

APPENDIX C. CONSERVATORS OF ADULTS APPOINTED IN A PROCEEDING INITIATED PURSUANT TO D.C. CODE § 21-1501, ET SEQ. (REPEALED)

The rules in Appendix C apply to conservatorships governed by now-repealed D.C. Code §§ 21-1501 to -1507. Statutory references in this appendix are to those statutory provisions. The rules in Chapter 1 govern to the extent that they are not inconsistent with the relevant statutory provisions and the rules in this appendix.

Rule C-1. Qualification of Conservator

Except for good cause only a person residing within the area of the subpoena power of the court or any bank or trust institution authorized to service in a fiduciary capacity, or a member of the bar authorized to practice law before this court may be appointed by the court as conservator of another.

Rule C-2. Bond

(a) REQUIREMENT AND AMOUNT. A conservator for the property and estate of an adult must execute a bond with surety approved by the court, conditioned for the faithful performance of such trust, before taking control of any assets of the adult. The penalty of the bond must be in the amount equal to the amount of the personal property, the annual income therefrom and the yearly rents to be derived from the real estate of such estate. Should it become necessary to sell real estate of the estate, the conservator must execute an additional bond in the amount required by the court before accepting the proceeds of the sale.

(b) No bond is required from a financial institution, as defined in Section 2(a)(18) of the 21st Century Financial Modernization Act of 2000, effective June 9, 2001 (D.C. Code § 26-551.02(18)), or a national bank as provided in 12 U.S.C § 92a(f).

Rule C-3. Property of the Protected individual

No conservator appointed by this court may, without prior court approval, remove or maintain outside the District of Columbia any personal assets held in a fiduciary capacity, except securities held in book entry form or in the custody of a broker, mutual fund, other corporate fiduciary, or of the U.S. Treasury.

Rule C-4. Expenditures and Sales

(a) EXPENDITURES. All expenditures from an estate by a conservator, except court costs and those provided by statute, must be made only upon prior authorization of the court.

(b) SALE OF PROPERTY. A conservator must not sell or otherwise dispose of estate property or encumber it without prior order of the court.

(c) EXPENDITURES AND SALES FOR INVESTMENT. A conservator must obtain a court order for all expenditures and sales for investment; however, the conservator may apply for approval by the court of an investment plan or program in accordance with Rule 119. If approved by the court, the investment plan may be carried out without the necessity of court approval of specific transactions; provided the transactions comply with the approved plan or program.

(d) FAILURE TO COMPLY. Failure to comply with the provisions of this rule constitute an irregularity or default. Such failure may result in personal liability and/or removal from office.

COMMENT

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

Reference should be made to Rule 119 for guidance on the reinvestment of the proceeds of sale of property. Excluding investment in federally insured bank accounts and United States Treasury obligations, a court order should be obtained to authorize such reinvestment if the proceeds are subject to court supervision and such investment is not authorized by the terms of the governing instrument or by statute.

Reference should be made to Rule 114 governing irregularity and default for the consequences of any failure to secure prior court authorization for any expenditures of funds, sale of property or the reinvestment of funds, sale of property or the reinvestment of property.

Rule C-5. Court Sales of Real and Personal Property

(a) SALE OF REAL PROPERTY. Unless otherwise herein provided, a sale of real estate or any interest in land under an order of this court is governed by the provisions of 28 U.S.C. § 2001 in the same manner as if such provisions were, by the terms thereof, applicable to proceedings in this court.

(b) PUBLIC SALE: PROCEDURE. Except when the order of court otherwise provides, the officer making a public sale must proceed in the manner following:

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

(2) *Terms of Sale.* The terms must be 1/3 of the purchase money in cash and the balance in two equal installments, payable on or before one and 2 years from date of

settlement of sale, represented by the promissory notes of the purchaser with interest at 6% per annum, payable semi-annually, secured by deed of trust on the property, or all cash at the option of the purchaser.

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

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

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

(6) *Compensation of Auctioneer.* The compensation of the auctioneer must be 1.5% of the first \$10,000.00, plus 3/8 of 1% of any amount over \$10,000.00 of the value of the equity in the property being sold. In the event that the property is unencumbered by indebtedness, the auctioneer's compensation must be computed and paid at the same rate upon the entire sales price. In no case will the auctioneer's compensation be less than \$35.00 dollars unless the property is withdrawn after being offered for sale, in which event the auctioneer's compensation will be \$25.00 dollars.

(c) PRIVATE SALE: PROCEDURE.

(1) *Order for Sale.* A private sale may be ordered after hearing of which notice to all parties and affected persons is given by publication or otherwise as the court may direct, if the court finds the best interests of the estate will be conserved thereby.

(2) *Appraisers.* Before confirmation of a private sale the court must appoint 3 disinterested persons to appraise the property, or different groups of 3 appraisers each to appraise properties of different classes or situated in different locations. Such appraisers must be licensed by the District of Columbia.

(3) *Minimum Sale Price.* A private sale may not be confirmed at less than 2/3 of the appraised value.

(4) *Order Nisi Increased Offer; Confirmation.* At least 14 days before confirmation of a private sale the terms thereof must be published in such newspaper or newspapers of general circulation in the District of Columbia as the court may direct, and the sale must not then be confirmed if a bona fide offer has been made, under such conditions as the court may prescribe, which guarantees at least a 10% net increase over the price specified in such published offer.

(d) ACCOUNT; DISTRIBUTION OF PROCEEDS. Promptly after the settlement of a private or public sale made under this rule a full and detailed account must be filed and presented to the court and the proceeds distributed as the court has directed or may direct.

(e) COMPENSATION TO OFFICER MAKING SALE. The compensation of the trustee or officer making a sale hereunder must be 5% on the first \$3,000.00, plus 2.5% on the next \$10,000.00, plus 1% on any amount in excess of \$13,000.00 of the value of the equity in the property being sold. In the event that the property is unencumbered by indebtedness, the compensation of the trustee or officer making the sale will be computed and paid at the same rate upon the entire sales price. The compensation may be increased or reduced by the court for special cause shown in writing.

(f) SALE OF PERSONAL PROPERTY. Unless otherwise herein provided, a sale of personal property under an order of this court is governed by 28 U.S.C. § 2004, in the same manner as if such provisions were, by the terms thereof, applicable to proceedings in this court. The officer making sale must account and distribute as provided by Rule C-5(d). The officer may be allowed compensation and expenses as determined by the court.

Rule C-6. Inventories and Accounts

(a) REQUIREMENTS. The conservator must file an inventory and accounts. Any inventory and account must comply with Rule 109 and must be accompanied by the form for reporting complete account numbers required by that rule.

(b) INVENTORY AND APPRAISALS.

(1) *Time for Filing and Form.* The inventory must be filed by the conservator within 90 days after the conservator's appointment. The inventory must be typed or electronically printed on the form maintained by the Register of Wills or a form that is substantially similar in content and format to that form, and must be verified in the manner described in Rule 103(c). The inventory must be filed with appraisals as provided in Rule C-6(b)(2)-(3).

(2) *Tangible Personal Property.* Promptly upon qualification, the conservator must engage the services of a qualified appraiser to appraise all tangible personal property in the protected individual's estate if, in the judgment of the conservator, the value of property exceeds \$1,000.00. Without the payment of additional court fees and subject to availability, the standing court appraiser may be engaged for this purpose. If the conservator believes that the tangible personal property is valued at \$1,000.00 or less, the conservator must submit with the inventory an affidavit or declaration setting forth the description and value of the property.

(3) *Valuation of Real Estate.* The conservator may inventory real property at the value set by the District of Columbia for purposes of assessment and taxation for the fiscal

year in which the guardian was appointed. If the conservator determines that any real property should be independently appraised, the fair market value must be determined by an appraiser selected by the conservator who is licensed by the District of Columbia.

(4) *No Assets*. If, at the time of the appointment of the conservator, the protected individual has no assets that can be collected, the conservator must file an affidavit or declaration in lieu of the inventory stating that the conservator has collected no assets. The affidavit or declaration must be filed within 90 days after the conservator's appointment.

(c) ACCOUNT.

(1) An account must be filed annually with the Register of Wills within 30 days after the anniversary date of the conservator's appointment. The account must be verified in the manner described in Rule 103(c). The account must contain an itemized statement of all receipts and disbursements for the accounting period. The account must be typed or electronically printed on the form maintained by the Register of Wills or a form that is substantially similar in content and format to that form, and must list with detailed particularity:

(A) all real and personal assets of the estate and the value of each;

(B) a statement of all receipts and disbursements;

(C) any sale, transfer or other disposition of assets;

(D) any investment, or change in form of assets;

(E) the amount of the conservator's bond; and

(F) the name of the surety.

(d) TERMINATION OF CONSERVATORSHIP; FINAL ACCOUNT. Upon the death of protected individual, the conservator must promptly file a notice of death. Upon termination by reason of the protected individual's restoration of capacity or death, or in the event of the conservator's death or incapacity, the conservator or the conservator's personal representative must file a final account within 60 days from the date of the event, except that the account is not due earlier than the date specified for filing of the inventory.

(e) NOTICE OF ACCOUNT.

(1) Within 7 days before or after filing of the account, the conservator must give notice of the filing to the protected individual, any adult having care and custody of the protected individual, and any other party. The notice must be on the form maintained by

the Register of Wills or a form that is substantially similar in content and format to that form, and must be served by first class mail.

(2) The conservator must attach to the account a certification that the notice has been provided in accordance with this rule.

(f) DOCUMENTS REQUIRED FOR AUDIT. At the time of filing an account, the conservator must:

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

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

(3) where not otherwise ascertained in accordance with Rule C-6(f)(1) - (2) or (4), file a written statement by each depository of cash balances on deposit therein and of all other assets (except tangibles) carried in the account as of closing date of the accounting period; and

(4) either:

(A) exhibit certificates or other statement of account of custodian other than the guardian (e.g., bank, broker, mutual fund, U.S. Treasury) evidencing ownership of all securities held for future accounting; or

(B) if a corporation is acting as conservator or the services of a depository have been authorized, the corporation or other depository may submit an affidavit or declaration executed by an officer of the corporation or depository, other than the officer signing the account, verifying the correctness of the securities and cash accounts held for future accounting and the corporation's or depository's custody of the securities and accounts.

(g) AUDIT AND EXAMINATION. Upon filing of an annual account, the Register of Wills must promptly audit the account, examine all securities (except as provided in Rule C-6(f)(4)), check them with the account, and ascertain the correctness of all reported deposits. After determining that the account is complete and accurate in all respects, the Register of Wills must submit the account to the court for approval.

(h) OBJECTIONS TO ACCOUNT. The protected individual and any person entitled to receive notice of the filing of the account have 30 days from the date of the notice to file any objections to the account with the Register of Wills. Any objection must be served on the conservator and all persons entitled to receive the notice.

(i) **STATEMENT OF DISTRIBUTION AND SETTLEMENT.** Promptly after full distribution and settlement of an estate, the conservator must file with the Register of Wills receipts or canceled checks evidencing final distribution.

Rule C-7. Conflict of Interests

Whenever a conservator of the property and estate of an adult has occasion to sue or defend in behalf of the adult concerning a matter in which the conservator has a possible conflicting interest, the conservator must report the facts in writing to the court so that it may take appropriate action.

Rule C-8. Proceedings in Contested Cases

(a) **COMMENCEMENT OF ACTION.** An action to (1) contest a petition for the appointment of a conservator, (2) to remove a conservator, (3) for instructions, or (4) any other action regarding the conservator may be commenced by any party in interest by filing a verified complaint with the Register of Wills. Except as otherwise provided, the procedure in such actions, including service of process, is governed by the civil rules.

(b) **SUMMONS.** The Register of Wills must issue a summons upon the request of the plaintiff in the action. In an action brought pursuant to this rule to contest a petition for the appointment of, or to remove, a conservator or for instructions, the summons must be directed to all interested persons and all indispensable parties under Civil Rule 19. In any other action against the estate, the summons must only be directed to the conservator and may be directed to others. In such actions against an estate in which the interested persons are not named parties, the conservator must notify the interested persons of the pendency of the actions and of the right to intervene. The notice must be provided by first class mail within 21 days after service of the action; and the conservator must file a certificate reflecting service of the notice at the time of filing a response.

(c) **DISCOVERY.** When a complaint is filed pursuant to this rule, the parties may proceed with discovery pursuant to the civil rules.

(d) **SCHEDULING AND SETTLEMENT CONFERENCE.** Within 120 days after a complaint has been filed, the court must conduct an initial scheduling and settlement conference.

(e) **OTHER CONTESTED MATTERS.** All other contested matters which are not initiated by complaint, including objections to reports or petitions filed with the court, must be treated as motions. The court may permit discovery upon a showing of good cause.

Rule C-9. Compensation

(a) **COMPENSATION FOR ORDINARY SERVICES.** Compensation to a conservator for ordinary services is by commission which must not exceed 5% of amounts disbursed from the estate. Ordinary services are those normally performed by a fiduciary in administering such an estate and include, but are not limited to, the following:

- (1) qualification as the conservator;
- (2) collection of the protected individual's assets and income;
- (3) payment of the protected individual's debts and costs of maintenance, as authorized or ratified by the court;
- (4) general supervision of the protected individual's investments and policy relating thereto, including safekeeping; and
- (5) preparation and filing of all inventories, accounts, and reports to the court.

(b) **TIME AND METHOD FOR CLAIMING COMPENSATION FOR ORDINARY SERVICES.** A claim for commission for ordinary services may only be made in an annual account and, except as otherwise provided in these rules, no statement of services is required. The amount or percentage of commission claimed need only be reflected in the account itself.

(c) **COMPENSATION FOR EXTRAORDINARY SERVICES.** At the time of filing an annual account or at any other time upon the showing of good cause, a guardian may petition the court for compensation for extraordinary services rendered. Extraordinary services are in addition to those services set forth in Rule C-9(a). The petition must include the following:

- (1) statement of jurisdiction and controlling court rule;
- (2) statement of services rendered sufficiently complete on its face to establish that the requested payment is reasonable and, as appropriate, that the services are in fact extraordinary;
- (3) the time devoted thereto, and the normal hourly rate of the conservator, if any;
- (4) evidence of the necessity or purpose of the services;
- (5) results achieved, including the benefit to the estate or protected individual, if any;
- (6) statement of all prior allowances from the estate to the conservator or other fiduciary or counsel, to the extent known;

(7) the ability of the estate to meet future needs of the protected individual and to compensate fairly the conservator, and;

(8) statement that notice has been given and to whom given.

(d) **TURNOVER COMMISSION.** A turnover commission may be claimed in a conservator's final account not exceeding 5% of the net assets to be turned over to a successor fiduciary or to the former protected individual, as the case may be. A turnover commission is in addition to the commission for ordinary services based on disbursements actually made during the accounting period. As a general rule, no statement of services is required in support of a claim for a turnover commission. The amount and percentage claimed need only be reflected in the final account. The exceptions to this general rule are as follows:

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

(2) *The Protected Individual's Death or Restoration to Competency.* If within 3 years of the conservator's appointment, a conservatorship terminates because of the protected individual's death or restoration to competency, and if the net assets to be turned over exceed \$100,000.00, the conservator must either file a statement of services in support of the turnover commission claimed or apply for a waiver of the requirement for a statement of services by filing a written request with the court.

(e) **COMPENSATION TO ATTORNEYS.**

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

(2) *Performance of Conservator's Ordinary Services; Assignment of Commission.* If an attorney performs on behalf of a conservator any of the above ordinary services in administering the estate, the court may authorize the attorney to be compensated from

the estate in the conservatorship proceeding only if a written assignment of the conservator's commission, in whole or in part, is filed with the court. Assignment of commission as used in this rule refers to those instances in which an attorney has, pursuant to an agreement with the conservator, performed some or all of the services normally expected of the conservator in administering the estate and has obtained an assignment from or written consent of the conservator to receive part or all of the conservator's commission as compensation for the attorney's services.

(f) NOTICE OF AND CONSENTS TO PETITIONS FOR COMPENSATION FOR EXTRAORDINARY SERVICES OR FOR ATTORNEY FEES. Notice of the filing of a petition for compensation for extraordinary services by the conservator or for attorney's fees (other than for ordinary commissions) and a copy of the petition must be given to the conservator (if appropriate) and to all other parties and affected persons as determined by the court by first class mail within 7 days before or after the filing. The petition must have attached to it a certification that copies and a notice of its filing have been provided in accordance with this rule.

(1) *Form of Notice.* The notice required must be on the form maintained by the Register of Wills or a form that is substantially similar in content and format to that form, and appended to the petition.

(2) *Form of Consent.* Consents to the petition must be on the form maintained by the Register of Wills or a form that is substantially similar in content and format to that form and, once filed, constitute a waiver of the right to object thereto.

(g) REFERENCE TO REGISTER OF WILLS OF PETITION FOR COMPENSATION FOR EXTRAORDINARY SERVICES OR FOR ATTORNEY FEES. All petitions for compensation to a fiduciary for extraordinary services and attorney's fees must be referred to the Register of Wills for appropriate recommendations.

(h) DISCRETION RESERVED TO THE COURT. The court may, at any time, require a statement of services or any additional verified documentation in determining an appropriate commission in any particular case.

(i) OBJECTIONS TO PETITION FOR COMPENSATION. Parties and affected persons may file an objection to the petition for compensation for extraordinary services by the conservator or for attorney's fees. The objection must be filed within 21 days after mailing of the petition and notice and must include specific statements of the grounds for contesting the petition. The objection must be mailed to the conservator and the conservator's attorney. If an objection is not filed within the prescribed time, the court may treat the petition as conceded. A party or affected person may specifically request an oral hearing by writing "Oral Hearing Requested" at the bottom of the objection above the signature, but the court, in its discretion, may decide the matter without a hearing.

COMMENT

No compensation will be awarded for supervision of a protected individual's person.

Generally, the preparation and filing of routine tax returns and accountings are considered to be ordinary services. If the services involved were in whole or in part extraordinary, compensation for such services may be claimed by petition pursuant to section (c) of this rule. If the conservator retains the services of a tax preparer, payment of the tax preparer's fee may be made subject to the requirement that expenditures be made only upon prior authorization of the court.

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

With respect to compensation for extraordinary services under this rule, the amount of commission for ordinary services will be taken into account, but not be the sole determining factor.

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

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