a substantial beneficial interest, or any other transaction which is affected by a substantial conflict of interest on the part of the Personal Representative, may be set aside by the Court in proceedings initiated by any Interested Person except one who has consented after fair disclosure (and any person or entity claiming by or through such Interested Person) unless:

- (1) the Will authorized such dealings with the Personal Representative, either generally or with regard to a specific transaction or type of transaction;
- (2) a contract entered into by the decedent authorized such a transaction; or
- (3) the transaction is approved by the Court after notice to the Interested Persons.

*D.C. Code § 20-744. Protection of person dealing with personal representative.
[D.C. Law 3-72, §101 (June 24, 19880), 27 DCR 2155; D.C. Code §20-744 (1981 Ed.);
D.C. Law 10-241, §3 (ccc) (Mar. 21, 1995); 42 DCR 63.]*

Except as otherwise provided in D.C. Code § 20-753, a person who in good faith either assists or deals with a Personal Representative for value is protected as if the Personal Representative properly exercised his power. The fact that a person knowingly deals with a Personal Representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised Personal Representatives which are endorsed on letters as provided in D.C. Code § 20-504, no provision in any will or order of court purporting to limit the power of a Personal Representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a Personal Representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not in substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

III. Reporting and Avoiding Conflicts of Interest

A. In adversarial proceeding comply with SCR-PD 202 (a)

Rule 202. Trustees, conservators, guardians, guardians ad litem, and other fiduciaries.

(a) *To report conflicting interest.* Whenever a Trustee, Conservator, Guardian, Guardian *ad litem*, or other fiduciary has occasion to sue or defend in behalf of an infant or incompetent person concerning a matter in which he has a possible conflicting interest, he shall report the facts in writing to the Court so that it may take appropriate action.

B. In all cases request hearing as directed by D.C. Code § 21-2068

D.C. Code § 21-2068. Sale encumbrance, or transaction involving conflict of interest; voidable; exceptions.

[D.C. Code § 21-2068 (181 Ed.); D.C. Law 6-204 § 2(a) (Feb. 28, 1987); 34 DCR 632; In Re Benjamin Land, Intervention No. 30-97]

Any sale or encumbrance to a conservator, the spouse, agent, attorney or a conservator, or any corporation, trust, or other organization in which the conservator has a substantial beneficial interest, or any other transaction involving the estate being administered by the conservator that is affected by a substantial conflict between fiduciary and personal interests is voidable, unless the transaction is approved by the court after a hearing as directed. Notice of the hearing shall be in the form and manner as prescribed in D.C. Code §§ 21-2042(c) and 21-2031(b) and shall be served on the following individuals:

- (1) The incapacitated individual;
- (2) The attorney of record for each party;
- (3) The individual most closely related to the subject of the Intervention Proceeding by blood or marriage, unless that individual's name or whereabouts is unknown and cannot be reasonably ascertained;
- (4) The individual or facility, if any having custody of the subject of the Intervention Proceeding;
- (5) The individual, if any, proposed for appointment by Will as a Guardian; and
- (6) The individual, if any, appointed or proposed for appointment as Guardian *ad litem*

IV. Fiduciary Obligation to Segregate Assets

Fiduciaries must segregate fiduciary funds/assets from personal assets and assets held in other fiduciary relationships.

V. Fiduciary Obligation to Account

A. In Intervention Proceedings:

By statute, accounts must be prepared annually and filed with the Court.

B. In a Decedent's Estate Probate Proceeding:

Must be prepared annually and may have to be filed with the Court.

C. In Minor's Guardianship Proceeding:

Must be prepared annually and filed with the Court.

D. In all other fiduciary matters whether or not brought before Probate Division:

Some form of accounting due to beneficiaries.

[Rearden v. Riggs, 677 A.2d 1032]

VI. Consequences of Breach of Fiduciary Duty

A. Damages/Surcharge

B. Summary Proceedings/Removal

C. Criminal Charges and Conviction

[U.S. v. Kinley Howard, Civ. 02-079 (RBU) U.S. District Court for District of Columbia]

Bar 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.

Signature

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 Petition for Authority to Expend Funds was served by first-class mail, postage prepaid, upon following parties to and affected persons in the above-captioned case.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Signature

PROBATE DIVISION

In Re:

A Minor

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)

Guardianship No. _____

PETITION FOR AUTHORITY TO INVEST (SCR-PD 202)

1. _____
(Name of petitioner)
2. Petitioner hereby provides the following information:
 - a. Age of minor: _____
 - b. Residence of minor: _____
 - c. Current assets: _____
 - d. Income: _____
3. Petitioner seeks the following relief: _____

[Describe the

_____ expenditure or sale for investment for which authority is requested. See SCR-PD

_____ 202; D.C. Code §21-148.)

4. Petitioner is entitled to this relief because _____

[Explain

_____ how the relief sought will benefit the minor and/or his/her estate.]

Signature

Signature

Counsel for petitioner

Petitioner

Exhibit B

Address of counsel

Address of petitioner

Telephone number

Telephone number

Bar 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.

Signature

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 Petition for Authority to Invest was served by first-class mail, postage prepaid, upon following parties to and affected persons in the above-captioned case.

Name

Address

Signature

Superior Court of the District of Columbia

PROBATE DIVISION

In Re: _____)
Guardianship No. _____)
A Minor)

PETITION FOR APPROVAL OF INVESTMENT PLAN OR PROGRAM (SCR-PD 202)

- 1. _____
2. Petitioner hereby provides the following information:
a. Age of minor: _____
b. Residence of minor: _____
c. Current assets: _____
d. Income: _____
3. Petitioner seeks the following relief: _____ [Describe the

investment plan or program for which approval is sought. See SCR-PD 202 and SCR-

Civ. 306.

4. Petitioner is entitled to this relief because _____

[Explain how the relief sought will benefit the minor and/or his/her estate.]

Signature

Signature

Counsel for petitioner

Petitioner

Telephone number

Telephone number

Bar 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.

Signature

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 Petition for Approval of Investment Plan was served by first-class mail, postage prepaid, upon following parties to and affected persons in the above-captioned case.

Name

Address

Signature

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Probate Division

In re:

JOHN Q. SMITH

A Minor

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Guardianship No. _____

PETITION FOR APPOINTMENT OF GUARDIANS

Mary and Charles Smith, parents of John Q. Smith, respectfully petition pursuant to D.C. Code § 21-120, for entry of an order appointing them as co-guardians of their son's estate. In support of this petition, Mr. and Mrs. Smith state the following:

1. The petitioners, Charles and Mary Smith, are the parents of John Q. Smith, a minor.
2. Petitioners reside at 7777 J Street, N.W., Washington, D.C. 20999. They are citizens of the United States and are not under any legal disability such as would disqualify them from serving as guardians of their son's estate.
3. The Smith's son, John Q. Smith, was born on July 4, 1993 and is presently 9 years of age. John lives with his parents at the J Street address.
4. John is entitled to the net proceeds from the settlement of Smith v. Jones, Civil Action No. _____, a personal injury action arising from injuries he sustained when he was struck by an automobile. The net settlement proceeds are expected to total \$100,000.
5. D.C. Code § 21-120 provides in pertinent part that "[a] person may not receive money or other property on behalf of a minor in settlement of an action brought on behalf of or against the minor ... where, after deduction of fees, costs and all other expenses incident to the matter, the net value of the money and property due the minor exceeds \$3,000, before he is appointed

or property, and qualifies as such." A guardian of John Q. Smith's estate must accordingly be appointed.

6. As John's parents, petitioners are statutorily entitled under D.C. Code § 21-107 to serve as guardians of their son's estate.

WHEREFORE, the premises considered, petitioners pray that the Court appoint them as co-guardians of the estate of their son, John Q. Smith, fixing bond at such amount as the Court deems fit and proper.

Respectfully submitted,

Mary Smith

Charles Smith

DISTRICT OF COLUMBIA, ss:

Mary Smith and Charles Smith, being first duly sworn on oath, depose and say that they have read the foregoing petition by them subscribed and that the contents thereof are true and correct to the best of their knowledge, information and belief.

Mary Smith

Charles Smith

SUBSCRIBED AND SWORN to before me on this ___ day of _____, 2002

Notary Public

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Probate Division

In re:

JOHN Q. SMITH

A Minor

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Guardianship No. _____

ORDER APPOINTING GUARDIANS

Upon consideration of the Petition for Appointment of Guardians and the undertaking in the amount of \$110,000, both having been filed herein on October 16, 2002 by Charles and Mary Smith, and it appearing to the satisfaction of the Court that petitioners are entitled to guardianship of the estate of their son, John Q. Smith, born July 4, 1993, and it further appearing that the petitioners and the minor personally appeared for an interview in the Office of the Register of Wills, it is by the Court on this ____ day of 2002,

ORDERED, that the undertaking filed heretofore is approved, and that Charles Smith and Mary Smith be, and they hereby are appointed guardians of the estate of John Q. Smith, a minor; and it is further,

ORDERED, that, prior to receipt of assets in excess of \$110,000, the said guardians shall apply to the Court for an additional undertaking in an amount to be fixed by the Court.

JUDGE

Copies to:

SAMPLE #3

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Probate Division

In re:

JOHN Q. SMITH

A Minor

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Guardianship No. _____

CONSENT AND WAIVER

I, Charles Smith, am the father of John Q. Smith. I am aware that I have statutory priority for appointment as guardian of my son's estate. However, I hereby waive my right to serve in this capacity and consent to the appointment of Mary Smith as guardian of John Q. Smith's estate.

Date:

Signature

would bring the total cost of the proposed purchase to \$2,000.

5. The guardianship estate consists of approximately \$100,000 in cash which is on deposit in interest bearing accounts at Independence Federal Savings Bank.

WHEREFORE, the premises considered, petitioner respectfully seeks authority to expend \$2,000 to purchase a computer and related equipment and accessories for the minor.

Charles Smith
7777 J Street, N.W.
Washington, D.C. 20999
(202) 999-9999

VERIFICATION

I, Charles Smith, being first duly sworn on oath, depose and say that I have read the foregoing petition and that the statements contained therein are true and accurate to the best of my knowledge, information and belief.

Charles Smith

SUBSCRIBED AND SWORN to before me on this ___ day of _____, 2002.

Notary Public

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Probate Division

In re:

JOHN Q. SMITH

A Minor

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Guardianship No. _____

ORDER

Upon consideration of the petition of Charles Smith, guardian of the estate of John Q. Smith, for authority to expend \$2,000 from the guardianship estate to purchase a personal computer and computer accessories for the minor ward, and it appearing to the Court that the proposed expenditure is reasonable and in the child's best interests, it is by the Court on this ____ day of _____, 2002,

ORDERED, that the said guardian be, and he hereby is authorized to expend \$2,000 for the purposes set forth in his petition, subject to proper accounting.

JUDGE

Copies to:

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Probate Division

In re:

JOHN Q. SMITH

A Minor

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Guardianship No. _____

PETITION FOR AUTHORITY TO INVEST GUARDIANSHIP FUNDS

Comes now Charles Smith, father of John Q. Smith and guardian of his estate, and respectfully seeks authority to invest \$10,000 of his son's money in a mutual fund known as the Washington Fund. In support of this request, petitioner states the following:

1. Petitioner was appointed by this Court on October 16, 2002 to serve as guardian of the estate of his son, John Q. Smith.
2. John Q. Smith was born on July 4, 1993 and is presently 9 years of age.
3. John was the subject of a personal injury action which was settled in August 2002, producing net proceeds to the estate of \$100,000. A guardianship was established for the purpose of receiving, managing and investing these funds.
4. By this petition, petitioner seeks authority to invest \$10,000 of his son's money in an equity mutual fund known as the Washington Fund. The Fund is described in a prospectus which is attached hereto as an exhibit, along with a descriptive brochure and a copy of the 2001 annual report. As may be seen from these materials, the Washington Fund is a conservatively managed equity fund which does not invest in start-up companies or speculative ventures of any kind. Rather, it invests exclusively in large, established companies whose stock is traded on the New

General Electric Corporations. The portfolio is highly diversified with investments in virtually every sector of the U.S. economy.

5. The sum which petitioner proposes to invest comprises approximately 10% of the guardianship estate. Petitioner believes it is appropriate and prudent to invest a portion of his son's money in equities because (a) over time, equities have consistently outperformed all other investments; (b) although stocks fluctuate in value they tend to appreciate over time, producing rich financial rewards for the long term investor; and (c) with approximately nine years to go before the ward attains his majority, petitioner is in a position to take advantage of long term trends without worrying unduly about short term fluctuations in value.

6. The guardianship estate consists of approximately \$102,000 which is currently on deposit at First City Bank and District Bank, where petitioner has established money market accounts for the minor ward.

WHEREFORE, for the reasons set forth above and in the attached materials, petitioner asks this Court to enter an order authorizing him to invest \$10,000 of the minor ward's funds in the Washington Fund.

Respectfully submitted,

Charles Smith
7777 J Street, N.W.
Washington, D.C. 20999
(202) 999-9999

I, Charles Smith, being first duly sworn on oath, depose and say that I have read the foregoing petition by me subscribed and that the statements contained therein are true and accurate to the best of my knowledge, information and belief.

Charles Smith

SUBSCRIBED AND SWORN to before me on this ____ day of _____, 2002.

Notary Public

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Probate Division

In re:

JOHN Q. SMITH

A Minor

:
:
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:
:

Guardianship No. _____

ORDER AUTHORIZING INVESTMENT

Upon consideration of the petition of Charles Smith, guardian of the estate of John Q. Smith, filed herein on the ___ day of _____, 2002, and it appearing to the Court that the investment proposed in the petition is a prudent and proper investment within the meaning of SCR-PD 5, it is by the Court on this ___ day of _____, 2002,

ORDERED, that Charles Smith be, and he hereby is authorized to invest \$10,000 of the minor ward's funds in the Washington Fund.

JUDGE

Copies to:

DIGEST

FIDUCIARY OBLIGATIONS

FIDUCIARY OBLIGATIONS

- I. Fiduciary Obligation to Post Surety Bond**
 - A. Probate Proceedings
 - B. Guardianship of Minors
 - C. Intervention and Fiduciary Proceedings
- II. Conflicts of Interest**
- III. Reporting and Avoiding Conflicts of Interest**
- IV. Fiduciary Obligation to Segregate Assets**
- V. Fiduciary Obligation to Account**
- VI. Consequences of Breach of Fiduciary Duty**

FIDUCIARY OBLIGATIONS

I. Fiduciary Obligation to Post Surety Bond

A. **Probate Proceedings**

1. Post July 1, 1995 and April 27, 2001 Probate Estates:

a. D.C. Code § 20-502(a): Bond required to cover entire value of estate assets if will fails to waive bond or waivers of bond have not been filed by all interested persons. (If waivers have been provided by some interested persons, the value of the bond can be reduced by the value of the waiving interested person's share in the estate.)

i. D.C. Code § 20-502(a) bond can be reduced by value of estate realty and personalty provided that a restriction on the right to sell estate realty without prior court approval is prescribed in the abbreviated probate order and on the letters of administration.

ii. D.C. Code § 20-502(a) bond is set with a proviso to increase bond upon receipt of additional estate assets. Accordingly, the Personal Representative must petition to increase (or decrease) bond as appropriate.

b. D.C. Code § 20-502(a-1): Bond can be requested by a creditor or a person having an interest in the estate in excess of \$1,000.00. Can request that the Personal Representative post a bond sufficient to protect that creditor or individual's interests in the estate.

c. A bond is set with a six (6) percent add-on as a matter of practice to protect annual interest and any annual income.

2. Post 1981 – July 1, 1995 Probate Estates:

a. D.C. Code § 20-502(a): If Will waives bond or waivers of bond have been filed by all interested persons, then a nominal bond is filed sufficient to protect the unsecured debts and unpaid funeral expenses. Otherwise, a general bond has to be filed sufficient to protect the estate

personal property to the extent necessary to protect the interests of any non-waiving interested persons. Real property is not bonded per D.C. Code § 20-502(d)(3).

- i. A general bond is set with a proviso to increase bond upon receipt of additional estate assets. Accordingly, the Personal Representative must petition to increase (or decrease) bond as appropriate.
- ii. A general bond is set with a six (6) percent add-on as a matter of practice to protect annual interest and any annual income.
- iii. No bond is required for national banks or trust companies serving as Personal Representative.
- iv. SCR-PD 112 (b) requires the filing of a bond in the appraised value of estate realty for a petition to confirm bond filed in connection with the sale of estate realty. D.C. Code § 20-742(c) requires the filing of a petition to confirm bond only if a general bond is in place in an estate proceeding, or when a nominal bond is in place, if the will fails to authorize sale of estate realty or the p.r. cannot obtain the consent in writing of all interested persons to the sale of the estate realty.

- 1.) Office of the Register of Wills advises that principles of statutory construction require that D.C. Code § 20-742(c) be applied prospectively only from its passage on April 27, 1994.

3. Pre-1981 Probate Estates:

- a. A general bond must be filed to protect all estate personal property if any Interested Persons are not petitioners in the petition for probate and require notice pursuant to SCR-PD 11.
- b. A special bond may be granted if all Interested Persons consent, or the Petitioner is the sole heir or legatee. A special bond only applies to estate debts or claims or all damages recoverable against the fiduciary. Court approval of the filing of a special bond has the effect of waiving the requirement of the filing of inventory and accounts in the probate estate, but the special bond makes the fiduciary personally answerable for all estate debts, claims, and damages recovered against him/her. (See Mersch, Volume I, Section 1171.)

4. Foreign Estate Proceedings:

- a. D.C. Code §§ 20-343 (b) and (c): If personal or real property in a foreign estate proceeding is sold, exchanged, or transferred within the six-month creditor claims period, then the foreign Personal Representative must post a bond with penalty amount equal to the value of the property to extend for the six (6) months during which a creditor may file a claim. Accordingly, if the six-month creditor claims period has expired, the foreign Personal Representative is no longer required to post a bond.
 - i. It is observed that a bond in a foreign estate proceeding is not posted with the Office of the Register of Wills.

B. Guardianship of Minors

1. D.C. Code § 21-115 requires the filing of a guardianship bond sufficient to protect all the assets of a minor. Where no statutory formula for bond is prescribed, SCR-PD 201 requires bond equal to the personal property, the annual income, and the yearly rents from real property, which takes the form of a six (6) percent add-on to the bond for the annual income/rents.
 - a. A petition to increase or decrease bond must be filed as appropriate, as D.C. Code § 21-117 permits the Court to require a guardian to provide additional bond when the interests of the minor require it.

N.B. – The bond agents at the Court have generally (but not always) required counsel to serve as Guardians for the estate instead of *pro se* petitioners, and accordingly, have not always been written Guardianship bonds for *pro se* petitioners. *Pro se* petitioners who seek appointment may attempt to secure bond from other bond agencies outside the Court if they do not wish to have an attorney serve as Guardian for the estate. In some instances, bond agents will allow counsel to serve as co-signatories on an estate bank account, and as a result, will write a bond for a *pro se* petitioner. This, however, is problematic where counsel is not appointed as a co-fiduciary.

C. Intervention and Fiduciary Proceedings

- a. Bond is set by the Court at the general proceeding pursuant to D.C. Code § 21-2058 to protect the aggregate capital value of the estate property and one (1) year's estimated income, minus the value of securities or real property for which there is an express limitation preventing sale, conveyance, or removal without prior court approval.
- b. Pursuant to In re: Nettie Wise, Int. 67-99 (J. Long, 5/18/00), a

conservator in an intervention proceeding may arrange an increase or decrease in bond with a bond agent without filing a petition and without obtaining prior court approval at a petition post-appointment hearing. This is because D.C. Code § 21-2058 does not require the filing of a petition and a hearing to increase or decrease bond (see pp. 8 – 9 of Wise opinion), but instead sets a statutory formula for the conservator to follow at all times during the administration of the estate to protect the estate assets. The Court only requires a petition to decrease bond where the conservator seeks to reduce bond below the value of the assets held by him/her as calculated by the statutory formula. (See pg. 9 of Wise opinion.)

- i. It appears that this logic would also apply to fiduciary and guardianship of minor proceedings since D.C. Code § 21-1503 (1973 Ed.) and D.C. Code § 21-115 also have no petition and hearing requirements, and SCR-PD 201 creates a formula for bond in all fiduciary proceedings, where no statutory bond formula is prescribed. However, the Court has not yet ruled on whether this logic is also applicable to non-intervention proceedings; the Wise decision only discusses the application of intervention statutes to an intervention proceeding.

1. Fiduciary Proceedings (Pre-1989 Fiduciary Estate Proceedings):

- a. D.C. Code § 21-1503 (1973 Ed.) requires bond to be filed in such amount as the Court orders.
- b. D.C. Code § 21-1503 and D.C. Code § 21-117 (1973 Ed.) require additional bond to be filed when the interests of the estate require it. Currently, petitions to increase or decrease bond are filed, as the Court has not ruled on whether the logic in the Wise opinion extends also to a fiduciary proceeding (see C (1)(b)(i) above).

N.B. – As a general rule, where petitions to decrease bond are required to be filed, such petition can only apply to an ending balance of an account previously approved by the Court, and cannot be granted with respect to a recently filed account that has not yet been approved by the Court. Such petitions are generally denied by the Court without prejudice to the filing of a supplemental petition to decrease bond upon approval of the (recently filed) account.

II. Conflicts of Interest

A. In Dealing with Beneficiaries

[Rearden v. Riggs, 677 A.2d 1032 (1996); In Re Estate of King, 769 A.2d 771 (2001); In Re Mildred Powell, Adm. 2434-97.]

B. In Dealing with Other Fiduciaries

[Rearden v. Riggs, 677 A.2d 1032 (1996); In Re Estate of King, 769 A.2d 771 (2001)]

C. In Dealing with Third Parties

*D.C. Code § 20-743. Improper exercise of power; breach of fiduciary duty.
[D.C. Law 3-72, § 101 (June 24, 1980), 27 DCR 2155; D.C. Code § 20-743 (1981 Ed.);
In Re Benjamin Land, Intervention No. 30-97.]*

If any Personal Representative's exercise of power concerning the estate is improper, such representative is liable for breach of fiduciary to Interested Persons for resulting damage or loss to the same extent as a trustee of an express trust. The exercise of power in violation of a Court order, or contrary to the provisions of the will may be a breach of duty. The rights of purchasers and others dealing with a personal representative are determined as provided in D.C. Code § 20-744 and are not necessarily affected by the fact that the Personal Representative breached a fiduciary duty in the transaction.

*D.C. Code § 20-743.01. Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.
[D.C. Code § 20-743.1 (1982 Ed.); D.C. Law 10-241, § 3 (bbb) (Mar. 21, 1995), 42 DCR 63.]*

Any sale, lease, or encumbrance to the Personal Representative, the Personal Representative's spouse, agent or attorney, or any corporation, trust, or other entity in which such individual has a substantial beneficial interest, or any other transaction which is affected by a substantial conflict of interest on the part of the Personal Representative, may be set aside by the Court in proceedings initiated by any Interested Person except one who has consented after fair disclosure (and any person or entity claiming by or through such Interested Person) unless:

- (1) the Will authorized such dealings with the Personal Representative, either generally or with regard to a specific transaction or type of transaction;
- (2) a contract entered into by the decedent authorized such a transaction; or
- (3) the transaction is approved by the Court after notice to the Interested Persons.

*D.C. Code § 20-744. Protection of person dealing with personal representative.
[D.C. Law 3-72, §101 (June 24, 19880), 27 DCR 2155; D.C. Code §20-744 (1981 Ed.);
D.C. Law 10-241, §3 (ccc) (Mar. 21, 1995); 42 DCR 63.]*

Except as otherwise provided in D.C. Code § 20-753, a person who in good faith either assists or deals with a Personal Representative for value is protected as if the Personal Representative properly exercised his power. The fact that a person knowingly deals with a Personal Representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised Personal Representatives which are endorsed on letters as provided in D.C. Code § 20-504, no provision in any will or order of court purporting to limit the power of a Personal Representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a Personal Representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not in substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

III. Reporting and Avoiding Conflicts of Interest

A. **In adversarial proceeding comply with SCR-PD 202 (a)**

Rule 202. Trustees, conservators, guardians, guardians ad litem, and other fiduciaries.

(a) *To report conflicting interest.* Whenever a Trustee, Conservator, Guardian, Guardian *ad litem*, or other fiduciary has occasion to sue or defend in behalf of an infant or incompetent person concerning a matter in which he has a possible conflicting interest, he shall report the facts in writing to the Court so that it may take appropriate action.

B. **In all cases request hearing as directed by D.C. Code § 21-2068**

D.C. Code § 21-2068. Sale encumbrance, or transaction involving conflict of interest; voidable; exceptions.

[D.C. Code § 21-2068 (181 Ed.); D.C. Law 6-204 § 2(a) (Feb. 28, 1987); 34 DCR 632; In Re Benjamin Land, Intervention No. 30-97]

Any sale or encumbrance to a conservator, the spouse, agent, attorney or a conservator, or any corporation, trust, or other organization in which the conservator has a substantial beneficial interest, or any other transaction involving the estate being administered by the conservator that is affected by a substantial conflict between fiduciary and personal interests is voidable, unless the transaction is approved by the court after a hearing as directed. Notice of the hearing shall be in the form and manner as prescribed in D.C. Code §§ 21-2042(c) and 21-2031(b) and shall be served on the following individuals:

- (1) The incapacitated individual;
- (2) The attorney of record for each party;
- (3) The individual most closely related to the subject of the Intervention Proceeding by blood or marriage, unless that individual's name or whereabouts is unknown and cannot be reasonably ascertained;
- (4) The individual or facility, if any having custody of the subject of the Intervention Proceeding;
- (5) The individual, if any, proposed for appointment by Will as a Guardian; and
- (6) The individual, if any, appointed or proposed for appointment as Guardian *ad litem*

IV. Fiduciary Obligation to Segregate Assets

Fiduciaries must segregate fiduciary funds/assets from personal assets and assets held in other fiduciary relationships.

V. Fiduciary Obligation to Account

A. In Intervention Proceedings:

By statute, accounts must be prepared annually and filed with the Court.

B. In a Decedent's Estate Probate Proceeding:

Must be prepared annually and may have to be filed with the Court.

C. In Minor's Guardianship Proceeding:

Must be prepared annually and filed with the Court.

D. In all other fiduciary matters whether or not brought before Probate Division:

Some form of accounting due to beneficiaries.

[Rearden v. Riggs, 677 A.2d 1032]

VI. Consequences of Breach of Fiduciary Duty

A. Damages/Surcharge

B. Summary Proceedings/Removal

C. Criminal Charges and Conviction

[U.S. v. Kinley Howard, Civ. 02-079 (RBU) U.S. District Court for District of Columbia]