

PROBATE ATTORNEY PRACTICE STANDARDS
SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

PROBATE
ATTORNEY PRACTICE STANDARDS

Proposed for Adoption by the
Superior Court of the District of Columbia

By

The Probate Division Education Committee
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ACKNOWLEDGEMENTS

The Probate Education Committee was established by Rufus G. King, III, Chief Judge of the Superior Court of the District of Columbia, in Administrative Order 02-07 on January 10, 2002 to develop a comprehensive training program, to provide information on best practices for the local fiduciary bar and to establish standards for participation in the Probate Division's fiduciary list.

The committee was co-chaired by the Presiding and Deputy Presiding judges of the Division, Kaye K. Christian and José Lopéz.

Following an internal review by the Chief Judge, the practice standards were created pursuant to Administrative Order 02-07.

This document, Superior Court of the District of Columbia Probate Attorney Practice Standards, would not have been possible without the dedication and hard work of the members of the Probate Education Committee, who were chosen because they have manifested interest and expertise in fiduciary matters.

The Court gratefully acknowledges all of the individuals whose knowledge and expertise were instrumental in the development of these standards, especially the following:

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STATEMENT OF INTENT

The Superior Court of D.C. Probate Attorney Practice Standards address the general authority and duty of attorneys serving as counsel, guardian, conservator, attorney for personal representative, visitors, and special masters and special administrators, as well as non-lawyers serving as guardians, visitors and examiners in Intervention Proceedings, and personal representatives in Decedent Estates.

Under these standards, those persons appointed to serve in any of these capacities are provided guidance to help them fulfill the duties and responsibilities defined in District law and the Rules of the Superior Court of the District of Columbia.

The standards identify in all instances the duties and responsibilities of lawyers and non-lawyers appointed in the Probate Division, and full compliance with the standards is required for lawyers and non-lawyers.

For attorneys, the fundamental obligations outlined in these standards are based upon the D.C. Rules of Professional Conduct, District of Columbia statutes and the Superior Court of D.C. Rules that govern practice in the Probate Division.

For non-lawyers, the fundamental obligations are based upon District of Columbia law and Superior Court of the District of Columbia Rules.

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PRACTICE STANDARD 1 General Authority and Duties

Standard 1.1: Non-lawyers

Persons appointed in probate cases who are not lawyers shall endeavor to be familiar with the practice standards to assist in the performance of their duties under their appointment in probate cases.

Standard 1.2: Attorney Qualifications

Counsel shall only accept an appointment in probate proceedings if they are knowledgeable of substantive and procedural probate laws and have participated in the required training programs. To be eligible for appointment, counsel must certify in writing that he or she has read and understands these standards, the District of Columbia Rules of Professional Conduct and the Superior Court of D.C. Rules and Statutes governing Probate Proceedings.

Each year, all counsel shall certify that they have completed the required hours of continuing education in matters related to probate practice.

Attorneys appearing pro bono in these cases must ensure that they receive the necessary training to provide competent representation in probate matters.

Standard 1.2(a): Attorney Certification

Attorneys seeking inclusion in the Probate Division appointments list maintained by the Superior Court of the District of Columbia shall receive training certification through the Office of the Register of Wills.

PRACTICE SUGGESTION:

- As part of the training process, new attorneys to the practice are encouraged to seek the advice and guidance of more experienced lawyers who have practiced in the Probate Division. Experienced attorneys are encouraged to make themselves available to mentor new attorneys as they gain experience in the practice.
- Experienced attorneys are encouraged to avail themselves of training opportunities regularly provided through the Estates, Trusts and Probate Law

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Section of the District of Columbia Bar, including formal training sessions and the informal sessions that have been established by the Section.

Standard 1.3: Basic Obligations for all persons appointed in probate cases:

- Be familiar with all relevant District of Columbia statutes, rules and case law related to Probate;
- Prepare and file all pleadings and motions in a timely manner;
- Serve all filings and communications with the Court on all parties;
- Maintain a case file on each active case;
- Thoroughly prepare for all hearings;
- Provide the complete case file to successor attorneys;
- Prepare or help prepare findings of fact and conclusions of law when requested or appropriate;
- Participate in negotiations, discovery, pretrial conferences, mediation sessions, and hearings.

Standard 1.4: Basic Obligations for attorneys in probate cases:

- Counsel clients concerning matters related to their cases;
- Assess each client's needs for services;
- Develop a case theory and strategy to follow at hearings and during negotiations;
- Cooperate and communicate civilly with other parties and professionals in the case

See DC Bar Voluntary Standards for Civility in Professional Conduct, adopted by DC Bar Board of Governors June 18, 1996; Amended March 11, 1997
- Maintain a manageable case load.

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PRACTICE STANDARD 2 Counsel for Petitioner

COMMENT

Whether they are institutional clients, family members or interested members of the general community, those who seek assistance from an attorney to initiate an intervention proceeding are generally not familiar with the procedures and the requirements to establish a guardianship and conservatorship. Counsel for the Petitioner acts as both educator (counselor) and advocate for the client.

The principal activities of Counsel for the Petitioner are the intake conference, document preparation, filing the petition and hearing preparation.

STANDARD 2.1

Counsel for the Petitioner must be familiar with the procedures required for appointment of guardians and conservators, including the statutory language and the rules governing intervention proceedings.

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.1(A) AND 1.1(B)

PRACTICE SUGGESTIONS:

- Explain the intervention proceedings, costs, and the roles of counsel for the petitioner, appointed counsel for the subject as well as the role of a visitor/examiner or guardian ad litem.
- Explain the fees for services rendered by all parties and the method for requesting payment through the Court.
- Discuss the clear and convincing evidence requirement; ascertain whether witnesses aside from the immediate family exist.
- Discuss alternatives to an Intervention Proceeding with the petitioner.

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- Get social security number of proposed ward.

- Request that the client provide a family tree if possible and any information regarding the ward's history, including financial information, any advance directives or last will and testaments.

- Determine whether any powers of attorney exist, when they were prepared and by whom. In addition, determine who is the nominated attorney-in-fact.

- Thoroughly explain duties of both guardian and conservator; show petitioner a sample inventory, accounting and form reports. Discuss the likely costs.

- If petitioner wishes to serve as fiduciary, ascertain whether there are impediments to the petitioner serving as a fiduciary including, but not limited to, conflicts of interest, inability to obtain bond, inability to travel. Discuss the problems that may arise honestly with the petitioner.

- Advise the petitioner that he or she must attend the hearing.

- Discuss the best method for personal service on the subject.

Medical Reports and Recommendations:

- If the petitioner provides a medical report, ascertain whether the physician indicates on the report his or her qualifications and that those qualifications are appropriate to make the recommendation regarding capacity or incapacity contained in the report. Make sure that the report focuses on incapacity as defined in D.C. Code § 21-2011 (11).

- Determine whether the physician will discuss the report with you.

- If the medical evaluation does not meet the statutory requirement and the physician will not amend the report, request that the Court appoint an examiner. Explain the examiner's role and why you believe an examiner is necessary to your client.

Other Suggestions:

- Ensure that all forms used in the preparation of all documents for filing are current.

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- Prepare the Petition for General Proceeding in draft and have your client review it for accuracy.

STANDARD 2.2

Counsel for the Petitioner shall be knowledgeable about all filing procedures for Interventions.

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT
1.1(A) AND 1.1(B)

PRACTICE SUGGESTIONS:

- Counsel for the Petitioner should have all documents required to file an Intervention Petition in proper form, including all required signatures, before presenting the documents to the Register of Wills office.
- Prepare an addendum to the petition if you believe additional information would be beneficial to the Court or to the persons involved in the proceeding. All additional pleadings must be served upon all parties – including the subject.
- Make appropriate requests in the petition regarding the property of the subject or his or her person.
- Prepare notices for service by mail and for personal service.
- Prepare appointment requests, *i.e.* counsel for subject, examiner, visitor and guardian ad litem, as necessary.
- Serve all parties.
- Provide self-addressed court envelopes or labels (2 sets preferred).

STANDARD 2.3

Counsel for Petitioner shall communicate with the parties, witnesses and maintain communication with the petitioner following the filing of the Intervention petition and pending the hearing.

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT
1.2, 1.4(A) AND 1.4(B)

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PRACTICE SUGGESTIONS:

- When counsel for the subject is appointed, contact counsel to ascertain whether counsel is accepting the appointment and to provide any additional information not contained in the petition.
- Prepare the notice pursuant to DCSC-PR 325(b) once counsel for the subject is appointed.
- Perfect personal service. Assure personal service upon the subject within the time prescribed by statute and file the affidavit of service with the Court.
- Contact witnesses regarding the hearing date and issue subpoenas to those whose testimony is critical to the resolution of the matter.
- Communicate with any visitor to learn if there are any relevant issues to address.
- Once counsel for the subject has met with his or her client, confer with counsel regarding the position of the ward regarding the Intervention and determine whether any agreement can be reached, whether any stipulations can be agreed to and discuss the recommendations for who would be best to serve as guardian and/or conservator. If an agreement is reached, if practical notify the Court prior to the hearing.
- If the matter is contested, define the issues.

PRACTICE STANDARD 3 Counsel for the Subject

COMMENT

The law presumes that a person has legal capacity unless proven otherwise. Thus, the mere filing of a petition for a general proceeding or other petition under D.C. Code §21-2001, et seq. is not a finding of incapacity, or even a basis for a “probable cause” finding.

Counsel is the subject’s advocate and is not an impartial investigator. The subject is a client just like any other client. The attorney-client

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privilege and rules of confidentiality apply. To the greatest extent possible, the subject determines his or her own best interests, and counsel advocates those interests.

Counsel must ensure that the subject's procedural rights are protected.

Zealous advocacy does not preclude settlement or, when appropriate, stipulating to uncontested facts or evidence (i.e., the admissibility of medical records kept in ordinary course of business, etc.). Settlement in intervention proceedings is like settlement in any other lawsuit, and is encouraged.

When a Guardian ad litem is appointed, counsel for the subject regards the guardian ad litem as the "substitute" client.

On occasion, a subject for whom counsel is appointed may retain counsel.

In that event, Probate Rule 305(b) applies.

STANDARD 3.1

Counsel for the subject shall abide by the laws and Court rules governing intervention proceedings.

AUTHORITY:

SCR-PD 305 AND 321(D)

PRACTICE SUGGESTIONS:

- File a notice of appearance [Form I-D] immediately upon notice of appointment.
- Be familiar with the terms of the D.C. Protective Proceedings Act (D.C. Code §21-2001, et seq.), relevant Superior Court of D.C. Rules.
- File responsive pleadings to the petition when appropriate.

STANDARD 3.2

Counsel for the subject shall maintain an attorney-client relationship with the subject.

AUTHORITY:

D.C. CODE § 21-2033(B) AND SCR-PD 305

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APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.3, 1.4, 1.6 AND 1.14

PRACTICE SUGGESTIONS:

- Meet personally with the subject and explain the subject’s rights and the available alternatives to a guardianship or conservatorship.
- Meet with the client privately as often as possible. The subject may want a spouse, family member, significant other or friend to be present when meeting with counsel. While the subject’s wishes govern, counsel should strive to meet alone with the subject.
- Communicate with the subject in a manner that will assist the subject to understand the proceedings, his or her rights and the alternatives available.
- Ask open-ended and non-leading questions to ascertain the wishes and desires of the subject.

STANDARD 3.3

Counsel for the subject shall determine, and advocate for, the least restrictive alternative(s) to meet the needs and wishes as stated by the subject.

AUTHORITY:

D.C. CODE § 21-2044(1) AND § 21-2055(A)

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.2 AND 1.3

STANDARD 3.4

If the subject is unable to communicate his or her own interests and desires, or if counsel has reason to believe that the subject’s legitimate interests require investigation, counsel shall request appropriate substitute decision-making alternatives, such as the appointment of a Guardian ad litem or a visitor .

AUTHORITY:

D.C. CODE § 21-2033(A), § 21-2011(26),
§ 21-2033(C) AND SCR-PD 305.

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.14

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PRACTICE SUGGESTIONS:

- A visitor may be appropriate if the subject is or may be subjected to improper or undue influence.
- A Guardian ad litem may be appropriate if the subject is wholly unable to determine or state his or her desires and intentions.
- In the event that a Guardian ad litem for the subject is appointed, counsel for the subject follows the directives of the Guardian ad litem regarding the subject's best interests.

STANDARD 3.5

Counsel for the subject shall represent zealously the subject's legitimate interests.

AUTHORITY:

D.C. CODE § 21-2033(B) AND SCR-PD
305

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.3 AND 1.4

PRACTICE SUGGESTIONS:

- Ensure that the subject's rights are protected, including appropriate service of notice.
- Protect the subject's right to counsel and the subject's right to be present at all hearings.
- Conduct appropriate investigation of relevant facts and circumstances in support of the subject's wishes and desires.
- Determine whether the subject has an existing trust or durable power of attorney, which may obviate the need for Court-ordered assistance.
- Ensure that the subject's desires and intentions are communicated to the Court during the hearing, including the subject's choice of a conservator or guardian when appropriate.
- Consider whether to offer evidence on the issue of incapacity.

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- Determine whether the subject's interest would be served by settlement.
- If appropriate, request that the hearing be closed. See D.C. Code §21-2041(h), D.C. Code §21-2054(e).
- Communicate with other parties prior to the intervention hearing.
- Discuss settlement alternatives with the petitioner (or counsel for the petitioner) and other interested persons. If appropriate, be prepared to enter into stipulations as to facts, or the terms of the final order.

STANDARD 3.6

Counsel shall secure and present to the Court all appropriate evidence, the subject's legitimate interests, and, if appropriate, the terms to be included in a final order and modifications to the statutory powers of the guardian and conservator.

AUTHORITY:

D.C. CODE § 21-2041 AND § 21-2054

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.1, 3.1, 3.2 AND 3.3

PRACTICE SUGGESTIONS:

- Review the statutory duties and powers of a guardian and a conservator before the hearing, and determine (with the involvement of the subject, if possible) which powers are appropriate. Often, the terms of the orders of appointment, and the powers and limitations on the powers of the guardian and conservator provide an opportunity to advance the interests and desires of the subject, and ensure the least restrictive alternative.
- If appropriate, issue and serve subpoenas for documents or witnesses.
- Determine the evidence and witnesses to be presented to the Court.

PRACTICE STANDARD 4

Guardian ad litem

STANDARD 4.1

The Guardian ad litem shall assist in determining the interests of the subject.

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AUTHORITY:

D.C. CODE § 21-2033 AND SCR-PD 327 (B)

PRACTICE SUGGESTIONS:

- Be familiar with the procedures required for appointment of guardians and conservators.
- Ascertain the interests of the subject of the proceeding, especially when the subject is unable to express his or her views.
- Review legal documents executed by the subject and interview persons who most likely have personal knowledge of the subject's wishes.
- Communicate with counsel for the subject so counsel can advocate more effectively on behalf of the subject once the GAL has interpreted the interests of the subject.
- Communicate with other parties as to the interpretation of the subject's interests, including any visitor or examiner, and Counsel for the Petitioner.
- Attend all legal proceedings and conferences involving appointment of a guardian and conservator, and communicate the interests of the subject during such proceedings as the court directs.
- If requested by the Court, file a report regarding the interpretation of the subject's interests whenever possible prior to the Intervention Hearing.

PRACTICE STANDARD 5

Visitor

COMMENT

The Visitor is an independent investigator who is expected to reach his or her own conclusions regarding the circumstances surrounding the subject. The Court will, on occasion, appoint a Visitor to conduct a special investigation in specifically identified issues.

STANDARD 5.1

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The Visitor shall thoroughly investigate the current circumstances of the subject of the intervention proceeding and respond specifically to any issues raised in the Petition or requested by the Court in the order of appointment of the Visitor.

AUTHORITY:

D.C. CODE § 21-2033 (C) AND SCR-PD 327(B).

PRACTICE SUGGESTIONS:

- Visit the present place of abode of the subject and any place proposed as a subsequent residence for the subject.
- Meet with appropriate persons to determine potential or existing conflicts of interest that would preclude the appointment of any person nominated by any party to serve as guardian or conservator.
- Nominate a person to serve as guardian or conservator if the Petitioner or other parties have not named a nominee.
- File a report 10 days prior to the Intervention Hearing and ensure that all parties receive a copy of the report before the hearing.
- Attend the hearing unless excused by the Court.

PRACTICE STANDARD 6
Guardian

COMMENT

The guardian's primary duty and responsibility is to the ward. The paramount role of the guardian is to ensure the health and well being of the ward at all times. Central to a person fulfilling the requirements of a guardian pursuant to D.C. Code Section 21-2047 is appropriate provision and monitoring of the health and well being of the ward. All guardians must avoid the appearance of impropriety or conflicts.

Immediately following the appointment, the guardian must gather information and begin planning for the care of the ward. The appointed guardian must determine the current status of the ward

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as well as the manner that the ward lived in prior to incapacity. This information is invaluable to determine where a ward should live and with whom, what recreational and social services will be appropriate for the ward and to create a sense of comfort for the ward as the guardianship is established.

The introduction of a guardian can be extremely upsetting and disruptive to wards, who despite their incapacity, must cope with losing control over their lives. Even more stressful is having that control placed in the hands of a stranger.

Once the initial planning for the ward has been completed, the guardian is responsible for maintaining the safety and well being of the ward and adjusting the plans to address the changes in the circumstances of the ward. Monitoring of the ward may be delegated to other qualified persons, but the duty to be personally involved and aware of the ward's condition remains that of the guardian.

Frequently, guardians are faced with the decision to either withhold or withdraw medical treatment. Guardians should refer to the standards for consenting to and withholding consent for medical treatment pursuant to D.C. Code Section 21-2047. Once the guardian has reviewed the code requirements, the guardian should consider the wishes of the ward. In the event that the ward's position is not clear, the guardian may seek court authorization or court approval of a review of the ward's circumstances by the Bio-ethics Committee.

STANDARD 6.1

The Guardian shall timely file reports to the Court and interested persons.

AUTHORITY:

D.C. CODE § 21-2047(A)(5) AND SCR-PD
328

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.3

STANDARD 6.2

The Guardian shall maintain an ongoing familiarity with the laws and standards applicable to the discharge of the Guardian's duties.

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APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT
1.1

PRACTICE SUGGESTIONS:

- Ensure that the duties and responsibilities enumerated in the statute and appointment order are carried out on a consistent basis for the benefit of the ward.
- Ensure that the affairs of the ward remain confidential unless it is necessary to reveal information to further the best interests of the ward.

STANDARD 6.3

The guardian shall avoid any appearance of conflict of interest or impropriety when dealing with the needs of the ward. The guardian can do so by ensuring that no personal or agency interest that can be perceived as self-serving or adverse to the interest or position of the ward arises or is disclosed to the Court when no other options exist.

AUTHORITY: D.C. CODE § 21-2047

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT
1.7 AND 1.8

STANDARD 6.4

The Guardian shall maintain regular contact with the ward.

AUTHORITY: D.C. CODE § 21-2047

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT
1.3, 1.4 AND 1.14

STANDARD 6.5

Contact with the ward shall be in the home or facility where the ward is placed whenever practicable.

AUTHORITY: D.C. CODE § 21-2047(A)(1)

PRACTICE SUGGESTIONS:

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- Meet the ward, preferably in the ward’s place of residence, and explain the role of the guardian, the ward’s rights, assess the ward’s physical, social, educational, vocational and other care needs, and determine the existing support systems (family, faith community, *etc.*) available to the ward.
- Ensure that the ward or the ward’s care providers can reach the guardian for emergencies.

STANDARD 6.6

The Guardian shall ensure that the self-reliance and independence of the ward are maximized and that the ward is involved in decision-making regarding habilitation, health care, recreation and other personal choices when appropriate.

AUTHORITY:

D.C. CODE § 21-2044(A) AND § 21-2047(B)(6); ORDER OF APPOINTMENT

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT 1.2, 1.4 AND 1.14

PRACTICE SUGGESTIONS:

- Communicate with the ward in a manner that is likely to be understood by the ward. When appropriate and possible, secure the assistance of others (social worker, interpreter, *etc.*) to assist in the communication with the ward.
- Consider social, faith, family and community relationship, and recreational activities that have been important to the ward or that will enhance the ward’s adjustment and well being.
- Track the ward’s responses to services and the ward’s ability to participate in decision making over time.

STANDARD 6.7

The Guardian shall ensure that the ward’s residence is appropriate and is the least restrictive environment to meet the ward’s needs.

AUTHORITY:

D.C. CODE § 21-2047(A)(3) AND § 21-2047(B)(2)

PRACTICE SUGGESTIONS:

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- Assess the appropriateness of the ward's residence at the time of appointment, arrange for appropriate changes to meet the needs of the ward, and regularly reassess the appropriateness of the placement.
- Accommodate the ward's desires as to his or her place of residence to the greatest extent possible, consistent with the ward's safety and well-being remaining paramount.
- Ensure that appropriate supportive services are available to the ward.
- If the ward is placed in a residential facility, ensure that the facility meets the needs of the ward and that the facility is licensed.

STANDARD 6.8

The Guardian shall arrange for appropriate and regular health care services.

AUTHORITY:

D.C. CODE § 21-2047(A)(1) AND § 21-2047(B)(4)

PRACTICE SUGGESTIONS:

- Evaluate whether a comprehensive health assessment is needed at the time of appointment and at any time during the guardianship.
- Secure appropriate medical records.
- Determine who are the ward's medical care providers and whether it is appropriate for the ward to continue to receive services from such providers.
- Be knowledgeable about health care providers who provide services including dentists, primary care physicians and any other medical specialists required for the health and well being of the ward.
- Maintain appropriate health insurance when possible or apply for appropriate public medical benefits.
- Arrange appropriate medical examinations and treatment including dental, hearing, vision, and podiatry.

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- Be aware that the ward has a right to confidentiality of medical information and act accordingly. Consider requesting that the Court seal reports that contain sensitive or confidential information regarding the ward.
- Consider seeking a second opinion for any medical treatment or recommendation against medical treatment.

STANDARD 6.9

The Guardian shall secure any health care directives executed by the ward. In the absence of such directives, investigate the ward's desires as to health care and end of life decisions.

AUTHORITY:

D.C. CODE § 21-2044(A) AND § 21-2047(C)(3)

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT 1.2 AND 1.14

PRACTICE SUGGESTIONS:

- Consult with the ward, the ward's family, friends, clergy, and others who are or who have been significant in the life of the ward to assist in determining what the ward's preferences are as to health care and end of life decisions.
- Assess whether consent for "do not resuscitate" should be implemented. When necessary, promptly seek court authorization for DNR and other end-stage orders.
- Consider requesting a bioethics review or consultation prior to making end of life decisions or seeking court authorization for medical decisions involving critical medical procedures or end of life decisions.

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STANDARD 6.10

The Guardian shall communicate with the conservator regularly based upon the circumstances of the ward. If the Court does not appoint a conservator, the Guardian shall endeavor to obtain the resources to meet the ward's needs.

AUTHORITY: D.C. CODE §§ 21-2047(A)(2), (3) AND (4); §§ 21-2047(B)(1), (3), AND (5); D.C. CODE § 21-2065(B), AND SCR-PD 329

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.3 AND 1.14

STANDARD 6.11

The Guardian shall establish a system to enable efficient access to information related to the health, safety and well being of the ward.

AUTHORITY: D.C. CODE § 21-2047

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.3 AND 1.14

PRACTICE SUGGESTIONS:

- Maintain a separate file for each ward to include:
 - ❑ The date of birth, address, telephone number, Social Security number, medical insurance information, name, address and phone number of the ward's physician, diagnosis, medications (prescriptions and over the counter). The dosage, reason taken, the name of the prescribing physician, and allergies to medications may be helpful information.
 - ❑ All legal documents.
 - ❑ Advance directives created.
 - ❑ List of all service providers, with contact information, and a description of the services provided to the ward.

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- Documentation of the ward's known values, lifestyle preferences, religious preferences and known wishes regarding medical and other care.
 - Documentation of your contacts with the ward or any other persons who have a relationship with the ward.
 - Keep copies of available progress notes prepared by others and any assessments of ward's changing needs.
- Maintain regular communication with all persons providing direct services to the ward.
 - Convene, attend or participate in all case management or treatment meetings related to the physical, mental and habilitation needs of the ward.
 - Ensure that care plans are being implemented on a regular basis by examining charts, notes and documents regarding the ward at the ward's place of residence and any other program site (e.g. day care centers, rehabilitation services, etc.).

STANDARD 6.12

The Guardian shall timely file reports to the Court and serve all interested persons.

AUTHORITY: D.C. CODE § 21-2047(A)(5) AND SCR-PD 328

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.1 AND 1.3

PRACTICE SUGGESTIONS:

- Address all issues related to the ward's status during the period covered by the report as required by statute.

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PRACTICE STANDARD 7
Conservator

STANDARD 7.1: The Conservator shall comply with all statutory requirements. These requirements include:

- **Post and maintain a surety bond pursuant to the appointment order or other requirements set by the Court.**
- **Complete all required appraisals and inventories of personal property owned by the ward at the time of the appointment.**
- **File Letters of Conservatorship with the District of Columbia Recorder of Deeds.**
- **Marshall all assets of the ward.**
- **Develop the conservatorship plan and file timely with the Court.**

AUTHORITY:

D.C. CODE § 21-2056 ET SEQ.

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.1, 1.3 AND 8.4(D)

PRACTICE SUGGESTIONS:

- Meet with the ward to discuss the duties and responsibilities of the conservator, the rights retained by the ward as to financial decision making, determine the ward's wishes as to financial and property management, and gather any information or documents that will assist in managing estate assets.
- In developing the conservatorship plan, consider the ward's estate plan, financial arrangements in existence prior to incapacity and the ward's financial management practices and spending habits.
- Consider whether the ward's financial arrangements include responsibility for or participation of other individuals such as children, spouses.

PROBATE ATTORNEY PRACTICE STANDARDS

STANDARD 7.2

The Conservator shall manage the ward's assets and income. Management includes:

- **Manage all property, including real property, personal property, income and disbursements from the estate, in a competent manner to benefit the ward.**
- **Maintain the ward's assets in a safe manner, keeping accurate records at all times of all transactions involving estate assets.**
- **Ensure that the ward's assets are maintained separately from the assets of others -- including those of the Conservator -- unless otherwise directed by the Court.**
- **Evaluate the appropriateness of encumbering or disposing of any real or personal property including such vehicles as home equity conversion loans or home equity loans.**

AUTHORITY:

D.C. CODE § 21-2055 (B)(2)

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT 1.15 AND 1.17

PRACTICE SUGGESTIONS:

- File all federal and state personal income taxes, and any property or business related taxes timely.
 - Consider making prepaid funeral arrangements for the ward, keeping in mind the ward's wishes and family history regarding said arrangements.
 - Evaluate the need for public assistance benefits for the ward and, if necessary, take appropriate and timely steps to apply for those benefits.
 - Maintain familiarity with the Prudent Investor Standard.
 - Arrange for insurance coverage for all assets requiring insurance coverage.

PROBATE ATTORNEY PRACTICE STANDARDS

- Regularly review the Conservatorship plan to make appropriate adjustments.
- Determine whether a will exists and, if so, the conservator should maintain possession of the original will and other important papers of the ward in a safe and secure place.
- Manage the ward's income and assets consistent with the ward's estate plan, if such a plan exists, and if possible and prudent.
- Notify creditors and the Postal Service of the Conservatorship and ensure that mail is transferred to the Conservator.

STANDARD 7.3

The conservator shall communicate with the ward.

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.4 AND 1.14

PRACTICE SUGGESTIONS:

- Communicate on a regular basis to the extent feasible.
- Consider whether to provide funds on a regular basis for the ward's use where appropriate.

STANDARD 7.4

The conservator shall use due diligence in determining who shall be retained to provide professional services in the management of the ward's income and assets.

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.1 AND 1.3

PROBATE ATTORNEY PRACTICE STANDARDS

PRACTICE SUGGESTIONS:

- Consider whether it is appropriate to retain the services of real estate agents, investment advisors, accountants, tax preparers, lawyers and other professionals.

STANDARD 7.5

The conservator shall comply with all reporting and accounting requirements established by the Court.

AUTHORITY:

D.C. CODE § 21-2065.

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT 1.15 AND 8.4 (D)

PRACTICE SUGGESTIONS:

- Maintain records of all financial transactions including bank statements, bills and receipts, and tax filings.
- Maintain financial records for a minimum of three years from the date of the final account's approval.
- Promptly file annual accounts.
- Promptly respond to all inquiries of the Court regarding the accounts.
- Upon the death of the ward, complete the final accounting for the estate and facilitate the final closing of the conservatorship.

PRACTICE STANDARD 8

Compensation of Guardians and Conservators

COMMENT

Guardians and conservators are entitled to reasonable compensation for their services. However, both the guardian and the conservator should bear in mind the duty and responsibility to conserve the ward's estate when making decisions regarding services and the fees for such services to be charged by the guardian or conservator.

PROBATE ATTORNEY PRACTICE STANDARDS

STANDARD 8.1

All fees requested by guardians and conservators shall be reasonable and related to the duties performed by guardians and conservators for services compensable under the Superior Court of D.C. and District law.

AUTHORITY: D.C. CODE §21-2060

PRACTICE SUGGESTIONS:

- Promptly submit all petitions for compensation.
- Maintain billing records created at the time service was rendered and documented by the guardian or conservator indicating the date and time of the service, the task or service provided, expenses incurred, other contacts involved in performing the task or service and the identification of the person who performed the task being billed (conservator, staff member, paralegal, contractor, etc.).

PRACTICE STANDARD 9
Fiduciaries

STANDARD 9.1

The Fiduciary shall provide competent management of the property and income of the estate. In the discharge of this duty, the Fiduciary shall exercise intelligence, prudence and diligence.

AUTHORITY: SCR-PD-1

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.1 AND 1.15

PRACTICE SUGGESTIONS:

- Ensure that the ward and the estate remain in compliance with all applicable laws and regulations.
- Make informed financial, investment and administrative decisions and do not delegate responsibility for such actions to a non-Fiduciary.

PROBATE ATTORNEY PRACTICE STANDARDS

STANDARD 9.2: The Fiduciary shall make decisions in accordance with the ascertainable preferences of the ward or the creator of the testamentary instrument and, when not in conflict, the beneficiaries of said ward or testamentary instrument.

AUTHORITY: SCR-PD 5

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.2, 1.3, 1.4 AND 1.14

PRACTICE SUGGESTIONS:

- Keep the ward and the interested persons apprised of his or her activities on behalf of the ward or estate.
- Promptly respond to concerns of the ward and interested persons over the affairs of the ward and the administration of the estate.

STANDARD 9.3

The Fiduciary shall recognize that though decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge, the Fiduciary is responsible for the decisions whether on behalf of a ward or an estate and its beneficiaries.

AUTHORITY: SCR-PD 5

PRACTICE SUGGESTIONS:

- Take reasonable steps to communicate with the ward and the interested persons to learn their positions on the affairs of the ward and/or the estate.
- Quickly resolve contested issues when feasible to minimize the financial impact upon the assets of the ward or the estate.

STANDARD 9.4

The Fiduciary shall exhibit the highest degree of trust, loyalty and fidelity in relation to the estate or ward.

AUTHORITY: SCR-CD RULE 304

PROBATE ATTORNEY PRACTICE STANDARDS

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.7, 1.15 AND 8.4(C)

STANDARD 9.5

The Fiduciary shall exercise prudence in the investment of funds of the estate.

AUTHORITY: SCR-PD 5

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.1 AND 1.15

PRACTICE SUGGESTIONS:

- Diligently investigate and monitor investments to minimize losses to the estate and maximize earnings, keeping in mind that the assets do not belong to the Fiduciary.

STANDARD 9.6

The Fiduciary shall avoid the appearance of self-interest in all matters.

AUTHORITY: SCR-PD 5, SCR-CD RULE 304

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.7 AND 1.8

PRACTICE SUGGESTIONS:

- Refrain from taking, using, borrowing, purchasing or securing interest in the assets of the ward, either directly or through the assistance of another, so as to avoid charges of self-dealing.

STANDARD 9.7

The Fiduciary shall provide periodic accountings to the ward and interested persons, not less than annually.

AUTHORITY: D.C. CODE § 20-721, § 20-2065 AND § 21-143

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.1 AND 1.15

PROBATE ATTORNEY PRACTICE STANDARDS

PRACTICE SUGGESTIONS:

- Maintain complete records of the financial affairs of the ward and make them available, where legally required, to the ward and interested persons.
- Promptly pay all bills and financial obligations of the ward and the estate.
- Ensure that the ward and interested persons are aware of any compensation he or she receives for their services as well as the compensation paid to others.

PRACTICE STANDARD 10 Guardians of Minors

STANDARD 10.1

A Guardian of a Minor or the attorney for the Guardian of a Minor shall be familiar with the statutes governing Guardianships of Minors in the District of Columbia.

AUTHORITY: D.C. CODE §21-301 TO § 21-324; § 21-101 TO § 21-182 AND § 20-1106.

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.1

PRACTICE SUGGESTIONS:

- Be aware that guardianships of minors are, under current law, handled quite differently from intervention proceedings and decedents' estates.
- Be aware of the legal alternatives to guardianship, including trusts and custodianships of minors under the Uniform Transfers to Minors Act, and the circumstances under which such alternatives are available and appropriate. Conversely, be aware of those circumstances under which formal guardianship is required.
- Be aware that the Probate Division of the Court generally does not appoint guardians of the person (as opposed to the property) of minor children but instead defers to the Family Court.
- Be aware that jurisdiction is governed by the domicile of the child, not his or her residence, and that the filing of a lawsuit in the District of Columbia will not confer jurisdiction over a non-domiciliary child.

PROBATE ATTORNEY PRACTICE STANDARDS

- Be aware that the Court closely supervises the administration of Guardianships of Minors and Court approval is generally required for expenditures, investments and the like.

STANDARD 10.2

A Guardian of a Minor or the attorney for the Guardian of a Minor shall be familiar with the rules governing Guardianships of Minors in the District of Columbia.

AUTHORITY: SCR-PD 201-211; SCR-PD 221-225;
SCR-PD 4; SCR-PD 5

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT
1.1

PRACTICE SUGGESTIONS:

- Determine the appropriate forms to be used in Guardianships including a Petition for Authority to Expend Funds, a Petition for Authority to Invest and a Petition for Approval of Investment Plan or Program. Practitioners should check to see that they are using the most current forms available through the Office of the Register of Wills.
- Be aware that compensation of guardians and their counsel is strictly governed by SCR-PD 225 and that many services are compensable solely by a commission which is limited in amount.

STANDARD 10.3

Prior to petitioning for Guardianship of a Minor, counsel shall obtain the information required by SCR-PD 221(a) and, if petitioning on behalf of a client, shall explain the duties of the guardian and the limitations on the guardian's authority.

AUTHORITY: D. C. CODE § 21-108, § 21-115 AND §
21-106(C), AND SCR-PD 221(A)

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT
1.3, 1.4(B) AND 1.14

PROBATE ATTORNEY PRACTICE STANDARDS

PRACTICE SUGGESTIONS:

- Be aware that there is no preprinted petition form for the appointment of a guardian of a minor.
- Obtain information concerning the age of the child, his residence and domicile and other information required by SCR-PD 221 when serving as counsel for the petitioner.
- Ensure that the proposed guardian is not under any legal disability.
- Since both biological parents have statutory priority for appointment as guardians, endeavor to obtain the written consent of the other parent when petitioning on behalf of one parent.
- If consent cannot be obtained, be aware that a hearing will be necessary and the non-consenting parent must be served with notice, which is provided by the issuance of a citation, which is served on the non-consenting parent by the U.S. Marshals.
- Arrange for both the proposed guardian and the minor to attend the hearing if one is necessary. The Court may waive the presence of the minor under certain circumstances.
- Be aware that minors who are over the age of 14 have a statutory right to select the guardian.
- Consider seeking the appointment of an attorney as guardian of the minor so that the bond required by the Court to protect the minor's estate can be secured.
- Be aware that an attorney may not serve as guardian of more than five minors at any one time, unless the minors are entitled to shares of the same estate.
- When petitioning for the appointment of a guardian of minors who are entitled to share in the same estate, file a single petition, thus avoiding the need for multiple bonds.

STANDARD 10.4

When seeking appointment of a guardian of a minor, counsel shall present a properly drafted petition along with complete supporting documentation such as consents to the proposed

PROBATE ATTORNEY PRACTICE STANDARDS
appointment and a proposed order, and arrange for the minor to be present.

AUTHORITY:

SCR-PD 221(B).

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.1 AND 1.3

PRACTICE SUGGESTIONS:

- Appear in the Register of Wills Office along with the minor, present the petition and all consents to the staff of the Office of the Register of Wills; the petitioner will be interviewed and admonished by the staff.
- Be prepared to appear before the Court if required to finalize the appointment of a Guardian of a Minor.

STANDARD 10.5

Before expending guardianship funds, the guardian shall obtain prior Court approval.

AUTHORITY:

D.C. CODE § 21-143 AND SCR-PD
222(A)

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.15 AND 8.4(D)

PRACTICE SUGGESTIONS:

- Submit a petition for authority to expend guardianship funds using SCR-PD Form 1 or employing a format substantially consistent with that form.
- Advise the biological parents that they are legally obligated to support their children and are generally required to use their own funds to meet their children's needs.
- If seeking Court authority to use guardianship funds to pay for the care and maintenance of a child, submit verified financial statements from the biological parents demonstrating why they are unable to bear the proposed cost. Financial statement forms are available in the Office of the Register of Wills.
- If guardianship funds have been expended without prior Court approval, file a petition for ratification of expenditures. The Court may, however, deny the

PROBATE ATTORNEY PRACTICE STANDARDS

petition and may also remove the guardian and require reimbursement of the estate by the removed guardian.

- Petition for continuing authority to expend a certain amount each month or each year on the child's recurring needs if the child's circumstances are such that funds are needed on a recurring basis.
- Be aware that even if Court approval is sought and granted, all expenditures are subject to proper accounting.
- Title all items, accounts or property purchased with guardianship funds in the name of the guardian in the guardian's fiduciary capacity (not individually), unless otherwise directed by the Court.
- Be aware that petitions for routine expenditures of funds will normally be granted or denied based on the pleadings. By contrast, a petition for authority to expend a substantial sum of money, *e.g.* to purchase a home or vehicle for the minor, will generally require a Court hearing, and may involve the appointment of a guardian *ad litem* to represent the interests of the child.
- File all federal, state and District of Columbia tax returns that are required on the child's behalf, and pay any tax that may be due. The tax rules applicable to children differ from those applicable to adults, in that a child under the age of 14 who is claimed as a dependent on the tax return of his parent is subject to taxation at the same rate as the parent. Thus, to prepare the child's tax return, a copy of the parent's tax return will be needed. If a child is claimed as a dependent on his parent's tax return, an exemption cannot be claimed on the child's tax return.

STANDARD 10.6

Guardian of a Minor shall obtain prior Court approval before investing guardianship funds in anything other than a federally insured bank account or U.S. Treasury Securities backed by the Full Faith and Credit of the United States Government.

AUTHORITY:

SCR-PD 5

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.15 AND 8.4(D)

PROBATE ATTORNEY PRACTICE STANDARDS

PRACTICE SUGGESTIONS:

- Be aware that bank accounts are federally insured only up to \$100,000 per investor, per bank.
- Use SCR-PD Form 2 when petitioning for authority to invest guardianship funds in stocks, bonds, mutual funds or other securities and when proposing a single investment.
- Use SCR-PD Form 3 when proposing an investment plan.
- Be aware that investments of guardianship funds are subject to the standards set forth in SCR-PD 5, Investments by a Fiduciary.
- Ensure that a petition to invest guardianship funds is accompanied by appropriate supporting documentation, such as a prospectus.

STANDARD 10.7

Guardian of a Minor shall timely file an inventory and annual accounts.

AUTHORITY:

SCR-PD 204(A)(2), SCR-PD 204(A)(4);
SCR-PD 204(D) AND SCR-PD 206

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.1, 1.3(C) AND 8.4(D)

PRACTICE SUGGESTIONS:

- File the inventory within 90 days after qualification, and reflect assets as of the date of qualification.
- File annual accounts and all supporting documentation within 30 days of the anniversary of qualification.
- Pay all court costs at the time of submission of the first account. The amount of the court costs depends on the size of the estate and the nature of the assets. If, after the initial payment of court costs, the size or nature of the estate changes, additional court costs may be assessed.

PROBATE ATTORNEY PRACTICE STANDARDS

- File inventories and accounts with the duty auditor in the Office of the Register of Wills.
- Promptly respond to any requirements letters issued by the Office of the Register of Wills if additional documentation is needed.

STANDARD 10.8

In seeking compensation as Guardian of a Minor or counsel for a Guardian, the attorney shall comply with the rules governing compensation.

AUTHORITY:

SCR-PD 225

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.5 AND 8.4(d)

PRACTICE SUGGESTIONS:

- Be aware that "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. A guardian need not petition for the payment of the annual commission. The commission need only be listed in the annual accounting as a proposed disbursement and can be paid only upon approval of the account.
- Be aware that extraordinary services, such as those rendered in connection with the purchase of a home or vehicle, are compensable only by petition.
- Be aware that legal services are compensable for services such as the preparation of pleadings and representation at a court hearing. If a practitioner renders ordinary services, such as the preparation of an account, that practitioner may be compensated only by assignment of the guardian's commission. Attorneys' fees are generally requested by a petition filed with the annual account. However, a petition for fees rendered in connection with the appointment of a guardian may be filed at any time. See SCR PD 225(e).
- Be aware that when a minor turns 18 and the guardianship terminates, a "turnover commission" not exceeding 5% of the net assets to be turned over may be included as a proposed disbursement in the final account of the guardian. In many cases the turnover commission constitutes the bulk of the compensation the guardian will receive, particularly when expenditures over the years have been modest. In most instances it is not necessary to file a petition or statement of services in support of a request for a turnover commission. However, if a

PROBATE ATTORNEY PRACTICE STANDARDS

guardianship terminates within three years of the guardian's appointment, and the net assets exceed \$100,000 in value, an itemized statement of services generally must be filed.

STANDARD 10.9

The Guardian of the minor shall file a final account when the minor reaches the age of majority, and upon approval of that account, the Guardian shall promptly distribute the assets of the estate to the former ward.

AUTHORITY:

SCR-PD 204(A)(5)

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL
CONDUCT 1.3 AND 1.15

PRACTICE SUGGESTIONS:

- File the final account within 60 days of the date the ward attains his or her majority.
- Upon approval of the final account, promptly distribute the assets of the former ward.
- If prompt distribution cannot be made, such as when the ward cannot be located, petition the Court to deposit funds into the court registry and explore alternative methods for distribution depending upon the circumstances.
- Obtain a receipt from the former ward upon distribution of the assets and promptly file the receipt with the Court.
- Be aware that the guardian's bond continues until approval of the final account and the filing of a receipt or receipts. A pro rata refund of the bond premium may be obtained if the former ward attains the age of majority midway through the accounting year.
- If there is a continuing disability such as mental impairment that will continue past the age of the majority, promptly seek appointment of a conservator or establishment of a special needs trust to avoid any lapse in authority to act on behalf of the disabled ward.
- Be aware that the age of majority in the District of Columbia is 18. If the former ward consents, the assets can be placed in a trust or invested in long term

PROBATE ATTORNEY PRACTICE STANDARDS

instruments or the like to attempt to preserve the assets for the future use of the ward. Without consent by the ward or the establishment by the Court of a conservatorship or special needs trust, the assets must be distributed outright upon approval of the final account.

PRACTICE STANDARD 11

Attorneys Representing Personal Representatives and Personal Representatives

STANDARD 11.1: **The attorney representing a personal representative must be knowledgeable about the statutes and rules governing testate and intestate administration, and small and large estates.**

AUTHORITY:

D.C. CODE § 20-101, ET SEQ.;
SCR-PD 1 THROUGH 128 AND
401 THROUGH 430.

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL
CONDUCT 1.1

PRACTICE SUGGESTIONS:

- Advise the proposed Personal Representative concerning the preparation and filing of the probate petition and will.
- The Attorney must be knowledgeable about the following:
 - the applicable District of Columbia Statutes on Descent and Distribution;
 - the appropriate form of probate to use, either abbreviated probate or standard probate, and the circumstances governing the use of each type;
 - the types of Estate Administration: Supervised and Unsupervised, and when to request one or the other in the Probate Petition. An attorney should know when it is prudent to advise a client to request a supervised estate during the course of the estate's administration;

PROBATE ATTORNEY PRACTICE STANDARDS

- the kind of information required for the completion of the probate petition;
 - the procedures required for filing a petition for probate, *i.e.*, review and approval by a Deputy in the Office of the Register of Wills;
 - the post-filing requirements, including publication and service of the Notice to Creditors.
- Determine whether a bond is required, whether the will waives the bond and, if there is no will, consult with the prospective Personal Representative to ascertain whether consents to waiver of bond from interested persons can be obtained.
 - Advise the prospective Personal Representative that there are situations where application for an unsupervised estate may be appropriate, but the requirement of a bond may convert the estate to a supervised estate due to a surety's requirement for supervision.
 - Advise the prospective Personal Representative of the amount of court costs for the estate and that these costs must be paid when the petition for probate is filed or the estate will be treated as a supervised estate.
 - Advise the Personal Representative that publications must be paid for promptly so that the verifications and proofs of publication may be filed in a timely manner.

STANDARD 11.2:

An attorney representing the personal representative shall ensure that the personal representative is advised of his or her fiduciary obligations to the estate, its heirs and creditors.

AUTHORITY:

D.C. CODE § 20-701(A), § 20-702, § 20-704, § 20-705, AND § 20-743.

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT 1.1 AND 1.4

PRACTICE SUGGESTIONS:

- Advise the Personal Representative that estate funds shall not be commingled with non-estate funds under any circumstances.
- Determine whether any conflicts of interest exist between the interests of various heirs or as to the Personal Representative's interest as an heir and the other

PROBATE ATTORNEY PRACTICE STANDARDS

heirs that would prevent the Personal Representative from carrying out fiduciary obligations.

- Advise the Personal Representative on the handling of any litigation involving the estate, or, if the attorney is not prepared to represent the estate in the matter, then advise the Personal Representative to hire an attorney to handle the matter for the estate.
- Advise the Personal Representative to file an IRS Form SS-4, request a tax identification number for the estate and open an estate bank account through which all estate business is conducted in an FDIC insured account or accounts, not to exceed \$100,000 in any one account.
- Advise the Personal Representative that Federal, state and local income tax returns must be filed on behalf of the decedent for the year in which the decedent died, and ensure that the tax returns are prepared and filed.
- If the value of an estate exceeds the amount provided by law, advise the Personal Representative that a Federal Tax Form Return (Form 706) must be filed within nine (9) months and one (1) day of the decedent's death, and that the penalty for failure to file continues to accrue until the Tax Return is filed and the tax is paid.
- If an estate is held open beyond one year, advise the Personal Representative of the requirement that an annual fiduciary income tax return must be filed on behalf of the estate.
- Advise the Personal Representative to prepare and file all claims for refunds for federal and state taxes.
- Advise the Personal Representative that it is the Personal Representative's responsibility to send the Notice of Appointment and General Information Sheet to all interested persons and known creditors by certified mail.
- Advise the Personal Representative that it is their responsibility to pay for the Proofs of Publications and to ensure their timely filing.
- Advise the Personal Representative of investment and fiduciary responsibilities, including the duty to maintain accurate records of all expenses and payments during the administration of the estate along with appropriate receipts for expenditures.

PROBATE ATTORNEY PRACTICE STANDARDS

STANDARD 11.3: The attorney shall advise the Personal Representative that he/she owes a fiduciary obligation to the estate, its heirs and creditors.

AUTHORITY: HOPKINS V. AKINS, 637 A.2D 424 (DC 1993).

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.4

PRACTICE SUGGESTIONS:

- Advise the Personal Representative that the attorney represents the Personal Representative and not the estate. Under District of Columbia case law, the attorney has an attorney/client relationship with the fiduciary, and not with the beneficiaries.
- Advise the Personal Representative of the adverse impact of any fiduciary decision on one or more beneficiaries.
- Advise the Personal Representative of conflicts between the Personal Representative's interests as fiduciary and any interest of the Personal Representative as a beneficiary.

STANDARD 11.4

The attorney shall advise the Personal Representative that an inventory must be prepared in all estates.

AUTHORITY: D.C. CODE § 20-711, § 20-712, § 20-713.01, § 20-714, AND § 20-715

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.4

PRACTICE SUGGESTIONS:

- Advise the Personal Representative regarding the preparation of the Inventory summary sheet and a schedule for each estate category.
- Advise the Personal Representative to verify the value of estate assets at the time of the decedent's death.

PROBATE ATTORNEY PRACTICE STANDARDS

- Advise the Personal Representative of the availability of the appraiser in the Office of the Register of Wills who will appraise all tangible personalty upon request.
- Advise the Personal Representative that either the assessed value of real property by the D.C. Office of Tax and Revenue or an appraisal by a qualified, licensed appraiser may be used for the inventory.
- Advise the Personal Representative that for pre-1995 estates, an Inventory must be filed within three months of the Personal Representative's appointment.
- Advise the Personal Representative that 15 days prior to the filing of the Inventory, either a copy of the Inventory or notice that the Inventory will be filed on or before a stated date must be mailed to all interested persons.
- Advise the Personal Representative that if each heir or legatee is a co-Personal Representative and files a waiver of filing Inventories and accounts, an Inventory need not be filed.
- In the administration of estates for decedents dying on or after July 1, 1995, in both supervised and unsupervised estates, advise the Personal Representative to mail or deliver a copy of the Inventory to all interested persons within three months of the Personal Representative's appointment.
- In unsupervised estates, even though there is no filing requirement for the Inventory, advise the Personal Representative to send a copy of the Inventory to all interested persons.
- In supervised estates, advise the Personal Representative that the Verified Inventory must be filed with a certificate that a copy has been mailed to all interested persons.
- Advise the Personal Representative to keep a stamped file copy of the Inventory for the estate records.
- If property is discovered after the Inventory is filed, or if a Personal Representative learns that an item has greater value than previously believed, advise the Personal Representative to file a Supplemental Inventory.
- In a supervised administration, if the Personal Representative has not marshaled or taken control of assets at the time the Inventory should be filed, advise the Personal Representative to file an Affidavit in Lieu of Inventory, and to maintain a stamped file copy of the Affidavit in the estate file.

PROBATE ATTORNEY PRACTICE STANDARDS

- Advise the Personal Representative about the requirements for sale of real property prior to and after 1994.

STANDARD 11.5

The attorney for the Personal Representative must know the statutes and rules governing the filing of a priority for the payment of claims, and shall check the court file periodically to determine whether a creditor has filed a claim against the estate.

AUTHORITY:

D.C. CODE § 20-901, ET SEQ.

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.1 AND 1.3

PRACTICE SUGGESTIONS:

- Advise the Personal Representative to pay all claims allowed against the estate in order of priority no later than eight months from the date of the first publication of the Notice of Appointment.
- Advise the Personal Representative of the procedure for disallowing claims that are believed, after a review of the claims' validity, not to be obligations of the estate.

STANDARD 11.6

The attorney must know the statutes and rules governing the preparation, filing and auditing of accounts.

AUTHORITY:

D.C. OFFICIAL CODE § 20-721, ET SEQ.

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.1

PRACTICE SUGGESTIONS:

- Advise the Personal Representative as to what is required for the proper maintenance and preparation of the estate account, explain that the only allowable expenditures are for estate debts, expenses and disbursements to heirs, and that all canceled checks and bank statements must be produced when it is time to prepare and file the account.

PROBATE ATTORNEY PRACTICE STANDARDS

- Advise the Personal Representative to prepare typewritten accounts and to follow the format of the preprinted forms from the Washington Law Reporter.
- Advise the Personal Representative that the account must be filed within one (1) year and one (1) day of the first publication of the Notice of Appointment, and subsequent accounts are due every nine (9) months or upon the termination of the Personal Representative's appointment.
- In unsupervised estates, advise the Personal Representatives to prepare accounts and mail the account to interested persons at reasonable intervals or upon reasonable demand.
- In unsupervised estates, advise the Personal Representative regarding the filing of the Certificate of Completion for a final account in post-1995 cases. If the final account is an account for an estate of a decedent dying before April 1, 1987, advise the Personal Representative to file a certificate of satisfaction of D.C. inheritance and/or estate taxes.
- Advise the Personal Representative that, upon completion of the account, it should be signed before a notary or a qualified person in the Office of the Register of Wills before the account is presented for filing.

STANDARD 11.7: The attorney for the personal representative must know the statutes and rules governing distributions, renunciation by the surviving spouse, intestate succession, the family allowance for pre- and post-1995 estates, the Homestead Allowance for decedents dying on or after April 27, 2001 and exempt property for decedents dying on or after April 27, 2001.

AUTHORITY:

D.C. CODE § 19-101.01, ET SEQ., § 19-113, § 19-301, TITLE 19, CH. 3; TITLE 20, CH. 11; § 20-741(24), AND § 20-1102(D).

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.1

PRACTICE SUGGESTIONS:

- In situations where it is difficult to determine the proper recipient of the family allowance, advise the Personal Representative to file a supplement to the petition outlining the facts of the case so that the Court can determine the rightful recipient of the family allowance.

PROBATE ATTORNEY PRACTICE STANDARDS

- Advise the Personal Representative that, where appropriate, partial distributions to heirs and legatees may be made during the administration of the estate.
- Advise the Personal Representative to prepare a proposal for distribution after all claims are known, and mail the proposal to all heirs or legatees and creditors who may object to the proposed distributions within 30 days of mailing.
- In a supervised administration, advise the Personal Representative to make final distributions within 30 days of the approval of the final account, unless extended by the Court for good cause shown.
- Under the Probate Reform Act of 1994, advise the Personal Representative to distribute to a minor, without court approval, in accordance with directions or discretion given in the Will. If there is no Will or if the Will gives no guidance in this regard to the Personal Representative, the distribution can be made without court approval to the court appointed guardian of the minor, if an order authorizing the guardian to receive such distribution has been filed, pursuant to D.C. Code Section 20-1106 (G)(1)(A), or the custodian selected or approved by the Personal Representative for the minor under the Uniform Gifts to Minors Act of any jurisdiction, subject to the limits, if any, of such act [D.C. Code Section 20-1106 (G)(1)(B)] or in any other manner approved by the Court.
- Advise the Personal Representative that distributions of real property may be effectuated by a quitclaim deed and that all costs of deed recordation are a cost of administration of the estate.
- Advise the Personal Representative regarding the laws of intestate succession depending on the date of the decedent's death.

STANDARD 11.8

The attorney for the Personal Representative must know the requirements for closing an estate and the time periods for service and filing of documents required to close the estate.

AUTHORITY:

D.C. CODE § 20-301

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.1 AND 1.3

PRACTICE SUGGESTIONS:

- Advise the Personal Representative to verify all statements made in the closing pleadings.

PROBATE ATTORNEY PRACTICE STANDARDS

- Advise the Personal Representative regarding the preparation of the Account, Notice of Account, Certificate of Completion, and any other documents needed for closing the Estate.
- Advise the Personal Representative to serve all interested persons.
- Advise the Personal Representative of his responsibilities with regard to distributions and the payment of claims.
- Obtain stamped-filed copies of the filed Certificate of Completion or ensure that the Personal Representative obtains such stamped copies.
- In a supervised Estate, advise the Personal Representative to ensure that the Final Account is timely filed and that all requirements are timely answered.
- Advise the Personal Representative that when extensions of time are needed for completion of the account or to meet audit requirements, the Personal Representative or the attorney on his behalf should formally request an extension of time.
- Advise the Personal Representative that receipts and canceled checks must accompany any Final Accounts.
- Advise the Personal Representative that distribution should be completed within the time required by Court Rules once the Final Account is approved.
- Advise the Personal Representative to obtain receipts for all distributions.

STANDARD 11.9

An Attorney who is appointed Personal Representative shall adhere to the same standards set for attorneys who represent Personal Representatives, except that when an attorney serves as a Personal Representative, the attorney is responsible for performing all fiduciary duties.

AUTHORITY:

D.C. CODE § 20-741(24)

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.1, 1.3, 1.15 AND 8.4(D)

PROBATE ATTORNEY PRACTICE STANDARDS

PRACTICE SUGGESTIONS:

- Ensure that all facts set forth in the Probate Petition, the bond application (if applicable), the Notice of Appointment, and the Verification are true and correct before affixing his or her signature.
- Send the Notice of Appointment and General Information Sheet to all interested persons and known creditors. He must pay for the Proofs of Publication so that the Proofs of Publication and the Verification can be filed in a timely manner.
- Open an estate bank account through which all estate business is conducted in a FDIC insured account or accounts not to exceed \$100,000 in any one account. If substantial funds exist, the Personal Representative should seek advice regarding the Personal Representative's investment and fiduciary responsibilities.
- Maintain receipts and accurate records of all expenses and payment while administering the estate.
- Do not commingle personal or other non-estate funds with estate funds.
- File all required Inventories and appraisals.
- Prepare the summary sheet of the Inventory and a schedule for each category of the estate, determine the value of estate assets at the time of the decedent's death, and sign each schedule.
- Request the services of the appraiser in the Office of the Register of Wills to appraise all tangible personalty or use outside qualified appraisers.
- In supervised estates, mail or deliver a copy of the Inventory to all interested persons within three months of the Personal Representative's appointment. In supervised estates, there is no filing requirement; however, the Personal Representative must send a copy of the Inventory to all interested persons.
- File a supplemental Inventory with the Court if property is discovered after the Inventory is filed, or if an item has greater value than previously reported.
- In a supervised administration, if the Personal Representative has not marshaled or taken control of assets at the time the Inventory should be filed, the Personal Representative must file an Affidavit in Lieu of Inventory. A stamped file copy of the Affidavit should be maintained in the estate file.

PROBATE ATTORNEY PRACTICE STANDARDS

- Determine whether he/she has personally received claims from creditors AND check the Court file periodically to determine whether a creditor has filed a claim against the estate with the Register of Wills.
- Pay all allowable claims against the estate in order of priority no later than eight months from the date of the first publication of the Notice of Appointment.
- In all estates where the filing of Inventories and accounts is required, file the account within one (1) year and one (1) day of the first publication of the Notice of Appointment. Subsequent accounts must be filed every nine (9) months or upon the termination of the Personal Representative's appointment.
- Keep bank statements, canceled checks, receipts, and detailed records on expenditures made for estate purposes.
- Sign all accounts before a notary or a qualified member of the staff of the Office of the Register of Wills.
- File all required bank statements, receipts, and cancelled checks at the time the account is filed.
- Be familiar with the statutes and rules governing distributions, the family allowance for pre and post-1995 estates, the homestead allowance for decedents dying on or after April 27, 2001 and exempt property for decedents dying on or after April 27, 2001.
- Determine whether partial distributions to heirs and legatees should be made during the administration of the estate.
- Prepare a proposal for distribution after claims against the estate are known and paid and mail the proposal to all heirs or legatees and creditors, who may file objections within 30 days of mailing.
- In a supervised administration, make final distributions within 30 days of the approval of the final account, unless extended by the Court for good cause shown.
- Under the Probate Reform Act of 1994, distribute to a minor, without court approval, in accordance with directions or discretion given in the Will.
- Be familiar with all statutes and rules governing the closing of the Estate and any changes thereto, whether by enactment or judicial decision.
- Ascertain that all facts in all pleadings and accounts signed, served, or filed to close the Estate are true and accurate to the best of his/her knowledge.

PROBATE ATTORNEY PRACTICE STANDARDS

- Prepare the Accounts or have the Accounts prepared by an attorney or other professional.
- Obtain a stamped copy of the filed Certificate of Completion.
- Ensure that all recognized or approved claims are paid prior to the filing of the Certificate of Completion or the Final Account in a supervised administration.
- Obtain receipts for the payment of all claims and all distributions.
- In a supervised administration, ensure that all accounts are filed on time or, if necessary, seek an extension of time for filing.
- Respond timely to any requirements or, if necessary, seek an extension of time to respond.
- Ensure that all receipts or canceled checks accompany any Accounts.
- Make all distributions within the time frames required by Court Rules once the Final Account is approved.
- Sign all state and income tax returns for the Estate.
- If the Personal Representative is not qualified, hire an attorney or another qualified professional to prepare the tax returns and ensure the accuracy of the returns before signing.
- Ensure that the decedent's last tax return is properly filed and is accurate.
- Prepare and file all claims for refunds for estate or income taxes.
- Ensure that the estate is properly represented in litigation or administrative proceedings that arise over tax matters.
- Avoid conflicts of interest, especially between the interests of various heirs or between the Personal Representative's interest as an heir and other heirs.
- Use reasonable judgment in making investment decisions and adhere to any instructions in the Will or statutory investment requirements.
- Consult professionals whenever investments are made or property is bought or sold.

PROBATE ATTORNEY PRACTICE STANDARDS

- Keep the heirs informed of the progress of the administration of the Estate, especially the investments made and any property sold or bought.

PRACTICE STANDARD 12 Special Administrators and Special Masters

STANDARD 12.1

The attorney who serves as special administrator must know the purpose of the Special Administrator and the fiduciary obligations that the Special Administrator owes to the estate.

AUTHORITY:

D.C. CODE § 20-531 ET SEQ

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT
1.1

PRACTICE SUGGESTIONS:

- File an Inventory; however, Verifications or Proofs of Publication are not filed.
- Manage the assets of the Estate but do not sell assets of the Estate unless given permission by the Court. The Special Administrator may invest assets, solely with the goal of preserving the Estate assets.
- Carry out all the duties required as set forth in the order of appointment.
- Seek Court approval for any special or additional powers needed to carry out the duties of the Special Administrator, including permission to sell real property.
- Seek clarification from the Court when necessary as to the authority granted in the order of appointment.
- Carry out all the duties of a supervised Personal Representative except that he does not publish.
- Conduct or defend against litigation necessary to preserve the estate.
- Act in the same fiduciary manner as a Personal Representative in litigating during his tenure.
- Timely file any reports as required by the order of appointment and keep all interested persons informed of his actions.

PROBATE ATTORNEY PRACTICE STANDARDS

- File accounts as required of a supervised Personal Representative.
- File a final account when a Personal Representative is appointed.
- Distribute the estate assets to the Personal Representative once the final account is approved.
- Obtain a receipt for all distributions.

STANDARD 12.2: An attorney serving as Special Master must know the statutory requirements and rules governing the role of the Special Master.

AUTHORITY: SCR-CP 53, SCR-PD 1(F) AND JERRY M. V. D.C., NO. 1519-85 (IFP) (D.C. SUPER. CT., OP. DATED AUGUST 21, 1991); 119 DAILY WASH. L. RPTR. 2569 (DECEMBER 2 AND 3, 1991)

PRACTICE SUGGESTIONS:

- Carry out the duties set forth in the appointment order and use all of the powers, including discovery, to complete the investigation as set forth in the appointment.
- Review the appointment order, and if there are any questions, promptly address them to the Court.
- File a request for additional powers or clarification of the appointment order if at any time the Special Master believes additional powers or clarification of the appointment order are necessary.
- Adhere to the discovery rules and proceed to conduct the investigation so that the administration of the Estate is not delayed.
- Remain impartial and make objective findings based upon the facts.
- Be mindful that the Special Master's fee is paid either by the Estate, and thus the fee devolves on the heirs, or is paid by the person being investigated. If a question of the cost versus the benefit of work to be performed arises, seek instructions from the Court. Be mindful that the fees may be a burden on an innocent party.
- Treat all persons he encounters with the civility required of attorneys in litigation.