

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SCR NEW PROBATE 334 AND AMENDMENTS TO PROBATE 330 AND 331

RULE PROMULGATION ORDER 07-02

WHEREAS, Pursuant to D.C. Code § 11-946 the Board of Judges of the Superior Court approved new Superior Court Rule of the Probate Division 334 and amendments to Superior Court Rules of the Probate Division 330 and 331 at its monthly meeting on July 11, 2007; and

WHEREAS, these rules do not modify the Federal Rules of Civil or Criminal Procedure;

NOW, THEREFORE, it is hereby,

ORDERED, that new Superior Court Rule of the Probate Division 334 and amendments to Rules of the Probate Division 330 and 331 be and are hereby amended as set forth below; and it is further

ORDERED, that the above enumerated rules and amendments shall take effect on September 4, 2007 and govern all proceedings thereafter commenced and insofar is just and practicable all pending proceedings.

SCR PROBATE 334

TERMINATION OF CONSERVATORSHIP

(a) Termination by order. A conservatorship is terminated pursuant to an order of termination, entered in accordance with this rule.

(b) Termination upon death.

(1) Upon the death of the ward, the conservator shall file a notice of death forthwith. The conservator shall file a petition for termination, accompanied by a final account and report, within 60 days of the date of death.

(2) Cessation of expenditures. Upon the death of the ward, the conservator shall make no expenditures, except for expenses of administration and any expenditures authorized by the court. Any petition for authorization to make expenditures, other than for administration expenses, shall be filed no later than 30 days from the date of death. The petition need not be accompanied by a notice of hearing, and the court may act on the petition without a hearing.

(3) The hearing on the final account shall be held with the hearing on the petition for termination.

(4) Upon approval of the final account, the court shall enter an order of termination. The order of termination shall provide for expenses of administration and direct the conservator to file a verified statement evidencing transfer of the assets within 60 days of the order of termination, unless the court finds good cause for extending or shortening the time for filing the verified statement. The verified statement shall be filed together with a receipt evidencing final distribution and vouchers or cancelled checks evidencing any expenditures. If, despite diligent efforts, a receipt evidencing final distribution cannot be filed, the court may accept other evidence of distribution.

(5) In the event that the conservator is unable to make distribution of assets within the time required by the order of termination, the conservator shall, prior to the date on which the verified statement is due, file a petition for an order requiring that the estate assets be deposited in the Register of Wills Estates Deposit Account.

(6) If the estate of the ward consists of assets that are in need of protection, and no other fiduciary has been appointed, the conservator may, in the petition, advise the court of the need for protection and file with the petition a proposed order for the appointment of a Special Administrator. The court may thereupon appoint a Special Administrator pursuant to D.C. Code §20-531.

(c) *Termination in cases other than upon death.*

(1) The ward, conservator, or any other interested person may file a petition to terminate the conservatorship.

(2) Upon the filing of the petition, the court shall schedule a hearing.

(3) In accordance with D.C. Code §21-2031 and SCR-PD 311, the petitioner shall serve a copy of the petition and the notice of the hearing on the petition upon each of the following persons:

(A) the ward (if the ward is not the petitioner);

(B) the attorney of record for each party, or the party if not represented by an attorney;

(C) any person who has filed an effective request for notice pursuant to SCR-PD 304; and

(D) any other person upon whom service is required by statute or order of the court.

(4) If, after notice and hearing, the court determines that the petition should be granted, the court shall issue a preliminary order of termination and shall direct that the final account and report shall be filed within 60 days, unless the court finds good cause for extending or shortening the time for filing.

(5) Upon approval of the final account, the court shall enter a final order of termination. The final order of termination shall provide for expenses of administration and direct the conservator to file a verified statement evidencing transfer of the assets to the former ward or to such other person as the court determines is entitled to distribution. The verified statement shall be filed within 30 days of the order of termination, unless the court finds good cause for extending or shortening the time for filing the verified statement. The verified statement shall be filed together with a receipt evidencing final distribution and vouchers or cancelled checks evidencing any expenditures. If, despite diligent efforts, a receipt evidencing final distribution cannot be filed, the court may accept other evidence of distribution.

COMMENT

This rule implements D.C. Code §21-2075, which provides for termination of conservatorship proceedings. Although that section does not explicitly provide for an order of termination upon death of the protected individual, it appears to include an order of termination upon that event. See *Treadway v. Montague-Elliston*, 673 P.2d 331, 333 (Ariz. App. 1983) (construing a similar provision of the Uniform Probate Code).

Expenses of administration include court costs; bond premiums; approved fees of a conservator, guardian, attorney for the conservator, guardian or protected individual, examiner, visitor, or guardian ad litem; and bank service fees. See *In re Estate of Dickson*, 736 A.2d 1007 (D.C., 1999). It is the opinion of the committee, however, that expenses of administration do not include the debts of the protected individual. Whether there are allowable expenses other than administration expenses is an issue on which the committee takes no position, but it was thought useful to allow for that possibility in subparagraph (b)(2) of this rule.

The termination of a special conservatorship or other protective arrangement is governed by SCR-PD 330(f).

SCR PROBATE 330

ACCOUNTS AND REPORTS OF CONSERVATORS

~~(a) *Filing.* A limited or general permanent or temporary conservator shall submit an account and a report to the Court for administration of the trust:~~

~~(1) Annually, within 30 days of the anniversary date of appointment as permanent conservator.~~

~~(2) Within 60 days of~~

~~(A) The resignation or removal of the conservator.~~

~~(B) Termination of the protected individual's incapacity.~~

~~(C) Termination of the conservatorship except when a person named as temporary conservator pursuant to D.C. Code § 21-2055(a) is appointed temporary conservator in which case a final account of the temporary conservator shall not be required;~~

~~(3) At such other times as the Court may direct.~~

~~A report shall also be filed when there is a significant change in the capacity of the incapacitated individual to manage his or her financial resources.~~

(1) A temporary conservator shall submit an account and a report to the Court for administration of the estate within 60 days of termination of the appointment of the temporary conservator, except that if the temporary conservator is appointed permanent conservator, an account of the temporary conservator shall not be required.

(2) A limited or general permanent conservator shall submit an account and a report to the Court for administration of the estate:

(A) annually, within 30 days of the anniversary date of appointment as permanent conservator; and

- (B) (i) within 60 days of the resignation or removal of the conservator;
- (ii) as provided in SCR-PD 334; and
- (iii) at such other times as the Court may direct.

(3) A report shall also be filed when there is a significant change in the capacity of the ward to manage his or her financial resources.

~~(b) *Form of account.* The first accounting period shall begin at the date of appointment of the conservator. All accounts shall be typewritten or machine printed on forms prescribed by the Register of Wills or in a format substantially similar to the prescribed forms.~~

(b) *Form of account.*

(1) The first accounting period shall begin on the date of appointment of the conservator.

(2) A final account shall contain a certification that there remain no unsettled liabilities.

(3) Accounts shall be typewritten or machine printed on a form prescribed by the Register of Wills or in a format substantially similar to the prescribed form.

(c) *Report.* Each account shall have attached a conservator's report [Form II-R], that outlines the following:

(1) Significant changes in the capacity of the protected individual to manage his or her financial resources;

(2) The services being provided to the protected individual and the relationship of those services to the individual conservatorship plan;

(3) Significant problems relating to the conservatorship which have arisen during the reporting period; and

(4) The reasons, if any, why the conservatorship should not be terminated, or why no less restrictive alternative would permit the protected individual to manage his or her financial resources.

~~(d) *Service.* (1) On termination of the protected individual's incapacity the conservator shall provide copies of the final account to the formerly protected individual, or upon the protected individual's death, to the known successors in interest of that individual. The conservator shall provide copies of intermediate accounts or a notice of the filing of the account to the parties, and any person who has filed an effective request for notice pursuant to SCR PD 304.~~

~~(2) The conservator shall serve a copy of the account and report or a notice of filing upon the foregoing individuals by first class mail within five days before or after filing the account.~~

~~(3) The conservator shall attach to the account certification that copies or a notice of its filing have been provided in accordance with subparagraphs (d)(1) and (2) of this rule.~~

(1) A conservator shall serve a copy of an account and report within five days before or after filing the account, along with a notice of filing, on the ward or the ward's known successor(s) in interest, the guardian of the ward (if any), any party, any person who has filed an effective request for notice pursuant to SCR-PD 304, and any other person as directed by the Court. Service shall be personal service or by first class mail.

(2) A certificate of service, as provided in this rule, shall be attached to the account.

(e) *Form of notice.* Notice shall be in substantially the following format: "Notice is hereby given that my account as Conservator together with the Conservator's report has been or will be filed on or before _____"

You have the right to file exceptions or objections to the account or report within 10 days of the receipt of notice from the Register of Wills of a hearing on the account.”

~~(f) *Suggestion of death.* Upon the death of the individual for whom a conservator is appointed, the conservator shall file a suggestion of death forthwith and shall file a final account.~~

(f) *Special conservator or person granted authority under a protective arrangement.*

(1) A special conservator or a person granted authority under a protective arrangement ordered pursuant to D.C. Code § 21-2056 shall file a report setting forth all matters done pursuant to the order of appointment:

(A) within 30 days after completion of the task(s) for which the special conservator was appointed or the action provided for in the order for a protective arrangement; and

(B) (i) not later than 6 months after order of appointment or for a protective arrangement; and

(ii) at such other times as may be ordered by the Court.

(2) If a special conservator was required to furnish a bond, the conservator shall file an account with the report.

(3) If appropriate, the report should include a request for termination of the special conservator’s appointment.

(4) The report, and account if required, shall be served as provided in subsection (d), above.

(5) The special conservator’s appointment shall terminate upon an order of the court.

~~(g) *Special conservator.* A special conservator appointed by the Court shall file a report and, if required to file an undertaking, shall also file an account, said report (and account if required) to be filed with the Court promptly after completion of the task for which the special conservator was appointed. In no event shall the report (and account if required) be filed later than 60 days from date of appointment. The report shall set forth all matters done pursuant to the order of appointment.~~

COMMENT

The Uniform Fiduciary Accounting Principles and accompanying commentaries and illustrations recommended by the Committee on National Fiduciary Accounting Standards in collaboration with the National Center for State Courts are approved as an elaboration of the requirements of this Rule. Reference may be made to them for determination of the adequacy of a particular account. The Model Account Forms attached thereto are deemed consistent with the prescribed forms.

SCR PROBATE 331

AUDIT OF ACCOUNTS

(a) *Audit.* The Register of Wills shall audit all accounts. At the time of filing an account a fiduciary shall:

(1) Exhibit all checking account bank statements, cancelled checks, vouchers and any other documents evidencing cash transactions during the accounting period.

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

(3) Where otherwise not ascertained in accordance with subparagraph (a)(1) above, 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 the closing date of the accounting period.

(4) Exhibit certification or other statements of account of a custodian other than the conservator evidencing ownership of all securities carried in the account as of the closing date of the accounting period. In those cases in which a bank is acting as conservator, in lieu of exhibiting certificates, the bank may submit an affidavit executed by an officer of the bank, other than the officer signing the account, verifying the correctness of the securities and cash accounts held as of the closing date of the accounting period.

~~(b) *Receipt.* A receipt signed by a protected person upon restoration to competency; or by Personal Representatives; or persons formerly missing or detained, shall excuse the audit of the account as provided in (a) above.~~

~~(e)(b) *Retention of documentation.* A conservator shall retain all documentation of financial transactions until approval of the final account and disposition of any timely appeal from the approval of the final account.~~

~~(d) *Final account.* Each final account shall contain a certification that there remain no known unsettled liabilities.~~

~~(e)(c) *Hearing; objections to account.* Upon the completion of the audit of an account the Register of Wills shall schedule a hearing on said account and mail a notice of hearing to all parties and persons entitled to receive a copy of the account.~~

Objections to the account, if any, shall be filed and served on all persons entitled to a copy of notice of hearing on the account within 10 days after receipt of notice of the hearing.

~~(f)(d) *Liability of conservator to third parties.* Matters pertaining to the personal liability of a conservator, pursuant to D.C. Code § 21-2074, shall be determined in a separate proceeding for accounting, surcharge, or indemnification or other appropriate proceeding or action. All such proceedings may be commenced by any party in interest by filing a complaint. Except as otherwise provided in these Rules, the procedure in such action shall be governed by the Superior Court Rules of Civil Procedure.~~

~~(g) *Final distribution.* Promptly after full distribution and settlement of an estate, the fiduciary shall file with the Register of Wills receipts or cancelled checks evidencing final distribution.~~

SO ORDERED

BY THE COURT:

Date: _____

/s/
Rufus G. King, III
Chief Judge

Copies to:

Judges
Senior Judges
Magistrate Judges
Division Directors
Executive Officer
Clerk of the Court
Library
Daily Washington Law Reporter
Gideon Website
DC Bar Webmaster