

## **SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

### **Notice of Proposed Amendments to the Superior Court Rules of the Probate Division**

The District of Columbia Superior Court Rules Committee recently completed review of proposed amendments to the Superior Court Rules of the Probate Division.<sup>1</sup> The Rules Committee will recommend to the Superior Court Board of Judges that the amendments be approved unless, after consideration of comments from the Bar and the general public, the proposed amendments are withdrawn or modified.

Written comments must be submitted by October 15, 2021. Comments may be emailed to [Laura.Wait@dccsystem.gov](mailto:Laura.Wait@dccsystem.gov) or may be mailed to:

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District of Columbia Courts  
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Washington, D.C. 20001

All comments submitted in response to this notice will be available to the public.

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<sup>1</sup> The rules have been completely reorganized and renumbered, so the strike-through version does not assist the reader in understanding the changes that have been made. Therefore, only the clean version of the proposed rules has been published. As reflected in proposed Probate Rule 101(b)(7), current probate rules that govern proceedings under superseded law will be moved to appendices. Those appendices are not attached to this notice.

## **CHAPTER 1 - ALL PROCEEDINGS**

### **Rule 101. Title, Scope, and Purpose**

(a) **TITLE.** These rules may be known as the Superior Court Rules of the Probate Division and may be cited as “Super. Ct. Prob. R. \_\_\_\_.”

(b) **SCOPE.** These rules apply to proceedings in the Probate Division of the Superior Court of the District of Columbia as follows:

(1) *All Proceedings.* Chapter 1 governs all proceedings in the Probate Division.

(2) *Decedent’s Estates.* Chapter 2 governs all estates of decedents dying on or after July 1, 1995.

(3) *Intervention Proceedings.* Chapter 3 governs all proceedings instituted under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act.

(4) *Foreign Estates.* Chapter 4 governs foreign estate proceedings.

(5) *Property and Estates of Minor Children.* Chapter 5 governs proceedings regarding property and estates of minor children.

(6) *Trusts.* Chapter 6 governs proceedings regarding trusts or trustees.

(7) *Proceedings Under Superseded Law.*

(A) Appendix A governs all estates of decedents dying prior to January 1, 1981.

(B) Appendix B governs all estates of decedents dying on or after January 1, 1981 through June 30, 1995.

(C) Appendix C governs proceedings regarding conservators of adults in proceedings initiated under the now-repealed D.C. Code §§ 21-1501 to -1507 (“old law conservatorships”).

(D) Appendix D governs commutation of dower.

(c) **PURPOSE.** These rules should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

(d) **APPLICABILITY OF CIVIL RULES.** Except when inconsistent with these rules or the traditionally uncontested and administrative proceedings provided for in these rules, the Superior Court Rules of Civil Procedure are applicable to proceedings in the Probate Division.

## **Rule 102. Matters Presented to the Register of Wills**

The Register of Wills will review and, if appropriate, make recommendations regarding all *ex parte* matters and all orders on consent or waiver of notice prepared for the signature of the judge assigned to fiduciary matters.

## **Rule 103. Form of Filings; Verifications**

### (a) FORM OF FILINGS.

(1) *In General.* A person must present a matter in the form required by the applicable rule or statute.

(2) *Form of Filing Not Specified.* When the form of filing is not specified by rule or statute, a person seeking a court order or other action or assistance from the court must present the matter in the form of a petition filed in accordance with Rule 105.

### (b) CAPTION. Every filing must have a caption with:

(1) “Superior Court of the District of Columbia, Probate Division”;

(2) the case name; and

(3) the case number.

### (c) VERIFICATIONS.

(1) *In General.* Unless otherwise provided by law, when a filing must be verified, the person who is required to verify must state the following directly above the person’s signature:

I, \_\_\_\_\_, do solemnly declare and affirm under penalty of law, including penalty of perjury, that the contents of the foregoing document are true and correct to the best of my knowledge, information, and belief.

### (2) *Person Required to Verify.*

(A) *In General.* When a rule or statute does not specify the person required to verify, a verification must be made by a fiduciary or person with personal knowledge of the facts to be verified.

(B) *By Officer, Agent, Attorney.* A verification may be made by an officer, agent, or attorney only when:

(i) a corporation is a party or fiduciary; or

(ii) the facts are within the personal knowledge of the attorney or agent.

(C) *Statement of Authority to Verify*. Where verification is made on behalf of a party or person, the verification must set forth the representative capacity and, in the case of a corporation, the title of a person verifying and must contain a statement that the person has authority to verify the filing on behalf of the person's principal.

(d) NONCONFORMANCE. A filing that does not conform to the requirements of this rule will not be accepted for filing.

## COMMENT

For purposes of this rule, "case name" should include, for example, the name of the decedent in a decedent's estate proceeding, the name of the subject in a guardianship or conservatorship proceeding, or the parties in a major litigation case.

## Rule 104. Forms

(a) IN GENERAL. The Register of Wills must maintain forms for inventories, accounts, and reports and may maintain other forms as may be useful to implement or effect compliance with these rules. Forms maintained by the Register of Wills are available on the court's website.

(b) SUPPLEMENTING FORMS. Any form may be supplemented with any additional information, memorandum, or document necessary to present the matter or issue to the court.

(c) ACCEPTANCE FOR FILING. Unless otherwise provided by statute or these rules, only those forms prescribed by these rules or maintained by the Register of Wills, or forms that are substantially similar in content and format to those forms, will be accepted for filing.

## Rule 105. Procedures for Petitions and Objections

(a) APPLICABILITY.

(1) *Petition*. This rule applies unless the form of a petition is prescribed by a specific rule.

(2) *Objection*. This rule applies when a rule permits the filing of an objection.

(b) CONTENTS OF PETITION OR OBJECTION.

(1) *Required Contents*. The petition or objection must include:

(A) the case caption, which must include:

(i) "Superior Court of the District of Columbia, Probate Division";

(ii) the case name; and

(iii) the case number;

(B) the filer's interest;

(C) a statement of the court action or assistance requested;

(D) the reasons why the court action or assistance requested is necessary or appropriate;

(E) the signature, printed name, address, and telephone number of the filer and, for electronic filers, the information required by any applicable administrative order; and

(F) a certificate of service, listing the names and addresses of the parties and the interested persons in the case and any attorney of record.

(2) *Request for Hearing.* A petition or objection may include a request for a hearing.

(3) *Proposed Order.* A petition or objection must be filed with a separate proposed order that specifically sets out the court action or assistance sought by the filer. Electronic filers must also send a copy of the proposed order by e-mail to the clerk as required by any applicable administrative order.

(c) RESPONSE TO PETITION OR OBJECTION.

(1) *When Permitted.* Any party or interested person may file a response to a petition or objection.

(2) *Timing.* A response must be filed within 14 days after the petition or objection is filed.

(3) *Contents of Response.* Rule 105(b)(1) applies to a response to a petition or objection.

(d) SERVICE OF PETITION, OBJECTION, OR RESPONSE.

(1) *How Served.* Unless otherwise required by a specific statute or rule, a petition or objection, or a response to a petition or objection, must be served on the persons listed in the certificate of service:

(A) by electronic service, to attorneys and persons registered for electronic filing; or

(B) by first class mail or personal service.

(2) *When Served.* Unless otherwise provided by a specific statute or rule, a petition or objection, or a response to a petition or objection, must be served not later than the date on which it is filed.

(e) HEARING ON PETITION OR OBJECTION.

(1) *Setting Hearing.* The court may set a hearing on a petition or an objection in response to a request for hearing or on its own initiative.

(2) *Notice of Hearing.*

(A) *In General.* Except as provided in Rule 105(e)(2)(B), the court must give notice of the hearing under Rule 106.

(B) *Petitions Filed Under D.C. Code § 20-107 (b).* For petitions filed under D.C. Code § 20-107(b) (2012 Repl.), the court must notify the personal representative that a hearing on the petition has been set, and the personal representative must serve written notice of the hearing on all interested persons by certified mail or personal delivery at least 10 days prior to the hearing.

(f) **DISCOVERY.** On request, the court may authorize discovery in accordance with Civil Rules 26 through 37. If the court authorizes discovery, the court must specify the extent of discovery permitted.

## **COMMENT**

For purposes of this rule, “fiduciary” includes a personal representative; guardian, conservator, or special conservator, for an incapacitated adult; guardian of the property of a minor; or court-appointed trustee.

### **Rule 106. Notice Requirements**

(a) **IN GENERAL.** Unless otherwise provided by statute or these rules:

(1) notice of a filing must be given to all the parties in a case, interested persons in decedent's estate cases, and affected persons in all other cases as the court directs; and

(2) notice may be given by sending the filing by first class mail postage prepaid to the prescribed person.

(b) **MODIFICATION OF NOTICE REQUIREMENTS.** The court may modify the requirements of notice under these rules when the number of the parties and affected persons makes the time, labor, and expense of complying disproportionate to the distributive shares of those having an interest in the matter.

### **Rule 107. Service or Notice by Publication**

(a) **PROOF OF PUBLICATION.** When a statute or these rules require notice by publication, publication must be proved by affidavit or declaration of an officer or agent of the publisher stating the dates of publication and accompanied by a copy of the order or notice as published.

(b) **LEGAL NEWSPAPER OR PERIODICAL DEFINED.** For purposes of these rules, a legal newspaper or periodical of daily circulation means a publication designated by the court that is:

(1) devoted primarily to publication of opinions, notices and other information from the courts of the District of Columbia;

(2) circulated generally to the legal community; and

(3) published at least on each weekday that the Superior Court is in session.

**Rule 108. Court Costs and Filing Fees**

**(a) COURT COSTS ON VALUE OF ESTATE.**

(1) Court costs are assessed on the value of a decedent's estate, conservatorship estate and minor child's estate subject to a guardianship, excluding the value of real property, as follows:

\$500.00 or less	N/C
Over \$500 to \$2,500	15.00
Over \$2,500 to \$15,000	50.00
Over \$15,000 to \$25,000	100.00
Over \$25,000 to \$50,000	150.00
Over \$50,000 to \$75,000	250.00
Over \$75,000 to \$100,000	350.00
Over \$100,000 to \$500,000	575.00
Over \$500,000 to \$750,000	825.00
Over \$750,000 to \$1,000,000	1,275.00
Over \$1,000,000 to \$2,500,000	1,800.00
Over \$2,500,000 to \$5,000,000	2,300.00
Over \$5,000,000 to \$50,000,000	2,300.00
plus 0.02% of amount over \$5,000,000	
Over \$50,000,000	11,300.00

(2) Court costs in the total amount of \$25.00 are assessed for all real property in the District of Columbia.

(3) Court costs under Rule 107(a)(1) are computed using the initial gross principal value of the assets of the estate, plus any increase in that value resulting from:

(A) collection of additional assets; and

(B) the disposition of any asset, including sale of real property, other than by distribution to a legatee, ward, or successor fiduciary.

(4) If additional assets are collected or an asset is sold and, as a result, there is an increase in the total value of an estate from one cost category set out in Rule 107(a)(1) to a higher category,

additional court costs are due in the amount assessed for that higher category, with credit for the amount of court costs previously paid.

(5) For decedent's estates, court costs are collected as follows:

(A) Court costs assessed under Rule 107(a)(1) and (2) are assessed and collected at the time the petition for probate is filed.

(B) In supervised administrations, any additional court costs which are due under Rule 107(a)(4) are assessed and collected at the time of the filing of an account which reflects the collection or disposition of assets as provided in Rule 107(a)(3).

(C) In unsupervised administrations, any additional court costs which are due under Rule 107(a)(4) must be paid at the time of the filing of the verification and certificate of notice, and thereafter at the time any increase in value of the estate results in additional court costs being due.

(6) For conservatorship and guardianship of minor child's estate, court costs are assessed and collected at the time of the filing of the first account. Any additional court costs which are due under Rule 107(a)(4) must be paid at the time of the filing of any subsequent account which reflects the collection or disposition of assets as provided in Rule 107(a)(3).

(b) INITIAL FILING FEES. Filing fees are assessed and collected at the time of filing any document which requires opening a new docketed case or matter, as follows:

Complaint	\$120.00
Petition for appointment of a guardian for an incapacitated adult	N/C
Petition for the appointment of a guardian for the estate of a minor	N/C
Petition for probate	<i>See court costs in Rule 107(a)</i>
All other filings resulting in the opening of a new court file	\$ 45.00

(c) OTHER FILING FEES. Filing fees are assessed and collected at the time of filing any document other than an initial filing, as follows:

Counterclaim, cross-claim, or third party complaint	\$ 20.00
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Answer to a complaint, counterclaim, cross-claim or third party complaint	N/C
Response or reply to a motion or petition	N/C
Certificate of discovery, or pretrial statement	N/C
Inventory, account, report, or plan of fiduciary	N/C
Petition for compensation	N/C
Consent or waiver	N/C
Verification and certificate of notice, certificate of completion, receipt of distribution	N/C
Affidavit	N/C
Praecipe not requiring court action	N/C
Claim \$ 5.00	
Notice of appeal	\$100.00
or as revised by the Court of Appeals	
Any other filing, including motion, petition, or objection	\$ 20.00

(d) MISCELLANEOUS FEES. Miscellaneous fees are assessed and collected by the Register of Wills, as follows:

Two certified copies of will (and codicils, if any) admitted to probate and twelve copies of Letters of Administration, issued upon appointment of personal representative	N/C
Letters of Administration or Appointment; per copy	\$ 1.00
Triple seal (excluding copy costs), or commission oath	\$ 45.00
Alias Summons	\$ 10.00

Certification	\$ 10.00
Any writ	\$ 20.00
Copy requiring court seal	\$ 5.00
Copy; per page	\$ .50
Records search	\$ 10.00
Attending safe deposit box opening	\$100.00

(e) GOVERNMENT AGENCY FEES. No filing fees will be charged to any government agency.

### COMMENT

A praecipe is a filing which does not request court action, such as a praecipe notifying the court of a change of address, a praecipe entering the appearance of counsel, or a praecipe noting the dismissal of a case. E-filing vendor fees are not covered by, and may be in addition to, the court costs and fees set out in this rule.

### Rule 109. Privacy Protection for Filings Made With the Court

(a) REDACTED FILINGS. Unless the court orders otherwise, a party or nonparty must redact, in an electronic or paper filing with the court, an individual's social-security number and driver's license number and a financial account number, except that a party or nonparty making the filing may include the following:

(1) the acronym "SSN" where the individual's social-security number would have been included;

(2) the acronym "DLN" where the individual's driver's license number would have been included; and

(3) the last 4 digits of the financial account number.

(b) EXEMPTION FROM THE REDACTION REQUIREMENT. The redaction requirement does not apply to a testamentary writing.

(c) ADDITIONAL UNREDACTED FILING UNDER SEAL.

(1) *Motion to File an Unredacted Copy Under Seal.* Except as provided in Rule 109(c)(2), a person who makes a redacted filing and wishes to file an additional unredacted copy must file a motion to file an unredacted copy under seal. If granted, the court must retain the unredacted copy as part of the record.

(2) *Separate Form for Inventory or Accounting.* A person who makes a redacted filing that includes an inventory or accounting, which identifies, contains, or refers to a financial account number, must file under seal a separate form prescribed by the Register of Wills, which lists each account, the financial institution at which the account is maintained, and the full account number. This separate form will be maintained by the court under seal and may be unsealed only by court order on a showing of good cause.

(d) **RESPONSIBILITY TO REDACT.** The responsibility for redacting personal identifiers or financial account numbers rests solely with the person or entity making the filing.

## **COMMENT**

This rule addresses the concern about access to, and dissemination of, private information in the court's public records to the detriment of individuals whose privacy is compromised simply because their otherwise private information is contained in court filings. The risk of invasion of privacy is heightened where the court's public records are made available through the internet. Although this rule does not expressly prohibit all use of personal identifiers and other private information, such as home addresses, it is the policy of the court that parties not include home addresses and other private information in any court filings unless it is necessary to the matter being litigated or is otherwise expressly required by statute or other rules of the court, including civil rules made applicable to Probate Division proceedings by Rule 101(d).

## **Rule 110. Service on Nonresident Fiduciary**

(a) **POWER OF ATTORNEY DESIGNATING REGISTER OF WILLS.** A fiduciary appointed by the court who is or becomes a nonresident of the District of Columbia, or who is continuously absent from the District of Columbia for more than 60 days, must file with the Office of the Register of Wills an irrevocable power of attorney designating the Register of Wills as the person upon whom all notices and process issued by a competent court in the District of Columbia may be served with the same effect as personal service on the fiduciary in relation to all suits or matters pertaining to the proceeding in which the fiduciary is appointed. The power of attorney required by this rule must include the fiduciary's residential address.

(b) **TIME TO FILE.**

(1) *In General.* Except as provided in Rule 109(b)(2), the fiduciary must file the power of attorney at the time the fiduciary seeks appointment or within 14 days after the date the fiduciary becomes a nonresident or continuously absent from the District of Columbia.

(2) *Guardian Appointed Under D.C. Code §§ 21-101 to -120.* A guardian appointed under D.C. Code §§ 21-101 to -120 (2012 Repl.) must file the power of attorney within 10 days after appointment.

(c) SERVICE BY REGISTER OF WILLS. The Register of Wills must forward to the fiduciary, by registered or certified mail to the address stated in the power of attorney, all notices and process served on the Register of Wills under this rule.

### **Rule 111. Sureties**

A member of the District of Columbia Bar in active practice or other officer of the court will not be accepted as a surety.

### **Rule 112. Inventory**

#### (a) DUTY TO PREPARE INVENTORY.

(1) *In General.* The following fiduciaries must prepare and file an inventory of assets of the decedent, protected person, minor, or trust beneficiary:

- (A) a supervised personal representative;
- (B) a special administrator;
- (C) a conservator;
- (D) a guardian of a minor; and
- (E) a trustee of a trust under continuing supervision of the court.

(2) *Unsupervised Personal Representative.* An unsupervised personal representative must prepare an inventory of assets of the decedent as required by this rule and serve the inventory on each interested person within three months of the date of appointment. The unsupervised personal representative may file the inventory with the court.

#### (b) FORMAT.

##### (1) *Form of Inventory.*

(A) *Filed Inventory.* An inventory that is filed with the court 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.

(B) *Unsupervised Personal Representative.* An unsupervised personal representative of a decedent's estate who does not file an inventory may use a format that clearly sets out the information required by this rule.

##### (2) *Verification.* An inventory must be verified in the manner described in Rule 103(c).

(3) *Notice of Right to File Objection.* An inventory must be accompanied by a notice of the right of an interested person, protected person, custodian of a minor, trust beneficiary, and other party or interested person to file an objection to the inventory. The notice must be in the form maintained by the Register of Wills or a form that is substantially similar in content and format to that form, and must specifically state that any person with standing to object to an inventory may file an objection to the contents, valuation, or timeliness of the inventory.

(4) *Certificate of Service.* An inventory must include a certificate of service. If the inventory is filed with the court, the certificate of service must state that the inventory was mailed or delivered within 15 days after the date of filing.

(5) *Privacy Requirements.* If an inventory filed with the court includes a financial account number, the fiduciary must comply with Rule 109 and must file, together with the inventory, the separate form required by Rule 109.

(c) TIME FOR FILING.

(1) *In General.* Except as provided in Rule 112(c)(2), a fiduciary must file an inventory within 90 days after the court appointing the fiduciary or the date of a court order providing for continuing supervision of the administration of the estate or trust.

(2) *Intervention Proceeding.* A conservator must file an inventory within 60 days after the court appointing the conservator.

(d) ASSETS INCLUDED IN INVENTORY.

(1) *In General.* A fiduciary must include in the inventory all assets which the fiduciary is entitled to possess except a specific asset which the court orders is not to be included among the assets under the control of the fiduciary.

(2) *Asset Not Under Control of Fiduciary.* If the fiduciary is unable to take control of an asset, the fiduciary must specifically identify the asset which the fiduciary is claiming but which the fiduciary has not obtained possession of as of the date of the inventory.

(e) DETERMINATION OF INVENTORY ASSETS.

(1) *Decedent Estate.*

(A) *Initial Inventory.* The initial inventory must set out the assets of the decedent as of the date of death.

(B) *Subsequent Supervision.* If the court orders supervision of an already existing decedent estate proceeding, the inventory must set out the assets of the estate as of the date of the order for court supervision.

(2) *Other Proceeding.* The inventory must set out the assets the fiduciary is entitled to possess as of the date that the court appoints the fiduciary.

(3) *Successor Fiduciary.* The inventory of a successor fiduciary must set out the assets the fiduciary is entitled to possess as of the date that the court appoints the successor fiduciary.

(f) DESCRIPTION, VALUATION, AND APPRAISAL OF ASSETS.

(1) *In General.*

(A) *Description.* Each asset must be listed and described in reasonable detail. The location of the asset must be stated.

(B) *Title.* If an asset is titled in the name of a person other than or in addition to the decedent, protected person, minor, or trust, the person holding title must be listed.

(C) *Encumbrances.* The type and amount of any encumbrance or lien on any asset must be listed.

(2) *Real Property.* The fiduciary may inventory real property at the value set by the District of Columbia for purposes of assessment and taxation. The fair market value may also be determined by an appraiser selected by the fiduciary and who is licensed by the jurisdiction in which the real property is located.

(3) *Tangible Personal Property.*

(A) *In General.* The fiduciary must list items of tangible personal property which the fiduciary is entitled to possess at its fair market value, as determined by qualified appraiser, except:

- (i) wearing apparel, other than furs and jewelry;
- (ii) food for consumption by the family;
- (iii) family pictures; and
- (iv) family bibles.

(B) *Value less than \$1,000.00.* If the fiduciary reasonably believes that the tangible personal property is valued at \$1,000.00 or less, the fiduciary may describe the tangible personal property in reasonable detail and the estimated value of the tangible personal property instead of obtaining a formal appraisal.

(C) *Motor Vehicles.* The fiduciary may inventory motor vehicles with the value stated on public appraisal publications or websites.

(4) *Publicly-Traded Investments.* Corporate stocks, bonds, or other publicly-traded investments that are listed on any national or regional exchange or are sold in an over-the-counter market where prices are regularly published may be valued by the fiduciary.

(g) **ASSETS WITHOUT VALUE OR NO ASSETS.** If, at the time of the fiduciary's appointment, the asset of which the fiduciary has control or has the right to possess cannot be readily valued or there are no assets that have been or can be collected by the fiduciary, the fiduciary must file either:

(1) an inventory showing no assets; or

(2) a statement verified in the manner described in Rule 103(c) stating that an asset cannot be readily valued or that the fiduciary has collected no assets.

(h) **SUPPLEMENTAL INVENTORY.**

(1) *When Required.* If, after the inventory is prepared, the fiduciary learns of another asset, or determines that the value or description of an asset is erroneous in any material respect, incomplete, or misleading, the fiduciary must file a supplemental inventory.

(2) *Format.* A supplemental inventory must comply with Rule 112(b).

### **Rule 113. Accounts**

(a) **FILING.**

(1) *In General.* The following fiduciaries must prepare and file an account:

(A) a supervised personal representative;

(B) a special administrator;

(C) a conservator;

(D) a guardian of a minor; and

(E) a trustee of a trust under continuing supervision of the court.

(2) *Timing.* The time for filing an account is specified in the chapter of the probate rules applicable to each fiduciary.

(3) *Court Order.* The court may order a fiduciary to file a special account at any time the court determines is reasonable and necessary.

(b) **FORMAT.**

(1) *Form of Account.*

(A) *Filed Account.* An account that is filed with the court 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.

(B) *Unsupervised Personal Representative.* An unsupervised personal representative of a decedent's estate may use a format that clearly sets out the assets listed on the personal representative's inventory, receipts, disbursements, and the distribution of estate assets.

(2) *Verification.* An account must be verified in the manner described in Rule 103(c).

(3) *Notice of Right to File Objection.* An account must be accompanied by a notice of the right of an interested person, protected person, custodian of a minor, trust beneficiary, and other party or interested person to file an objection to the inventory or account. The notice must be in the form maintained by the Register of Wills or a form that is substantially similar in content and format to that form.

(4) *Certificate of Service.* An account must include a certificate of service. If the account is filed with the court, the certificate of service must state that the account was mailed or delivered within 15 days after the date of filing.

(5) *Privacy Requirements.* If an account filed with the court includes a financial account number, the fiduciary must comply with Rule 109 and must file, together with the account, the separate form required by Rule 109.

(c) CONTENTS OF ACCOUNT.

(1) *Initial and Interim Account.* A fiduciary's account must contain:

(A) for an initial account, the total value of the assets as shown in all inventories made prior to the date of the account;

(B) for an interim account after the initial account, the assets shown at the end of the period of the preceding account;

(C) all receipts during the period of the account and, for a decedent estate administration, from the date of death of the decedent;

(D) each purchase, sale, lease, transfer, compromise, settlement, or other disposition of any non-cash asset;

(E) each disbursement for an expense of administration of the estate or trust;

(F) each payment of a claim or debt of the decedent, the estate, or the ward;



(G) each distribution to or for the benefit of an heir, legatee, protected person, minor, or beneficiary; and

(H) the remaining assets, if any, in the possession or control of the fiduciary.

(2) *Final Account.* In addition to the requirements for initial and interim accounts, a fiduciary's final account must include:

(A) a statement that all claims have been paid or rejected;

(B) a statement that there are no unsettled liabilities or the identity of any liabilities that remain as of date the fiduciary's appointment terminates; and

(C) the proposed distribution of the remaining assets in the possession or control of the fiduciary.

(d) **ASSETS WITHOUT VALUE OR NO ASSETS.** If, during the accounting period, an asset of which the fiduciary has control or has the right to possess cannot be readily valued or there were no assets collected by the fiduciary, the fiduciary must file either:

(1) an account showing no assets; or

(2) a statement, verified in the manner described in Rule 103(c), indicating that an asset cannot be readily valued or that the fiduciary has collected no assets.

(e) **AUDIT OF ACCOUNT**

(1) *Requirements for Account Subject to Audit.* Together with the account, the fiduciary must file copies of:

(A) all 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, which show the assets of the estate on deposit or on account and the transactions in such assets during the accounting period;

(B) all checks, settlement statements, receipts, or other documents, which show receipt of income or assets during the accounting period;

(C) all documents that show the sale or other disposition of any asset during the accounting period;

(D) all checks, vouchers, statements of account, or other documents, which show the cash transactions during the accounting period; and

(E) all income tax returns and other required tax filings due during the accounting period, or include in the account a statement that no income tax filing is required.

(2) *Cursory Review of Account: Supervised Personal Representative.* If waivers of formal audit of an account of a supervised personal representative are filed by all heirs or legatees, the personal representative must state on the face of the account that the account is subject to cursory review, and must file copies of:

(A) all 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, which show the assets of the estate on deposit or on account and the transactions in such assets during the accounting; and

(B) all checks, vouchers, statements of account, or other documents, which show funeral expenses and all other disbursements in excess of \$1,000.00 claimed in the account.

(e) WAIVER OF AUDIT OF ACCOUNT.

(1) *Decedent's Estate.* The formal audit of an account of a supervised personal representative must be excused if, after service of the account and the notice required by this rule, all heirs or legatees of a decedent's estate file a written waiver of audit and consent to the account in the form maintained by the Register of Wills or a form substantially similar in content and format to that form. If all heirs or legatees waive the formal audit of an account, the court will conduct a cursory review as provided in Rule 113(e)(2).

(2) *Guardianship of a Minor.* The audit of a final account of a guardian of a minor who has reached age 18 may be excused if, after service on the former minor of the account and the notice of right to object to the final account, the former minor files a written waiver of audit and consent to the account in the form maintained by the Register of Wills or a form substantially similar in content and format to that form.

(3) *Court-Supervised Trust.* The audit of an account of a trustee of a court-supervised trust must be excused if, after service of the account and the notice required by this rule, all qualified beneficiaries of a court-supervised trust file a written waiver of audit and consent to the account in the form maintained by the Register of Wills or a form substantially similar in content and format to that form.

(4) *Receipt of Full Distribution.* A receipt signed by an heir, legatee, or beneficiary of a trust which acknowledges full payment of that person's interest in the estate or trust has the same effect as a waiver of audit and consent to the fiduciary's account.

(5) *Incapacitated Beneficiary or Interested Person.*

(A) An interested person in a decedent's estate, minor who has reached age 18, or beneficiary of a trust who is incapacitated may not waive audit of and consent to a fiduciary's account.

(B) A representative of an incapacitated interested person or beneficiary may, on behalf of the incapacitated person, waive audit of and consent to a fiduciary's account, or may execute a

receipt of full distribution of the incapacitated person's or beneficiary's interest in the estate or trust, if the representative is authorized to do so either by the law governing that representative or the instrument (such as a power of attorney) appointing that representative.

*(6) Effect of Waiver of Audit and Consent to Account.*

*(A) In General.* A waiver of audit of and consent to a fiduciary's account constitutes a waiver of the interested person's or beneficiary's right to object to the account.

*(B) Decedent Estate - Final Account.* An heir or legatee who has signed a waiver of formal audit may require a formal audit by filing a written demand within 20 days after the approval of the supervised personal representative's final account.

## COMMENT

Other chapters of the probate rules include provisions specifically applicable to accounts for that case type. Additionally, 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.

### **Rule 114. Irregularity, Default, or Insufficiency**

(a) **TYPES OF IRREGULARITY OR DEFAULT.** An irregularity or default includes a failure to file timely any verification and certificate of notice, inventory, account, report, or receipt required by these rules.

(b) **NOTICE TO CORRECT IRREGULARITY, DEFAULT, OR INSUFFICIENCY.**

(1) *By Register of Wills.* When the Register of Wills finds an irregularity or default in the administration of a proceeding under these rules or that there is an insufficiency in the amount or security of a bond or undertaking, the Register of Wills must promptly notify the fiduciary responsible that unless the irregularity, default, or insufficiency is promptly corrected, the fiduciary may be removed from office. If the irregularity, default, or insufficiency is not remedied, the Register of Wills must report it to the court.

(2) *By Court.* On its own initiative, the court may issue an order to show cause why any action should not be taken in a proceeding where there is an irregularity, default, or insufficiency.

(c) **HEARING.**

(1) *After Notice to Correct or Order to Show Cause.* If the fiduciary does not remedy an irregularity, default, or insufficiency after receiving a notice to correct or an order to show cause under Rule 114(b), the court must set a hearing and direct notice of the hearing to the fiduciary.

(2) *Without Notice to Correct*. In extraordinary cases or in cases in which the fiduciary fails to satisfy a prior notice or specific order of the court, the court, on its own initiative or at the request of the Register of Wills, may order a summary hearing without giving the fiduciary prior notice to correct an irregularity, default, or insufficiency.

(3) *Notice of Hearing*. Notice of a hearing under Rule 114(c)(1) or (2) must be sent by first class mail to the address of record of the fiduciary, the surety (if appropriate), counsel of record, and each party, interested person, person entitled to participate, and person entitled to notice.

(d) **ACTION BY THE COURT**. At the hearing, the court may remove the fiduciary and appoint a successor, excuse the irregularity, default, or insufficiency on good cause, or take other appropriate action.

### **Rule 115. Closing a Case Despite Irregularity or Default**

When an irregularity or default in the administration of an intervention proceeding, decedent's estate, minor child's estate, trusts, or other fiduciary case exists, but no party appears to be materially adversely affected, the Register of Wills or the Auditor-Master, after notice to all interested persons, may request the court to close the case unless a party shows cause why the court should take further action.

### **Rule 116. Fiduciaries and Legal Representatives Who May File Consents and Waivers**

(a) **WHO MAY CONSENT OR WAIVE**. Except as provided in Rule 116(b), the following persons may execute a consent or waiver for and on behalf of that person's principal:

- (1) a guardian;
- (2) a guardian ad litem;
- (3) a conservator;
- (4) a parent;
- (5) a legal representative of an interested person with a legal disability;
- (6) an attorney-in-fact;
- (7) a trustee nominated by will or other document; or
- (8) any other person acting in a fiduciary capacity.

(b) **EXCEPTIONS**. A person listed in Rule 116(a) does not have authority to execute a consent or waiver if the consent or waiver is to:

- (1) the fiduciary's or representative's own appointment;

(2) the fiduciary's or representative's own bond; or

(3) the fiduciary's or representative's own report, inventory, accounting, or request for compensation, unless for a trust accounting, the fiduciary is also the sole beneficiary.

(c) **REQUIREMENTS FOR WAIVER.** A waiver signed by one acting in a fiduciary or representative capacity must be accompanied by a certified copy of a court appointment, if any, or, if none, by a verified statement:

(1) indicating such person's status;

(2) setting forth the nature and the date of the instrument, if any, creating the fiduciary relationship or legal representation, and the relevant portions of the instrument; and

(3) representing that the instrument, if any, is still in full force and effect.

## **COMMENT**

This rule is procedural; it is not intended to create, enlarge, or modify substantive law regarding a person's ability to consent or waive on behalf of another, especially where there may be a conflict of interest. *See, e.g.*, D.C. Code §§ 19-1301.01 to -19-1311.03 (2012 Repl.) (adopting Uniform Trust Code, including provisions about representation and conflicts of interest).

## **Rule 117. Guardian ad Litem**

(a) **IN GENERAL.** Except for good cause, no person other than an active member of the District of Columbia Bar in good standing may be appointed guardian ad litem.

(b) **APPOINTMENT.** On its own initiative or on request of a fiduciary, a person having legal custody of a minor, or other interested person, the court may appoint a guardian ad litem at any stage of a proceeding to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate:

(1) a minor;

(2) an incapacitated person;

(3) an unborn person;

(4) an unascertained person;

(5) a person whose identity or address is unknown; or

(6) a designated class of persons who are not ascertained or are not in being.

(c) REPRESENTATION OF SEVERAL PERSONS OR INTERESTS. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(d) COMPENSATION AND EXPENSES.

(1) *In General.* A guardian ad litem may receive reasonable compensation for services and reimbursement for reasonable expenses incurred, to be paid from the estate, trust, or other property that is the subject of the matter for which the guardian ad litem will be appointed, or by the petitioner or from such other source as the court may order.

(2) *Petition for Compensation.* The guardian ad litem must file a verified petition for compensation, setting out in reasonable detail:

(A) a summary of the services rendered;

(B) the amount of time spent;

(C) the attorney's hourly rate and the basis of that rate;

(D) the amount, if any, of compensation previously received by the guardian ad litem; and

(E) the value of the estate, trust, or other property from which the compensation will be paid.

(3) *Time for Filing Petition for Compensation.* The petition must be filed within 60 days after the date the guardian ad litem's appointment ended and at other times as allowed by the court. The petition must be served on all persons entitled to notice in the proceeding.

(e) INAPPLICABILITY TO GUARDIAN AD LITEM FOR SUBJECT OF INTERVENTION PROCEEDING. This rule does not apply to a guardian ad litem for the subject or the ward in an intervention proceeding governed by D.C. Code §§ 21-2001 to -2085 (2012 Repl. & 2021 Supp.).

## COMMENT

Civil Rule 17(c) provides that a representative, a next friend, or a guardian ad litem appointed by the court, may sue or defend on behalf of a minor or incompetent person. This rule supplements Civil Rule 17(c) and recognizes the inherent power of the court, as an incident of its jurisdiction, to appoint guardians ad litem to represent the interests of all those whose representation would otherwise be inadequate, including the interests of unascertained and unborn beneficiaries and unknown persons. *See Hatch v. Riggs National Bank*, 361 F. 2d 559, 565-566 (D.C. Cir. 1966).

The rules governing trusts provide that a guardian ad litem is not required for the appointment of a successor, substitute, or additional trustee.

A guardian ad litem for the subject in an intervention proceeding or a ward is governed by Rule 308.

### **Rule 118. Order to Show Cause for Recovery of Possession of Property**

(a) PETITION.

(1) *In General.* A petition for an order to show cause for recovery of possession of property may be filed when it is believed that any person is in possession of and wrongfully withholding assets, papers, data, or information of or about:

- (A) a decedent's estate;
- (B) a minor child's estate;
- (C) a ward's or subject's income, property, or estate; or
- (D) a trust or settlor of a trust subject to court supervision.

(2) *By Fiduciary.* The following fiduciaries may file a petition for an order to show cause:

- (A) a personal representative;
- (B) a fiduciary for an adult ward, subject, or a minor child; or
- (C) a trustee.

(3) *By Interested Person or, in Intervention Proceeding, Other Persons.* An interested person or, in an intervention proceeding, a subject, ward, party, or person granted permission to participate may file a petition for order to show cause against:

- (A) the personal representative in a decedent's estate;
- (B) the conservator or guardian of an adult ward;
- (C) the trustee of a trust subject to court supervision; or
- (D) a guardian of a minor child's property and estate.

(4) *Content of the Petition.* The petition must state with particularity, or explain the absence of, the following facts and points and authorities:

- (A) a concise description of the asset, papers, data, or other information that is alleged to be wrongfully withheld;

(B) the name, address, telephone number and any other pertinent identifying information about the person alleged to be wrongfully withholding;

(C) a statement of the jurisdiction of this court over the subject matter and the person alleged to be wrongfully withholding;

(D) the facts and law that would establish the right of the petitioner to demand production of the subject asset, paper, data, or other information, including but not limited to its alleged connection to the assets of the estate or its relevance to the administration of the estate;

(E) a concise demand for relief, such as production of a particular asset or data, reimbursement of monies to the estate, or other specific relief; and

(F) any other information that the petitioner determines to be relevant to the court's decision to issue the order to show cause.

(5) *Certification by Petitioner.* The petition must include the petitioner's certificate that despite a good faith effort the petitioner has been unable to obtain the assets, papers, data, and information sought. The certification must state specific facts describing the good faith effort.

(b) **PROPOSED ORDER.** The petition must be filed with a proposed order that is substantially similar in content and format to the form maintained by the Register of Wills.

(c) **ORDER TO SHOW CAUSE.** Without waiting for a response to the petition, the court or the Auditor-Master may grant the petition and enter an order requiring the person alleged to be wrongfully withholding to appear and show cause why the person should not be ordered to:

(1) disclose all of the assets, papers, data, and information in the person's possession, belonging to the decedent, ward, minor child, settler, or trustee;

(2) disclose the location of the assets, papers, data, and information;

(3) provide access to or deliver the assets, papers, data, and information; or

(4) take such other action ordered by the court or the Auditor-Master.

(d) **SERVICE OF THE PETITION AND ORDER.**

(1) *Service on Person Alleged to Be Wrongfully Withholding.*

(A) *In General.* A copy of the petition and order to show cause must be served, by a person other than the petitioner, on the person alleged to be wrongfully withholding, in the manner set forth in the civil rules for service of a summons and complaint.

(B) *Timing.* The petition and order to show cause must be served at least 14 days prior to the hearing or within the time frame specified by the court.



(2) *Service on Other Persons.* All other persons entitled to be served with a petition or motion must be served, by first class mail, with the petition and order to show cause.

(3) *Proof of Service.* Proof of service of the petition and order to show cause must be by affidavit filed no later than the hearing set by the order.

(e) RESPONSE TO ORDER TO SHOW CAUSE.

(1) *In General.* The person alleged to be wrongfully withholding may file a responsive pleading to the petition at any time up to the date of the hearing.

(2) *Plea of Title.*

(A) *Treating Petition as Complaint.* If the responsive pleading asserts a plea of title, the court may treat the petition as a complaint filed under these rules and may:

(ii) hold a status conference on the date set for the hearing; and

(iii) enter any other appropriate order.

(B) *Complaint Fee.* The petitioner must pay the complaint filing fee within 14 days after receiving notice of the court's intent to treat the petition as a complaint.

**COMMENT**

If the petition is treated as a complaint, a jury demand must be timely made by any party desiring a jury trial. *See* Super. Ct. Civ. R. 38(b)(1).

**Rule 119. Investments by a Fiduciary**

(a) APPLICABILITY. This rule applies to all fiduciaries under the supervision of the court.

(b) INVESTMENT STANDARDS.

(1) *Prudent Person Standard.*

(A) *In General.* When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing property for the benefit of another, a fiduciary must act with care, skill, prudence, and diligence under the circumstances then prevailing. The fiduciary must use the same care, skill, prudence, and diligence as a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, to attain the goals of the settlor as determined from the trust instrument or will, or the objectives of the ward as determined by the court.

(B) *Relevant Circumstances.* The fiduciary must consider the following relevant circumstances, among others:

- (i) general economic conditions;
- (ii) the possible effect of inflation or deflation;
- (iii) the expected tax consequences of investment decisions or strategies;
- (iv) the role that each investment or course of action plays within the overall portfolio;
- (v) the expected total return from income and the appreciation of capital;
- (vi) other resources of the beneficiary, ward, or estate;
- (vii) needs for liquidity, regularity of income, or preservation or appreciation of capital; and
- (viii) an asset's special relationship or special value.

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

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

(4) *Deviation from Terms of Trust or Will.* Nothing in this rule abrogates or restricts the power of the court in proper cases to direct or permit the fiduciary to deviate from the terms of the trust or will regarding the making or retention of investments.

(5) *Other Terms Invoking Prudent Person Standard.* Terms such as "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "investments acquired using the judgment and care which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," and other words of similar import used in defining the powers of a fiduciary relative to investments, in the absence of other controlling or modifying provisions of a trust instrument or will, may be construed as authorizing any investment permitted, and imposing the standard of prudence required, by the terms of Rule 119(b)(1).

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

(c) EFFECT OF COURT AUTHORIZATION FOR INVESTMENT. In all cases in which a fiduciary is required to obtain court authorization prior to making investments, an order of court authorizing investments under this rule does not constitute court approval of the particular investments nor will the fiduciary be relieved of any fiduciary responsibility for having made the investments.

## COMMENT

Subsection (b)(1) of this rule maintains "the prudent investor" standard as expressed in *Johns v. Herbert*, 2 App. D.C. 485 (1894), but makes clear that a prudent investor uses a total asset management approach in light of the investment objectives for the beneficiary and allows the court to permit generally accepted practices of risk allocation embodied in modern portfolio management theory. For further explication of current fiduciary investment practices with respect to trusts, see D.C. Code §§ 19-1309.01 to -.06 (2012 Repl.).

## Rule 120. Conflict of Interests Transaction by Fiduciary

(a) CONFLICT OF INTERESTS TRANSACTION DEFINED.

(1) *In General.* A conflict of interests transaction is a sale, purchase, lease, encumbrance, or other transaction, involving property entrusted to a fiduciary or an opportunity belonging to the person, estate, or trust for which the fiduciary is acting, that is:

(A) entered into by the fiduciary for the fiduciary's own personal account; or

(B) otherwise affected by a substantial conflict between fiduciary and personal interests.

(2) *Related Persons or Entities.* A sale, purchase, lease, encumbrance, or other transaction, involving property entrusted to a fiduciary or an opportunity belonging to the person, estate, or trust for which the fiduciary is acting, is presumed to be affected by a conflict of interests if entered into by the fiduciary with:

(A) the fiduciary's spouse or domestic partner;

(B) the fiduciary's descendants, siblings, parents, or their spouses;

(C) an agent of the fiduciary;

(D) the fiduciary's attorney; or

(E) a corporation or other entity in which the fiduciary or a person listed in Rule 120(a)(2)(A)-(D) has a substantial beneficial interest.

(b) **DISCLOSURE.** Unless the governing instrument authorizes the transaction, a fiduciary must disclose all material information regarding a conflict of interests transaction to all parties, interested persons, beneficiaries, or other persons having a substantial beneficial interest in the estate or property entrusted to the fiduciary.

(c) **VOIDABLE TRANSACTIONS.** A conflict of interests transaction is voidable unless:

(1) the transaction is authorized by the substantive law applicable to the trust or estate entrusted to the fiduciary;

(2) the transaction is authorized by the governing instrument of the trust or estate entrusted to the fiduciary;

(3) after fair disclosure, the transaction is consented to or ratified by all persons having a substantial beneficial interest;

(4) after fair disclosure, the fiduciary was released from liability by all persons having a substantial beneficial interest;

(5) the transaction involved a contract entered into or claim acquired by the fiduciary before the fiduciary became or contemplated becoming the fiduciary; or

(6) the transaction is approved by the court.

## **COMMENT**

Conflict of interests transactions as defined in this rule do not include a fiduciary's compensation or agreements with respect to a fiduciary's compensation.

A person seeking court approval of a conflict of interests transaction should file a petition consistent with the statute and court rules applicable to the relevant fiduciary estate.

This rule does not affect the rights of unrelated third parties who engaged in a transaction with a fiduciary without knowledge of the fiduciary's conflict of interests in the transaction.

### **Rule 121. Reporting Conflict of Interests in Action**

If a fiduciary sues or defends on behalf of the person, estate, or trust for which the fiduciary is acting concerning a matter in which the fiduciary has a possible conflict of interests, the fiduciary must report the facts in writing to the court.

### **Rule 122. Life Estate**

(a) COMPUTATION. Allowance to a healthy tenant for life, unless otherwise adjudged, must be computed using the formula and tables established by the Secretary of the Treasury in accordance with I.R.C. § 7520.

(b) VALUATION DATE. For purposes of this rule, the valuation date is the first day of the month next preceding the month in which the initial pleading seeking an allowance is filed.

### **Rule 123. Disclaimers**

A person may disclaim, in whole or part, any interest in or power over property by filing with the Register of Wills:

(1) the certificate of filing a disclaimer on a form maintained by the Register of Wills or a form that is substantially similar in content and format; and

(2) a disclaimer in accordance with D.C. Code §§ 19-1501 to -1518 (2012 Repl. & 2021 Supp.).

### **COMMENT**

The requirements of this rule are not intended to address the jurisdictional basis for filing a disclaimer in the Superior Court. Any person filing a disclaimer should assure himself or herself of the jurisdictional basis for filing the disclaimer in the Superior Court.

### **Rule 124. Notice of an Order or Judgment**

(a) SERVICE. Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in Civil Rule 5(b), on each party and other person entitled to notice. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in Civil Rule 5(b).

(b) TIME TO APPEAL NOT AFFECTED BY LACK OF NOTICE. Lack of notice of the entry does not affect the time for appeal or relieve—or authorize the court to relieve—a person for failing to appeal within the time allowed, except as allowed by the District of Columbia Court of Appeals Rules.

(c) WHO CAN PERFORM THE CLERK'S FUNCTION. Nothing in this rule precludes a judge or magistrate judge or his or her authorized staff member from performing the function of the clerk prescribed in Rule 124(a).

## **Rule 125. Motion for Reconsideration and Other Relief From Judgment**

(a) WHO MAY FILE. A motion for reconsideration may be filed by:

- (1) any person who participated in the determination of the ruling, order, or judgment; or
- (2) a person who received notice of an account or request for compensation and who filed an objection to that account or request for compensation within the time required by applicable rule or allowed by the court.

(b) GROUNDS FOR RECONSIDERATION. A motion may seek reconsideration of the ruling, order, or judgment only on the following grounds:

- (1) the court failed to consider a material fact or law upon which such matter was based;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered;
- (3) the court did not provide a basis or reason for its order;
- (4) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by another person or entity interested in the proceeding;
- (5) mistake, inadvertence, surprise, or excusable neglect;
- (6) the order pertains to a matter or matters on which no other interested person or party filed an objection or otherwise contested the issues disposed of by the order; or
- (7) any other reason that justifies relief.

(c) TIME FOR FILING.

(1) *In General.* Except as provided in Rule 125(c)(2), the motion must be filed no later than 28 days after entry of the ruling, order, or judgment and prior to the entry of the order approving the final account, except for an order disposing of an objection to a final account.

(2) *Objection to Final Account in Decedent's Estate.* If the court disposes of an objection to a final account in a decedent's estate through an order approving the final account or an order entered contemporaneously with the court's approval of the account, a motion for reconsideration may be made no later than 20 days after the entry of the order approving the final account.

(3) *Extending Time.* Notwithstanding any other provision of the Superior Court rules, the court may not extend the time for filing a motion for reconsideration.

(e) STAY PENDING RECONSIDERATION. If a motion for reconsideration is filed in connection with a ruling pertaining to an objection to a final account, the court may suspend the

actions or obligations of the fiduciary by granting a separate motion for a stay pending reconsideration until the motion for reconsideration is decided.

(f) HEARING. The court may rule on a motion for reconsideration with or without a hearing.

(g) CLERICAL MISTAKES. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a ruling, order, judgment or decree, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(h) OTHER POWERS TO GRANT RELIEF. This rule does not limit a court's power to:

- (1) entertain an independent action to relieve a party from a ruling, order, or judgment; or
- (2) set aside a judgment for fraud on the court.

(i) RELATIONSHIP TO CIVIL RULES. If this rule applies, Civil Rules 59 and 60 do not apply.

## **COMMENT**

Pursuant to District of Columbia Court of Appeals Rule 4, the timely filing of a motion for reconsideration pursuant to this rule suspends the running of the time for filing a notice of appeal.

A motion for reconsideration does not suspend the proceedings or stay the ruling, order, or judgment that is the subject of the motion. A party seeking a stay must file a motion for a stay pending reconsideration or appeal under Rule 127.

If an interested person or party has notice of an account or request for compensation and fails to file an objection to that account or request for compensation within the statutory period, that interested person or party lacks standing to bring a motion for reconsideration of the order approving the account or request for compensation.

This rule is similar to Civil Rules 59(e) and 60(b). Modifications have been made to accommodate practice in the Probate Division. Where provisions of this rule are substantially similar to the civil rules, case law interpreting the civil rules will be applicable to this rule.

"Judgment" as used in this rule includes any order from which an appeal lies.

## **Rule 126. Appeals**

(a) IN GENERAL. Any person who is aggrieved by a final order or judgment of the Probate Division and who participated in the determination of that order or judgment may file an appeal to the District of Columbia Court of Appeals.

(b) **WHEN ALLOWED: DECEDENTS' ESTATES.** An order or judgment of the court determining rights of any interested person or party in any proceeding in the administration of the estate of a decedent is deemed final with respect to the following matters:

- (1) order granting or denying probate;
- (2) order construing the decedent's will;
- (3) order determining heirs or legatees;
- (4) order determining title to assets;
- (5) order determining that property should be sold; or
- (6) order approving a final account.

(c) **WHEN ALLOWED: ALL OTHER PROCEEDINGS.** An order or judgment of the court determining rights of any interested person or party in any proceeding other than decedents' estates is deemed final with respect to the following matters:

- (1) order appointing, removing or denying a request to appoint or remove a permanent guardian, permanent conservator, special conservator, trustee, or other permanent fiduciary;
- (2) order granting or limiting the rights, powers or duties of a permanent guardian, permanent conservator, special conservator, trustee, or other permanent fiduciary;
- (3) order approving any account, or granting or denying an objection to any account;
- (4) order granting or denying compensation;
- (5) order determining title to assets;
- (6) order determining that property should be sold;
- (7) order determining a claim against a protected person or property of a protected person; or
- (8) order granting or denying authority to make gifts.

(d) **WHEN ALLOWED: JUDGMENT ON FEWER THAN ALL CLAIMS OR INTERESTED PERSONS OR PARTIES.** On application of any interested person or party or in the court's discretion, the court may direct the entry of a final judgment as to one or more, but fewer than all, claims or interested persons or parties if the court expressly determines that there is no just reason for delay.



## COMMENT

An interested person or party in a decedent's estate generally lacks standing to appeal if the person or party has notice of an account or request for compensation and fails to file an objection to such account or request for compensation within the statutory period, or if the statutory period has expired, when the person or party "discovers, or by reasonable diligence should discover, the injury, its cause in fact, and some evidence of wrongful conduct." *Johnson v. Martin*, 567 A.2d 1299, 1302 (D.C. 1989).

The mere filing of an appeal does not suspend the proceedings or stay the ruling, order, judgment or decree that is the subject of the appeal. The court may enter a separate order for a stay pending appeal. *Murphy v. McCloud*, 605 A.2d 202 (D.C. 1994).

### **Rule 127. Stay of Judgment or Order Pending Reconsideration or Appeal**

(a) STAY ON MOTION FOR RECONSIDERATION OR APPEAL. On appropriate terms for the opposing party's security, the court may stay the execution or enforcement of a judgment or order pending the disposition of:

- (1) a motion for reconsideration; or
- (2) an appeal.

(b) APPELLATE COURT'S POWER NOT LIMITED. This rule does not limit the power of the appellate court or one of its judges:

- (1) to stay proceedings while an appeal is pending; or
- (2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

## COMMENT

This rule does not address the time for filing a notice of appeal, which is governed by District of Columbia Court of Appeals Rule 4.

### **Rule 128. Computing and Extending Time; Time for Motion Papers**

(a) COMPUTING TIME. The following rules apply in computing any time period specified in these rules, in any court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

- (A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or a legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 128(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 128(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute or court order, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal Holiday" Defined.* "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and

(B) any day declared a holiday by the President or Congress, or observed as a holiday by the court.

(b) EXTENDING TIME.

(1) *In General*. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if the request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions*. A court must not extend the time to act under Rule 125 and Civil Rules 52(b), 59(b), (d), and (e), and 60(b).

(c) **TIME FOR SERVING AFFIDAVITS**. Any affidavit supporting a motion or opposition must be served with the motion or opposition unless the court orders otherwise.

(d) **ADDITIONAL TIME AFTER CERTAIN KINDS OF SERVICE**. When a party may or must act within a specified time after being served and service is made by mail or leaving with the clerk, 3 days are added after the period would otherwise expire under this Rule 128(a).

## **CHAPTER 2 - ESTATES OF DECEDENTS**

### **Rule 201. Commencing a Decedent's Estate**

(a) **IN GENERAL**. An interested person or creditor may commence a proceeding to administer a decedent's estate by filing a petition for probate. The petition for probate must indicate whether the interested person or creditor is requesting:

(1) a supervised or unsupervised abbreviated probate proceeding described in Rule 202;

(2) a supervised or unsupervised standard probate proceeding described in Rule 203; or

(3) a small estate proceeding described in Rule 204.

(b) **OTHER FILINGS AND DOCUMENTS**. If applicable, the petition for probate must be accompanied by:

(1) the notice of standard probate, described in Rule 203(d);

(2) the notice of appointment in a standard or abbreviated probate proceeding, described in Rule 206;

(3) a proposed order on the form maintained by the Register of Wills or a form that is substantially similar in format and content;

(4) any consents to appointment of personal representative, described in Rule 207;

(5) a bond or waiver of bond, described in Rule 208; and

(6) the personal identification information form maintained by the Register of Wills.

### **Rule 202. Abbreviated Probate**

(a) IN GENERAL. An interested person may request a supervised or unsupervised abbreviated probate proceeding, unless a standard probate proceeding is required because:

(1) the petition for probate is filed by a creditor or interested person who does not have the highest priority to serve as the personal representative; or

(2) there is an irregularity with the will.

(b) FORMAT AND CONTENT OF PETITION. The petition for abbreviated probate must be typed or electronically completed on the form maintained by the Register of Wills or a form that is substantially similar in format and content. The petition must contain the information required by D.C. Code § 20-304 (2012 Repl.).

### **Rule 203. Standard Probate**

(a) IN GENERAL. An interested person or creditor must request a standard probate proceeding if:

(1) the petition for probate is filed by a creditor or interested person who does not have the highest priority to serve as the personal representative; or

(2) there is an irregularity with the will.

(b) PETITION: FORMAT AND CONTENT; ADDITIONAL INFORMATION AND MEMORANDA.

(1) *Format and Content.* The petition for standard probate must be typed or electronically completed on the form maintained by the Register of Wills or a form that is substantially similar in format and content. The petition must contain the information required by D.C. Code § 20-304 (2012 Repl.).

(2) *Additional Information and Memoranda.*

(A) *Requesting Order for Testimony by Witnesses to Will.* If a person requesting standard probate seeks an order directing witnesses to a purported will to appear and give testimony regarding its execution, the petition for standard probate must include, or be accompanied by a memorandum providing, the names and addresses of the witnesses and a statement regarding the efforts made to secure affidavits from the witnesses.

(B) *Requesting Order for Person with Custody of Will.* If a person requesting standard probate seeks an order requiring any person alleged to have custody of a purported will to deliver it to the court, the petition for standard probate must include, or be accompanied by a memorandum providing, the name and address of the person alleged to have custody of the purported will and the efforts made to induce that person to file it with the Register of Wills or to deliver it to the nominated personal representative.

(C) *Seeking Admission of Altered, Lost, or Destroyed Will.* If a person requesting standard probate seeks an order directing any interested person to show cause why the provisions of an altered will or a copy of any lost or destroyed will should not be admitted to probate, the petition for standard probate must include, or be accompanied by a memorandum containing, a concise statement of facts, supported by affidavits, that shows:

(i) the will was duly executed;

(ii) if the will contains unwitnessed cross outs or interlineations, why the will should not be presumed revoked by physical destruction;

(iii) the chain of custody of the original will and whether and why it should not be presumed to be revoked;

(iv) if the will is incomplete or there appear to be missing pages, why the will should not be presumed revoked;

(v) any other facts that would overcome the presumption that the will was revoked; and

(vi) any facts that support the admission of the will to probate.

(D) *Seeking Finding of Intestacy After Will Has Been Filed.* If the person requesting standard probate seeks a finding of intestacy when a document purporting to be a will of the decedent has been filed with the Register of Wills, the petition for standard probate must include, or be accompanied by a memorandum containing, a concise statement of facts, supported by affidavits, that shows:

(i) the will was not duly executed;

(ii) no original will can be found and only a copy was found in the possession of the decedent;

(iii) the markings on the will establish that the will was revoked by destruction;

(iv) any other facts that establish the will has been revoked; or

(v) any other facts supporting denying admission of the will to probate and a finding of intestacy.

(E) *Any Other Relief*. If the person requesting standard probate seeks any other court action, the petition for standard probate must include, or be accompanied by a memorandum containing, a concise statement of the court action sought, supported by affidavits.

(c) **FILING BY REGISTER OF WILLS**. If no petition for standard probate is filed within a reasonable time, the Register of Wills, with the approval of the court, may file a petition for standard probate.

(d) **NOTICE**. A person requesting standard probate must provide notice of the petition.

(1) *Format and Content*. The notice must be typed or electronically completed on the form maintained by the Register of Wills or a form that is substantially similar in format and content.

(2) *Filing and Publication*. The person requesting standard probate must file the notice at the time of filing the petition for standard probate. The Register of Wills must promptly forward copies to a newspaper of general circulation in the District of Columbia and a legal newspaper, for publication once a week for two successive weeks.

(3) *To Whom*. Within 14 days after the date of first publication, the person requesting standard probate must serve—by certified or registered mail, return receipt requested, with delivery restricted to the addressee only—a copy of the notice, the petition, and any other documents filed under Rule 203(b), on:

(A) all interested persons;

(B) any person named in a testamentary document filed with or otherwise before the court (if applicable);

(C) the witnesses (if applicable); and

(D) the person alleged to be in possession of the purported will (if applicable).

(4) *Proof of Publication and Service*.

(A) *In General*. The person requesting standard probate must file proofs of publication and a verified statement indicating:

(i) that the notice, petition, and any other documents filed under Rule 203(b) were served in accordance with Rule 203(d)(3);

(ii) if applicable, after diligent efforts, the person requesting standard probate has been unable to locate the address of an interested person; and

(iii) if the identity of heirs at law is unknown, the efforts to ascertain their identity and whereabouts.

(B) *Actual Notice*. In lieu of the notice prescribed by this rule, proof of actual notice or personal service will suffice.

(e) HEARING. The court may schedule a hearing on the petition for standard probate upon receiving the proof and verified statement required by Rule 203(d)(4).

(f) DISMISSAL FOR FAILURE TO FILE NOTICE. If the petitioner fails to file the proof and verified statement required by Rule 203(d)(4) within 60 days after the filing of the petition for standard probate, the Register of Wills may dismiss without prejudice the petition for standard probate. Any dismissal entered under Rule 203(f) is not effective until 14 days after the date on which it is docketed, and must be vacated on the granting of a motion filed by the petitioner within that 14-day period showing good cause why the petition for standard probate should not be dismissed.

## COMMENT

D.C. Code § 20-321 (2012 Repl.) specifies those persons entitled to request standard probate.

### **Rule 204. Small Estate**

(a) IN GENERAL. Any person eligible for appointment as the personal representative who seeks to administer an estate with a value less than the amount set out in D.C. Code § 20-351 (2012 Repl.) may file a verified petition for probate that requests a small estate proceeding.

(b) FORMAT AND CONTENT OF PETITION. The petition for probate of a small estate must be typed or electronically completed on the form maintained by the Register of Wills or a form that is substantially similar in format and content. The petition must contain the information required by D.C. Code §§ 20-304 and -352 (2012 Repl.).

### **Rule 205. Solely-Owned Safe Deposit Box**

(a) PETITION FOR APPOINTMENT OF SPECIAL ADMINISTRATOR. If a decedent owned a safe deposit box titled in the decedent's sole name, and there is reason to believe that the box contains the decedent's will, an interested person may file a petition for the appointment of a special administrator to access the box to obtain the will and deliver it to the court in accordance with this rule. The petition for appointment of a special administrator to open a safe deposit box must be on the form prescribed by the Register of Wills or a form that is substantially similar in content and format.

(b) WHO MAY BE APPOINTED. The petitioner may seek the petitioner's appointment or that of a member of the District of Columbia Bar.

(c) BOND NOT REQUIRED. No bond is required.

(d) NOTICE.

(1) *No Prior Service or Notice Required.* The court may act before service of the petition on, or notice to, the interested persons.

(2) *Mailing Petition and Order.* The court must send the order appointing the special administrator to the interested persons.

(e) **AUTHORITY OF SPECIAL ADMINISTRATOR.**

A special administrator appointed under this rule has only the authority to enter the safe deposit box(es) listed in the petition and deliver to the court any testamentary instruments found in the safe deposit box(es).

(f) **REPORT.** If a will is not found, the special administrator must file a report of the actions taken to seek the will.

(g) **EXPIRATION OF APPOINTMENT.** The appointment of the special administrator expires at the earlier of:

- (1) the filing of the will or a report of the actions taken to seek the will; or
- (2) 30 days after the entry of the order of appointment.

**COMMENT**

The court has the discretion to appoint the petitioner or a member of the District of Columbia Bar as special administrator. If the petitioner is not the named personal representative or a residuary legatee in a copy of the will exhibited with the petition, the court may appoint a member of the Bar.

**Rule 206. Notice of Appointment of Personal Representative in Abbreviated or Standard Probate**

(a) **PETITIONER REQUESTING NAMED PERSON FOR APPOINTMENT AS PERSONAL REPRESENTATIVE.** If the petitioner requesting standard or abbreviated probate seeks appointment of one or more named persons as personal representative, the petitioner must file, along with the petition for probate, a typed or electronically completed notice of appointment on the form maintained by the Register of Wills, signed by each person seeking appointment and completed to the extent possible (excluding the date of first publication and the deadline for filing objections and claims).

(b) **PETITIONER REQUESTING COURT-SELECTED PERSONAL REPRESENTATIVE.** If the petitioner seeks appointment of a person selected by the court as personal representative, the person appointed by the court must file a typed or electronically completed notice of appointment, signed and completed as set forth above, not later than 14 days after the date of appointment.



(c) PUBLICATION. Upon appointment of the personal representative under Rule 206(a) or filing of the notice of appointment under Rule 206(b), the Register of Wills must complete the notice of appointment form and forward copies to a newspaper of general circulation in the District of Columbia and a legal newspaper, for publication once a week for three successive weeks.

(d) SENDING COPIES OF NOTICE. No later than 20 days after appointment, the personal representative must send by certified or registered mail to all heirs and legatees, and to all creditors whose identities are known or whose identities are ascertainable by reasonably diligent efforts, copies of the first notice of appointment, notice to creditors and notice to unknown heirs, and the general information statement on the form maintained by the Register of Wills.

(e) VERIFICATION AND CERTIFICATION OF NOTICE.

(1) *In General.* Within 90 days after the appointment of the personal representative, the personal representative (whether supervised or unsupervised) must file with the Register of Wills:

(A) the verification and certificate of notice form maintained by the Register of Wills, specifying the date of mailing of the notice required by Rule 206 and the names and addresses of the persons to whom the notice was mailed; and

(B) an affidavit or declaration of an officer or agent of each publisher stating the dates of publication and accompanied by a copy of the notice as published.

(2) *Filing with Inventory.* The verification and certificate of notice must be included with any inventory required to be filed with the court. If the personal representative is unsupervised, the verification and certificate may be filed independent of the inventory.

(f) AFTER-DISCOVERED WILL. If a will is admitted to probate after notice of appointment has been given, the personal representative must:

(1) send notice of appointment or reappointment as provided in Rule 206(d), except that ordinary mail may be substituted for registered or certified mail if this is not the first notice sent to the person; and

(2) file a notice of appointment or reappointment, typed or electronically completed on the form maintained by the Register of Wills, and the Register of Wills must promptly forward copies of the completed form to the designated newspapers for publication.

### **Rule 207. Consent to Appointment of Personal Representative**

(a) FORMAT AND CONTENT. A consent to the appointment of a personal representative must be on the form maintained by the Register of Wills or a form that is substantially similar in format and content.

(b) **WAIVER OF BOND.** The consent may be accompanied by a waiver of the personal representative's bond described in Rule 208.

### **Rule 208. Bond**

(a) **IN GENERAL.**

(1) *When Required.* Unless the personal representative is excused from giving bond either by the will or by the written waiver of all of the interested persons, the personal representative must, at the time of filing the petition for probate, give bond for the benefit of interested persons who did not waive bond and creditors who are not interested persons.

(2) *After Presentation of Claim.* If the will does not waive bond, and at any time after the filing of a petition for probate a creditor becomes an interested person and does not waive bond, the personal representative must petition to give or increase such a bond within 21 days after presentation of a claim to the personal representative.

(3) *Form.* The bond required under D.C. Code § 20-502(a) (2012 Repl.) must be on the form maintained by the Register of Wills.

(b) **DEMAND FOR BOND UNDER D.C. CODE § 20-502(a-1).**

(1) *Who May File.* At any time after the filing of the petition for probate, any person with an interest in the estate worth in excess of \$1,000 or any creditor having a claim in excess of \$1,000 may file a demand for bond under D.C. Code § 20-502(a-1) (2012 Repl.).

(2) *Form and Service.* A demand for bond under D.C. Code § 20-502(a-1) (2012 Repl.) must be made by petition on the form maintained by the Register of Wills or a form that is substantially similar to that form. A copy of the petition must be mailed or delivered to the personal representative, or, if appointment has not occurred, to the person(s) whose appointment as personal representative is requested in the petition.

(3) *Opposition to Demand for Bond.* The personal representative or the person requesting appointment as personal representative may oppose the petition or the amount of the bond requested by filing a timely opposition with the Register of Wills.

(4) *Bond Ordered by Court; Form.* If the court orders that the personal representative file a bond or increase an existing bond, but the order does not specify a time for filing, the personal representative must file the bond within 14 days after the date of the order appointing the personal representative or the order requiring the bond, whichever is later. The bond required under D.C. Code § 20-502(a-1) (2012 Repl.) must be on the form maintained by the Register of Wills.

(c) **AMOUNT OF BOND; VALUE OF INTEREST.**

(1) *Amount of Bond.* For the purpose of setting a bond under D.C. Code § 20-502(a) (2012 Repl.), the amount of the bond must be equal to the estimated value of the estate less the estimated net

distributable share of each person waiving bond, calculated as if estate assets were applied to debts, funeral expenses, family allowance, administration expenses, and distributions to heirs, legatees, and other claimants in order of priority and according to law.

(2) *Value of Interest.* For the purpose of setting a bond under D.C. Code § 20-502(a-1) (2012 Repl.), the value of the interest in the estate of the person or creditor demanding bond must be the estimated amount of the net distribution or disbursement due to that person or creditor, calculated as if estate assets were applied to debts, funeral expenses, family allowance, administration expenses, and distributions to heirs, legatees, and other claimants in order of priority and according to law.

(3) *Appraisal.* The court may require an appraisal of a specific asset for the purpose of setting a bond if there is a dispute over the value of that asset.

(d) **FAILURE TO FILE BOND.** In its order requiring the filing or the increasing of a bond, the court may direct that, if the bond is not filed or increased within the time specified by this rule or the court's order, the powers of the personal representative will, upon the expiration of that time period, automatically and without further order of the court be suspended until the filing or increase of the required bond. Upon such filing or increase, the original powers of the personal representative must automatically be reinstated unless otherwise ordered by the court. The failure to file or increase the required bond may subject the personal representative to removal proceedings in accordance with D.C. Code § 20-526 (2012 Repl.) and Rule 114.

(e) **WAIVER OF BOND.**

(1) *In General.* An interested person may waive the personal representative's bond as to his or her interest.

(2) *Form.* The waiver of the personal representative's bond must be on the form maintained by the Register of Wills or a form which is substantially similar to that form.

(3) *Consent to Appointment of Personal Representative.* The waiver may be accompanied by a consent to appointment of a personal representative described in Rule 207.

## **COMMENT**

Creditors who can become interested persons are only those creditors of the decedent, including those whose rights accrue at the time of death, who have timely presented a claim in excess of \$500 that has not been barred or discharged. D.C. Code § 20-101(d)(1)(E) (2012 Repl.). Claims are presented in accordance with D.C. Code § 20-903(a)(1) (2012 Repl.). However, claims that arise after the death of the decedent, such as expenses incurred in the administration of the estate, need not initially be presented to the personal representative, *Poe v. Noble*, 525 A.2d 190, 196 (D.C. 1987), and in fact become barred if no action is commenced on them within six months after they arise, D.C. Code § 20-903(a)(2) (2012 Repl.). *Cf. Johnson v. Martin*, 567 A.2d 1299, 1305 (D.C. 1989) (“On remand, therefore, the court must first decide whether any claim against the estate (as opposed to a claim against Mr. Abrams himself) for an alleged breach of fiduciary

duty is time-barred.”); *Grimberg v. Marth*, 659 A.2d 1287 (Md. 1995). Accordingly, administrative creditors as distinguished from creditors of the decedent cannot become interested persons, because they cannot perfect their claims by presentation to the personal representative under D.C. Code § 20-903(a)(1) (2012 Repl.).

### **Rule 209. Special Administrators**

A special administrator must file an inventory and accounts in the same manner as required for supervised personal representatives.

### **Rule 210. Contested Proceedings Commenced by Complaint**

#### (a) TYPE OF PROCEEDING.

(1) *When Required.* The following actions are commenced by filing a verified complaint:

(A) an action to contest the validity of a will in accordance with D.C. Code § 20-305 (2012 Repl.); or

(B) an action for payment of a claim that was denied in whole or in part in accordance with D.C. Code § 20-908 (2012 Repl.).

(2) *By Court Order.* Unless a statute provides otherwise, on request of an interested person or on its own initiative, the court may order that a petition be treated as a complaint commencing a contested proceeding or that a complaint be filed.

#### (b) APPLYING CIVIL RULES.

(1) *In General.* Except as modified in Rule 210(b)(2)-(3) or as otherwise ordered by the court, the Superior Court Rules of Civil Procedure apply to a contested proceeding commenced by a complaint under Rule 210(a)(1) or (2).

(2) *Summons.* Together with the complaint, the plaintiff must complete and file a summons for each defendant on the form maintained by the Register of Wills. On filing of the complaint and summons, the clerk must issue the summons and an initial order to be served with the complaint in accordance with the civil rules.

(3) *Initial Scheduling and Settlement Conference.* The court must schedule an initial scheduling and settlement conference to be held within 120 days after the complaint is filed.

#### (c) REQUIRED DEFENDANTS.

(1) *Complaint to Contest Validity of Will.* In a complaint to contest the validity of a will, the defendants must include:

(A) all interested persons, excluding creditors; and

(B) all persons needed for just adjudication under Civil Rule 19.

(2) *Any Other Complaint.* In any other complaint, the defendants must include:

(A) the personal representative; and

(B) any other persons needed for just adjudication under Civil Rule 19.

(d) **NOTICE TO CREDITORS.** In a proceeding to contest the validity of a will, the plaintiff must give notice under D.C. Code § 20-103 (2012 Repl.) to creditors who are interested persons and must prove service of the notice by certificate of service.

## **COMMENT**

A plenary proceeding provided for in D.C. Code § 16-3105 (2012 Repl.) is a process that existed largely for decedent estate administration pursuant to now-repealed statutes, and it is no longer used in current practice. Relief formerly requested in a plenary proceeding may be requested in a petition which, if appropriate, may be treated as a complaint commencing a contested proceeding.

## **Rule 211. Petitions to Restrain Acts of Supervised Personal Representative: Requirements**

(a) **CONTENT.** A petition to restrain the acts of a supervised personal representative filed pursuant to D.C. Code § 20-521 (2012 Repl.) must contain the information required by Rule 105(b)(1).

(b) **PARTIES TO PROCEEDING.**

(1) *Required.* The parties to proceedings on the petition must include:

(A) the petitioner;

(B) the personal representative; and

(C) any third person whose rights will be directly affected by the relief requested in the petition, who must be named in the petition as a respondent.

(2) *Permitted.* Any other interested person in the estate may request to be a party to the proceedings on the petition.

(c) **HEARING.** The court must set a hearing on the petition within 10 days after the filing of the petition, unless the parties agree to a different date.

(d) **SERVICE.**

(1) *On Parties*. The petitioner must personally serve the petition on the personal representative and any party no later than the time set by the court.

(2) *Interested Persons Not Named as a Party*. The petitioner must serve the petition, by first class mail, on all interested persons not named as a party when the petition is filed.

### **Rule 212. Distribution to Minors**

(a) IN GENERAL. A personal representative must distribute assets to a minor in accordance with D.C. Code § 20-1106 (2012 Repl.).

(b) PETITION FOR COURT APPROVAL. If court approval is required or is otherwise requested by the personal representative for a distribution to a minor under D.C. Code § 20-1106 (2012 Repl.), the personal representative must file a verified petition that sets forth the following information:

(1) the name, residence, and date of birth of each minor for whom distribution authority is sought, as well as the basis for the minor's entitlement to share in the estate;

(2) the total value of the estate assets to be distributed to each minor;

(3) the proposed method of distribution;

(4) the reason why distribution under D.C. Code § 20-1106 (a) or (b)(1) (2012 Repl.) is not permissible or desired;

(5) if authority is requested to establish a restricted account, the name and location of the financial institution; and

(6) if authority is requested to distribute assets exceeding \$10,000.00 in value under D.C. Code § 21-306 (2012 Repl.):

(A) the reason why the transfer is in the best interests of the minor;

(B) facts to show the transfer is not prohibited by or inconsistent with the provisions of the will; and

(C) a representation that the personal representative will effect the transfer in accordance with D.C. Code § 21-309 (2012 Repl.) and file an appropriate receipt.

### **Rule 213. Action on Claims**

(a) NOTICE OF ACTION. Notice of action taken by the personal representative, in accordance with D.C. Code § 20-908(a) (2012 Repl.), 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.

(b) SERVICE OF NOTICE OF ACTION. The personal representative must sign the notice and mail or deliver it to each claimant.

#### **Rule 214. Petition for Payment of Claim**

(a) IN GENERAL. A person may file a petition for an order directing payment of a claim under D.C. Code § 20-909(a) (2012 Repl.) if the person:

(1) has a valid unbarred claim or judgment; and

(2) has not been paid by the personal representative within 8 months after publication of the first notice of appointment of a personal representative.

(b) FORMAT AND CONTENT. A petition for an order directing payment of a claim 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.

(c) APPLICABLE PROCEDURES. The procedures for a petition for an order directing payment of a claim are governed by Rule 105(c)-(f).

(d) RESPONSE TO PETITION. The personal representative must file and serve the claimant with a response to the petition no later than 14 days after the petition was mailed or delivered.

#### **Rule 215. Account of Personal Representative**

(a) SUPERVISED PERSONAL REPRESENTATIVE.

(1) *Filing*. A supervised personal representative must file an account as required by D.C. Code § 20-724 (2012 Repl.).

(2) *Contents of Account*. In addition to the content required by Rule 113, the account must show payment of any applicable statutory allowances set out in D.C. Code §§ 19-101.02 to -.04 (2012 Repl.).

(3) *Objection to Account*. An objection to an account of a supervised personal representative must be filed within 30 days after the filing of the account.

(4) *Final Account Tax Certification*. The final account of a supervised personal representative must include a certification that the supervised personal representative is, or is not, required to file a federal estate tax return or a District of Columbia estate transfer tax return, and if so, that any tax due, including applicable interest, has been paid in full.

(b) UNSUPERVISED PERSONAL REPRESENTATIVE.

(1) *When Required*. An unsupervised personal representative must prepare an account and serve it on all interested persons:

- (A) at reasonable intervals during the administration of the estate;
- (B) on reasonable demand by any interested person; and
- (C) as ordered by the court in a proceeding initiated by an interested person.

(2) *Contents of Account.* In addition to the contents required by Rule 113, the account must show payment of any applicable statutory allowances set out in D.C. Code §§ 19-101.02 to -.04 (2012 Repl.).

(3) *Objection to Account.*

(A) *Interim Account.* An objection to an interim account of an unsupervised personal representative may be filed at any time prior to the mailing of the final account of an unsupervised personal representative.

(B) *Final Account.* An objection to a final account of an unsupervised personal representative must be filed within 60 days after the final account is sent.

(4) *Final Account.*

(A) *Service.* An unsupervised personal representative must serve the final account on all interested persons and may send the final account to each creditor of the decedent or the estate.

(B) *Notice.* The final account of an unsupervised personal representative must include the notice to interested persons required by D.C. Code § 20-735(b) (2012 Repl.), on the form maintained by the Register of Wills or a form that is substantially similar in content and format to that form.

## COMMENT

Rule 113 includes the general requirements for format, contents, and audit of accounts.

The finality of unsupervised administration provided for in D.C. Code § 20-736 (2012 Repl.) requires serving both the final account and the notice to interested persons described in D.C. Code § 20-735(b) (2012 Repl.). Any certificate of completion of unsupervised administration filed pursuant to Rule 221 must be accompanied by a copy of the notice sent with the final account.

## Rule 216. Waiver of Filing Inventories and Accounts in Supervised Administration

(a) **FORM OF WAIVER.** A waiver of filing inventories and accounts under D.C. Code § 20-731 (2012 Repl.) 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.



(b) EFFECT OF WAIVER.

(1) *In General.* The filing of the waiver of the inventories and accounts converts supervised administration to unsupervised administration.

(2) *Court-Ordered Supervised Administration.* If waivers of filing inventories and accounts are filed by all interested persons in an estate administration that is supervised pursuant to court order, the court may set a hearing to determine whether there is good cause for the administration to remain supervised.

**COMMENT**

For purposes of D.C. Code § 20-731(a) (2012 Repl.), “an heir or legatee” refers to intestate or testate cases, as appropriate, and does not require the waiver by heirs in a testate case.

D.C. Code § 20-403(b) (2012 Repl.) permits the court, after notice and a hearing, to order supervised administration.

**Rule 217. Waiver of Complete Court Audit of Account in Supervised Administration**

(a) FORM OF WAIVER. A waiver of a complete court audit of an account by an heir in an intestate estate or a legatee in a testate estate pursuant to D.C. Code § 20-732(a) (2012 Repl.) 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.

(b) EFFECT OF A RECEIPT. A receipt signed by an heir or legatee acknowledging payment in full of his or her interest in the estate is deemed to be a waiver for purposes of D.C. Code § 20-732(a) (2012 Repl.).

(c) WAIVER OF RIGHT TO FILE OBJECTIONS. An heir or legatee may waive the right to a complete court audit under D.C. Code § 20-732(a) (2012 Repl.) and the right to file an objection to the account within 30 days after its filing as provided in Rule 215. An heir or legatee who waives these rights may nevertheless demand a complete court audit within 20 days after approval of the final account.

**Rule 218. Assignment of Rights**

(a) FORM OF ASSIGNMENT. A person who claims to have a right to a distribution from a decedent’s estate may assign all or part of that right to another person or entity. The assignment must be in writing and must have the caption required by Rule 103.

(b) FILING. The assignee must promptly file the assignment with the court.

(c) FUTURE PROCEEDINGS. Any future action to protect or enforce the assignment, or any claim based on the assignment, must be presented in the name of the assignee and not in the

name of the assignor. Unless approved by the court, neither the assignee, nor counsel for the assignee may appear for or represent the assignor.

### **Rule 219. Termination of Appointment of Supervised Personal Representative**

A petition for termination of the appointment of the supervised personal representative, the accompanying notice, and the proposed order pursuant to D.C. Code § 20-1301 (2012 Repl.) must be on the forms maintained by the Register of Wills or forms that are substantially similar in content and format to those forms. The petition must have attached to it all receipts not previously filed evidencing proper distribution of assets of the estate.

### **Rule 220. Review of Compensation**

(a) **COMPENSATION IS PAYABLE WITHOUT COURT APPROVAL.** Whether administration is supervised or unsupervised, the personal representative may pay reasonable compensation, without prior court approval, to the personal representative, an attorney, and any other provider of services to or person contracting with the personal representative.

(b) **REVIEW OF OR OBJECTION TO COMPENSATION.** On petition of or objection by an interested person who has not consented after fair disclosure and after notice of the right to object, the court may review the need for employment of any person or entity or the reasonableness of any compensation paid to the personal representative or any person or entity.

(c) **CONTENT OF PETITION OR OBJECTION AND ANY RESPONSE.** A petition or objection seeking review of the need for employment of any person or entity or the reasonableness of any compensation, and any response to the petition or objection, must address the factors set forth in D.C. Code § 20-753(b) (2012 Repl.) and may include any other bases for relief.

### **Rule 221. Certificate of Completion in Unsupervised Administration**

(a) **FORM.** A certificate of completion, as provided in D.C. Code § 20-735 (2012 Repl.), may be filed by an unsupervised personal representative on the form maintained by the Register of Wills or a form that is substantially similar in content and format to that form.

(b) **CONTENTS.** The certificate of completion must include:

- (1) the information required by D.C. Code § 20-735(b) (2012 Repl.);
- (2) a copy of the notice accompanying the final account, as required by Rule 215;
- (3) a list of the names and addresses of each person to whom the final account and notice was sent; and
- (4) a certificate of service.

## **Rule 222. Requests for Extension of Unsupervised Personal Representative's Appointment**

(a) **FORM OF REQUEST.** A written request for extension of the appointment of an unsupervised personal representative under D.C. Code § 20-1301(c) (2012 Repl.) 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. The request must include:

(1) a list of the name and current address of each interested person; and

(2) a proposed order on the form maintained by the Register of Wills or a form that is substantially similar in content and format.

(b) **NOTICE OR CONSENT.** No notice to or consent of interested persons is required for action on the request.

(c) **TIME FOR FILING; COURT ACTION.**

(1) *Time for Filing.* A request for extension of appointment must be filed by the date that the initial or extended appointment would terminate under D.C. Code § 20-1301(c) (2012 Repl.).

(2) *Court Action.* A written request for extensions filed after the termination date may be granted by the court.

(d) **NOTICE OF EXTENSION.** The court must send to each interested person the order extending the appointment of the personal representative and the notice advising the interested persons of the extension of the personal representative's appointment on the form maintained by the Register of Wills.

### **COMMENT**

If the request is filed after the expiration of the personal representative's powers, the court may apply greater scrutiny to the request.

## **CHAPTER 3 - PROCEEDINGS UNDER THE DISTRICT OF COLUMBIA GUARDIANSHIP, PROTECTIVE PROCEEDINGS AND DURABLE POWER OF ATTORNEY ACT (INTERVENTION PROCEEDINGS)**

### **Rule 301. Commencing an Intervention Proceeding**

(a) **IN GENERAL.** Except for a proceeding to appoint a temporary guardian under Rule 302 or to appoint a conservator for a missing, disappeared, or detained person under Rule 303, an intervention proceeding is commenced by filing a petition on the form maintained by the Register of Wills or a form that is substantially similar in format and content, requesting:

(1) the appointment of a guardian;

(2) the appointment of a conservator;

(3) a protective order; or

(4) any combination of the above.

(b) **ADDITIONAL DOCUMENTS FILED WITH PETITION.** The petition must be accompanied by:

(1) a notice of hearing to be served on the subject or ward, on the form maintained by the Register of Wills or a form that is substantially similar in format and content;

(2) a notice of hearing to be served on all other persons entitled to receive notice, on the form maintained by the Register of Wills or a form that is substantially similar in format and content; and

(3) a proposed order on a form maintained by the Register of Wills or a form that is substantially similar in format and content.

(c) **HEARING.** On receiving the petition, the court must schedule a hearing.

(d) **SERVICE.**

(1) *In General.* Except as provided in Rule 302(d)(4)-(5), the petition and the notice of hearing must be personally served on the following individuals at least 14 days before the hearing:

(A) the subject of the proceeding;

(B) the subject's spouse or, if no spouse, the subject's adult children or, if no spouse or adult children, the subject's parents or, if no spouse, adult children, or parents, at least 1 of the subject's nearest adult relatives if any can be found;

(C) any person who is serving as guardian or conservator or who has the care and custody of the subject of the proceeding;

(D) any other person as directed by the court; and

(E) if the District of Columbia is not the subject's home state, any persons who would be entitled to notice if the petition had been brought in the subject's home state.

(2) *Notice to Other Persons.* A copy of the petition and notice of hearing must be sent by first class mail, postage prepaid, to:

(A) any person listed in Rule 301(d)(1)(B) who was not personally served; and

(B) any person who has a higher priority for appointment as guardian or conservator than the proposed guardian or conservator.

(3) *Petition for Appointment of a Guardian.* A copy of a petition for appointment of a guardian must also be mailed to the subject of the petition, by first class mail, postage prepaid, within 3 days after the petition is filed.

(4) *Person Outside of the District of Columbia.* If any person listed in Rule 301(d)(1)(B)-(D) lives outside of the District of Columbia, the petitioner may mail the petition and the notice of hearing by certified or first-class mail, addressed to the person's place of residence or office. The petitioner must mail the petition and notice at least 17 days before the hearing date.

(5) *Subject of Petition Who Has Disappeared or Been Detained.* If the subject of a petition has disappeared, has been detained by a foreign power, or is being held hostage by someone other than a foreign power, the notice of hearing on the petition must be published in a newspaper of general circulation in the District of Columbia at least once a week for 3 consecutive weeks, with the first publication being at least 40 days before the hearing date.

(6) *By Court Order.* For good cause, the court may provide for a different method or time of notice.

(7) *Proof of Service.* Proof of service must be given by affidavit or declaration filed not later than the date of the hearing.

(8) *Waiver.* The subject of the proceeding may not waive notice. Any other person may waive notice by filing a written waiver.

## COMMENT

The rules addressing intervention proceedings use terms such as “intervention proceedings,” “ward,” “protected individual,” “examiner,” and “visitor” as they are defined in D.C. Code § 21-2011 (2021 Supp.).

### **Rule 302. Proceeding to Appoint a Temporary Guardian**

(a) **IN GENERAL.** A proceeding to appoint a temporary guardian, including an emergency guardian, a health-care guardian, or a provisional guardian, is commenced by filing a petition on the form maintained by the Register of Wills or a form that is substantially similar in format and content.

(b) **EMERGENCY GUARDIAN.**

(1) *In General.* A petition to appoint an emergency guardian must be accompanied by the following documents on forms maintained by the Register of Wills or forms that are substantially similar in format and content:

(A) a proposed order to appoint counsel and any guardian ad litem, examiner, or visitor, for the individual alleged to be incapacitated; and

(B) a proposed order to appoint the emergency guardian.

(2) *Counsel.* Immediately upon receipt of the petition, the court must appoint counsel to represent the individual alleged to be incapacitated. If the petition discloses that the subject is represented by counsel, the court must appoint that person unless there is good cause to appoint a different attorney.

(3) *Service and Notice.*

(A) *Service.* The petitioner must serve the petition, order appointing counsel, any order appointing a guardian ad litem, examiner, or visitor, and a notice of the right to request a hearing, in the manner provided by and on the persons listed in Rule 301(d).

(B) *Immediate Notice.* The petitioner must provide notice of the petition and of the right to request a hearing to counsel for the individual alleged to be incapacitated and any interested persons, in a manner reasonably calculated to provide immediate notification, including by telephone or electronic communication.

(C) *Proof of Service.* An affidavit or declaration of service must be filed.

(4) *Appointing an Emergency Guardian.* The court may schedule a hearing on the petition or may appoint an emergency guardian without a hearing. If the court appoints an emergency guardian without a hearing, the court must state the reasons in the appointment order.

(5) *Post-Appointment Hearing.* The ward, counsel for the ward, or any other party or interested person may request a hearing at any time before the emergency guardian's appointment expires. No specific form is required for a request for a hearing. The hearing must be held no later than 48 hours after the request is filed. The court must provide immediate notice of the hearing to the petitioner and to all parties and interested persons, by telephone or electronic communication.

(6) *Service of Order Appointing Emergency Guardian.* The court must provide a certified copy of the order of appointment to the emergency guardian, and must mail a copy of the order of appointment to all other parties and interested persons.

(7) *Expiration of Appointment.* An emergency guardian's appointment is limited to 21 days and may not be extended. Upon petition, the emergency guardian may be appointed as a health-care guardian.

(c) HEALTH-CARE GUARDIAN.

(1) *In General.* A petition to appoint a health-care guardian must be accompanied by the following documents:

(A) in accordance with D.C. Code § 21-2204 (2012 Repl.), two certifications that the individual alleged to be incapacitated lacks the mental capacity to make a health-care decision;

(B) a proposed order to appoint counsel and any guardian ad litem, examiner, or visitor, for the individual alleged to be incapacitated, on a form maintained by the Register of Wills or a form that is substantially similar in format and content; and

(C) a proposed order to appoint the health-care guardian, on a form maintained by the Register of Wills or a form that is substantially similar in format and content.

(2) *Counsel.* Immediately upon receipt of the petition, the court must appoint counsel to represent the individual alleged to be incapacitated. If the petition discloses that the subject is represented by counsel, the court must appoint that person unless there is good cause to appoint a different attorney.

(3) *Service.*

(A) *In General.* The petitioner must serve the petition, order appointing counsel, any order appointing a guardian ad litem, examiner, or visitor, and a notice of hearing, in the manner provided by and on the persons listed in Rule 301(d).

(B) *Proof of Service.* An affidavit or declaration of service must be filed no later than the time of the hearing.

(4) *Hearing.* A hearing on the petition for appointment of a health-care guardian must be held no later than 7 days after the petition is filed.

(5) *Service of Order Appointing Health-Care Guardian.* The court must provide a certified copy of the order of appointment to the health-care guardian, and must mail a copy of the order of appointment to all other parties and interested persons.

(6) *Extending Appointment of Health-Care Guardian.*

(A) *In General.* On petition or on its own initiative, the court may extend the health-care guardian's appointment for one additional period of up to 90 days because of continued incapacity and need for the provision of substituted consent or because a petition for the appointment of a permanent guardian is pending.

(B) *Petition.* A petition to extend the appointment of a health-care guardian must be filed no later than 7 days prior to the expiration of the appointment. The petition must be filed on the form maintained by the Register of Wills or a form that is substantially similar in format and content.

(C) *Additional Documents.* The petition must be accompanied by the following documents on forms maintained by the Register of Wills or forms that are substantially similar in format and content:

(i) a notice of hearing;

(ii) a proposed order to appoint counsel and any guardian ad litem, examiner, or visitor, for the ward; and

(iii) a proposed order to extend the appointment of the health-care guardian.

(D) *Service.* The petitioner must serve a copy of the petition, order of appointment of counsel, and notice of a hearing in the manner provided by and on the individuals listed in Rule 301(d). An affidavit or declaration of service must be filed no later than the date set for the hearing.

(E) *Hearing.* A hearing must be scheduled no later than the date on which the original appointment expires.

(d) PROVISIONAL GUARDIAN.

(1) *In General.* On petition or on its own initiative, the court may suspend the authority of an appointed guardian and appoint a provisional guardian if the appointed guardian is not effectively performing the guardian's duties and the welfare of the ward requires immediate action.

(2) *Notice of Appointment of Provisional Guardian.* The Register of Wills must give notice of the order appointing a provisional guardian to the ward, the suspended guardian, and all other parties and interested persons within 14 days after the order is entered.

(3) *Authority and Duration.* The provisional guardian has the authority set forth in the previous order of appointment. The provisional guardian's appointment is limited to 6 months.

**COMMENT**

This rule implements D.C. Code § 21-2046 (2012 Repl.).

The appointment of a provisional guardian is reserved for extraordinary situations requiring immediate action by the court, and is not the means to seek removal, in non-emergency situations, of a guardian who is allegedly negligent in the performance of his or her duties. In non-emergency situations, a petition under Rule 301 is appropriate. After the appointment of a provisional guardian, the procedures provided for a petition subsequent to the appointment of a guardian or conservator ("petition post-appointment"), set out in Rule 314 apply, because D.C. Code § 21-2049 (2021 Supp.) requires that, when appointing a successor guardian, the court must follow the same procedures to safeguard the rights of the ward that apply to the appointment of a guardian.

**Rule 303. Petition to Appoint a Conservator for a Missing, Disappeared, or Detained Person**

(a) **IN GENERAL.** A proceeding to appoint a conservator for a missing, disappeared, or detained person is commenced by filing a petition on the form maintained by the Register of Wills or a form that is substantially similar in format and content.



(b) **ADDITIONAL DOCUMENTS.** The petition must be accompanied by the following documents on forms maintained by the Register of Wills or forms that are substantially similar in format and content:

- (1) a notice of hearing; and
- (2) a proposed order setting the hearing and directing publication.

(c) **EXAMINER AND VISITOR.** No examiner or visitor will be appointed unless otherwise ordered by the court.

(d) **SERVICE.** The petitioner must serve the petition, the order setting the hearing and directing publication, and the notice of hearing, in the manner provided by and on the persons listed in Rule 301(d).

#### **Rule 304. Discovery**

Discovery under Civil Rules 26 through 37 may only be conducted upon order of the court. If the court authorizes discovery, the court must specify the extent of discovery permitted.

#### **Rule 305. Parties and Petition for Permission to Participate**

(a) **PARTIES.** Parties to the proceeding include:

- (1) the subject of the proceeding;
- (2) any guardian or conservator;
- (3) the person filing a petition to initiate an intervention proceeding; and
- (4) a creditor filing a petition to determine a claim.

(b) **PETITION FOR PERMISSION TO PARTICIPATE.**

(1) *In General.* To participate in a proceeding, a person other than one listed in Rule 305(a) must file a petition for permission to participate on the form maintained by the Register of Wills or a form that is substantially similar in format and content. The petition must be accompanied by a proposed order and must be filed no later than 7 days before the hearing or within the time permitted by the court for good cause.

(2) *Service.* The petition must be served on all parties in the manner required by Rule 105.

(3) *Party Designation.* At the initial hearing or any time after the initial hearing, the court may confer the status of party on any participant.

(c) **TERMINATION OF PARTY OR PARTICIPANT STATUS.**

(1) *Petitioner*. Unless the court provides otherwise, a petitioner (other than the subject of the proceeding) who initiates an intervention proceeding ceases to be a party when:

(A) a conservator or guardian is appointed;

(B) a protective order is entered; or

(C) the petition is dismissed.

(2) *Creditor*. A creditor ceases to be a party upon payment or other final disposition of the claim.

(3) *Other Party or Participant*. Unless the court provides otherwise, any other party or participant ceases to be a party or participant when the intervention proceeding concludes.

(d) CONTINUATION OF PARTY STATUS. The court, in the findings of fact, conclusions of law, and order must specify who will continue as parties or participants.

### **Rule 306. Request for Notice of Filings**

(a) IN GENERAL. Any person who is interested in an intervention proceeding may request notice before any order is issued in the proceeding by filing a request for notice on the form maintained by the Register of Wills or a form that is substantially similar in format and content.

(b) SERVICE. The requestor must serve the request for notice by first class mail on all persons entitled to receive notice. The clerk must mail a copy of the request to any appointed guardian and conservator.

(c) DURATION.

(1) *In General*. A request for notice is effective from the date of filing and for 3 years or the duration of the proceeding, whichever is shorter.

(2) *Petition to Strike the Request*. Upon petition filed by a party within 14 days after service of the request or on its own initiative, the court may order the request stricken for lack of sufficient interest.

(3) *Revoking or Renewing Request*. The requestor may revoke the request by filing a notice. To renew a request for notice, the requestor must file a new request for notice in accordance with this rule.

(d) NOTICE OF ORDERS AND OTHER PAPERS FILED. After a request for notice is filed, the clerk must send the requestor copies of all orders subsequently entered by the court. Once served with a copy of the request for notice, each party to an intervention proceeding must send the requestor copies of all subsequent filings.

### **Rule 307. Counsel for the Subject or Ward**

(a) IN GENERAL. Counsel for the subject or ward must zealously represent and advocate for:

(1) the subject's or ward's expressed wishes; or

(2) if the subject or ward is unconscious or otherwise wholly incapable of expressing his or her wishes, the result that is the least restrictive option in type, duration, and scope, consistent with the interests of the subject or ward as determined by the guardian ad litem.

(b) NOTICE OF APPEARANCE.

(1) *In General*. Counsel must promptly file a notice of appearance.

(2) *Retained Counsel*. If counsel is retained by the subject or ward, the notice of appearance must state:

(A) whether counsel was retained after the court appointed counsel; and

(B) whether retained counsel has previously served as counsel for the subject or ward.

(3) *Termination of Appointed Counsel*. Unless a petition to strike retained counsel is filed, the appearance of counsel appointed for the subject or ward terminates when the notice of appearance of retained counsel is filed.

(c) PETITION TO STRIKE APPEARANCE

(1) *In General*. If appointed counsel, an appointed guardian ad litem, an appointed visitor, an appointed examiner, or any person entitled to notice objects to the appearance of retained counsel, that person may file a petition to strike the appearance of retained counsel.

(2) *Hearing*. If a petition to strike the appearance of counsel is filed, the court must, as soon as practicable, hold a hearing, attended only by:

(A) the subject or ward;

(B) appointed counsel;

(C) retained counsel;

(D) the person filing the petition and any counsel representing that person; and

(E) any guardian ad litem, visitor, or examiner appointed in the case.

(3) *Striking the Appearance*. After the hearing, the court may strike the appearance of counsel retained by the subject or ward if the court finds that:

(A) retained counsel has a conflict of interest that will prevent counsel from zealously representing the subject or ward;

(B) the entry of appearance of retained counsel would unduly delay trial of the case; or

(C) there is any other basis for striking the appearance.

(d) PRACTICE STANDARDS. Counsel must represent the subject or ward in accordance with the Probate Attorney Practice Standards.

(e) TERMINATION OF APPEARANCE. Unless otherwise ordered by the court, the appearance of counsel for the subject or ward terminates upon the disposition of the petition for which counsel's appearance was entered.

## COMMENT

D.C. Code § 21-2033 (2021 Supp.) and this rule require counsel to act as a zealous advocate for the subject and not as a guardian, independent investigator, or objective finder of fact. Counsel should file a responsive pleading consistent with the requirements of the practice standards, such memoranda as is needed to address unique issues or special circumstances, or any pleading requested by the court, but should not file a "report" or a pleading consisting of a general discussion of the case. In representing the subject, counsel should remain free from the influence of persons whose interests conflict with the subject's physical, mental or financial well-being. Counsel for the subject may make decisions with respect to the conduct of the intervention proceeding or other litigation.

### **Rule 308. Guardian ad litem for Subject of the Proceeding**

(a) IN GENERAL. On petition or on its own initiative, the court may appoint an individual to assist the subject or ward to determine his or her interests in regard to the guardianship or protective proceeding or to make that determination if the subject or ward is unconscious or otherwise wholly incapable of determining his or her interest in the proceeding even with assistance.

(b) MEMBERS OF THE BAR TO BE APPOINTED. Except for good cause, no person other than a member of the District of Columbia Bar may be appointed guardian ad litem.

(c) PETITION. A petition for appointment of a guardian ad litem may be part of the petition for a general proceeding or a separate petition filed by a party, person with permission to participate, or counsel for the subject or ward. The petition must state:

(1) the name, address, email address, and telephone number of any limited guardian, guardian, limited conservator, or conservator for the subject or ward;

(2) the individuals most closely related, by blood or marriage, to the subject or ward;

- (3) the individual or facility, if any, having custody of the subject;
  - (4) the facts and reasons supporting the request for a guardian ad litem;
  - (5) the proposed specific duties of a guardian ad litem;
  - (6) if the appointment of a specific individual is sought, the name, address, email address, telephone number, and qualifications of that individual; and
  - (7) facts to show that because of impaired ability to receive and evaluate information regarding the proceeding, or because of impaired ability to communicate decisions regarding the proceeding, the subject or ward cannot determine his or her own interests without assistance, and:
    - (A) no limited guardian or guardian for the individual has been appointed;
    - (B) the subject's interests and those of the subject's limited guardian or guardian conflict; or
    - (C) the appointment is otherwise required in the interests of justice.
- (d) **NOTICE OF HEARING AND PROPOSED ORDER.** If the petition to appoint a guardian ad litem is filed after the petition for general proceeding, the petitioner must file a notice of the petition and hearing and a proposed order on the forms maintained by the Register of Wills or forms that are substantially similar in format and content. The notice of the petition and hearing and the proposed order must be served with the petition.
- (e) **ORDER OF APPOINTMENT.** The court, as part of the record, must set out the reasons for appointment and the specific duties of the guardian ad litem.
- (f) **PRACTICE STANDARDS.** The guardian ad litem must represent the subject or ward in accordance with the Probate Attorney Practice Standards.
- (g) **TERMINATION OF APPOINTMENT.** The appointment of the guardian ad litem terminates upon the disposition of the petition for which the guardian ad litem was appointed unless otherwise directed by the court.

## **COMMENT**

A guardian ad litem for a person other than the subject or the ward in an intervention proceeding is governed by Rule 117.

### **Rule 309. Examiner**

- (a) **DUTIES.** Any examiner appointed by the court must:
  - (1) submit a written report on the form maintained by the Register of Wills or a form that is similar in format and content;

(2) send copies of the report to all persons listed on the order appointing the examiner no later than 14 days before the hearing; and

(3) attend the hearing unless excused by the court.

(b) **TERMINATION OF APPOINTMENT.** The appointment of an examiner terminates upon the disposition of the petition for which the examiner was appointed, unless otherwise directed by the court.

## **COMMENT**

“Examiner” is defined in D.C. Code § 21-2011(7) (2021 Supp.).

## **Rule 310. Visitor**

(a) **APPOINTMENT.** The court may appoint an individual or an organization as visitor. When an organization is appointed the organization must designate an individual to perform the duties of the office of visitor.

(b) **DUTIES.** Any visitor appointed must:

(1) interview the subject of the proceeding, the petitioner, any person nominated by the petitioner to serve as guardian or conservator, and such other persons as the visitor deems appropriate;

(2) visit the present place of abode of the subject of the proceeding and the place it is proposed that the individual will reside if the appointment is made;

(3) investigate whether a conflict or potential conflict should preclude the appointment of a person who has been nominated as a guardian or conservator;

(4) nominate a person for appointment as guardian or conservator in the report if no person has been nominated;

(5) submit a written report on the form maintained by the Register of Wills or a form that is similar in format and content;

(6) mail copies of the visitor’s report to all persons listed on the order appointing the visitor no later than 14 days before the hearing; and

(7) attend the hearing unless excused by the court.

(c) **TERMINATION OF APPOINTMENT.** The appointment of a visitor terminates upon the disposition of the petition for which the visitor was appointed, unless otherwise directed by the court.

## COMMENT

“Visitor” is defined in D.C. Code § 21-2011(26) (2021 Supp.).

### **Rule 311. Response to Petition for Appointment of a Guardian or Conservator or for a Protective Order**

#### (a) WHEN REQUIRED.

(1) *In General.* Unless otherwise ordered by the court, counsel for the subject of a proceeding must file and serve a response:

(A) within 21 days after the petition and notice were served on the subject of the proceeding;  
or

(B) if a guardian ad litem has been requested and appointed after the initial order appointing counsel, no less than 7 days before the initial hearing.

(2) *Content.* The response may include:

(A) any admissions or denials of allegations in the petition;

(B) a statement of position and any prayers for relief;

(C) any request to excuse the subject of the proceeding from being present at the hearing and the reasons why the subject’s presence should be excused;

(D) a statement as to whether the subject of the proceeding wishes the hearing to be closed;

(E) any request for the appointment of additional examiners or visitors to evaluate the condition of the subject of the proceedings, and the reasons for the request;

(F) any request for the appointment of a guardian ad litem for the subject or for any other person, the reasons for the request, and the proposed specific duties of the guardian ad litem;

(G) any current comprehensive evaluation or habilitation plan; current social, psychological, medical, or other evaluation used for diagnostic purposes in the development of a current plan of treatment; or current plan of treatment for the subject; and

(H) a statement indicating whether the proceeding may be resolved at the initial hearing and the issues that must be determined by the court at the initial hearing to effect that resolution or what issues remain to be determined and the best means for determining them.

(b) WHEN PERMITTED. Any other party or person entitled to participate may file and serve a response that includes the information in Rule 311(a)(2)(A)-(H).

### **Rule 312. Petition for Temporary Relief**

(a) IN GENERAL. As part of the petition to appoint a guardian or conservator or for other protective order or on separate petition, a person may seek an order to preserve and apply the property of the subject of the proceeding as required for the support of the subject or the subject's dependents while the petition to appoint a guardian or conservator or for other protective order is pending. The petition must:

- (1) state why an order is required; and
- (2) include any documents or other evidence relevant to the petition.

(b) COURT ORDER. After preliminary hearing and without prior notice to others, the court may enter an order to preserve and apply the property of the subject of the proceeding.

### **Rule 313. Initial Hearing on Petition for Appointment of a Guardian or Conservator or for a Protective Order**

(a) IN GENERAL. The court must hold an initial hearing on a petition for appointment of a guardian or conservator or for a protective order.

(b) COURT ORDERS. At the initial hearing, the court may:

- (1) enter an order disposing of the petition;
  - (2) enter an order for temporary relief; or
  - (3) enter scheduling orders, orders for discovery, or other appropriate orders for any subsequent proceeding.
- (c) PRESENTING EVIDENCE. Unless the court orders otherwise, each party or person granted permission to participate may present evidence in support of the relief sought by that party or participant.

### **Rule 314. Petition Post-Appointment**

(a) APPLICABILITY. This rule applies to proceedings after the appointment of a guardian or conservator, including:

- (1) a proceeding to limit powers, or remove or modify limitations on the powers, of a guardian or conservator;
- (2) a proceeding to accept the resignation of or remove a guardian or conservator;
- (3) a proceeding regarding an objection to or seeking to modify a guardianship report or conservatorship plan;



(4) a proceeding to address a petition filed under D.C. Code § 21-2068 (2012 Repl.) regarding a conflict of interest; and

(5) a proceeding regarding the administration of a conservatorship or guardianship.

(b) **INITIATION OF PROCEEDING.** Except for a proceeding regarding a temporary guardian or an order to show cause issued by the court on its own initiative, a proceeding after the appointment of a guardian or conservator must be initiated by filing a petition post-appointment on the form maintained by the Register of Wills or a form that is substantially similar in format and content. The petition must state with specificity the grounds for the request. The petition must be accompanied by a notice of the right to respond to the petition and to indicate the type of hearing requested.

(c) **SERVICE.**

(1) *In General.* The petitioner must serve a copy of the petition and the notice required by Rule 314(b) on each of the following:

(A) the incapacitated individual;

(B) the attorney of record for each party or person entitled to participate, or the party or other person entitled to participate if not represented by an attorney;

(C) any person who has filed an effective request for notice; and

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

(2) *Manner of Service.* The petition and notice must be served personally or by certified or first-class mail addressed to the person's residence or place of employment.

(d) **RESPONSE TO PETITION.** Any party or person entitled to participate who objects to the relief requested, or who desires a specific type of hearing, must file a response to the petition, a request for the hearing, or both, and must include the reasons. The party or person must file the response within 14 days after that party or person is served with the petition and notice. The response must be served as provided in Rule 314(c).

(e) **HEARING.**

(1) *In General.* The court must hold a hearing on the petition.

(2) *Notice of Hearing.* If the court schedules an in-person hearing or a hearing by telephone conference or video teleconference, the court must issue a notice of the hearing. The petitioner must serve the notice of hearing as provided in Rule 314(c). If the protected individual has disappeared, has been detained by a foreign power, or is being held hostage by someone other than

a foreign power, the petitioner must serve the notice of hearing on the protected individual in the manner required by Rule 301(d)(5).

## COMMENT

*In re Greene*, 829 A.2d 506, 508 (D.C. 2003) provides that “a hearing *in certain circumstances* may be held through written submission.” *Id.* (emphasis in original).

## Rule 315. Bond

(a) **CONDITION OF BOND.** Any bond required by the court must be filed on a form maintained by the Register of Wills or a form that is similar in format and content. The condition of the bond is that the conservator must faithfully discharge all duties of the trust according to law and obey any court orders.

(b) **EXEMPTIONS.**

(1) *Bank or Trust Company.* No bond is required from a bank or trust company authorized under District of Columbia or federal law to act as conservator.

(2) *Temporary Conservator Appointed as Permanent Conservator.* If a person appointed as temporary conservator is later appointed permanent conservator, a new bond is not required and the original bond may be increased as necessary.

(c) **PENALTY.** Unless otherwise ordered by the court, the penalty of the bond must be in the amount of the value of the assets (real and personal) of the estate committed to the conservator's control plus estimated annual income, minus the value of any securities deposited under arrangements that require an order of the court for their removal and the value of any real estate that the conservator, by express limitation, lacks the power to sell or convey without prior court authorization.

## Rule 316. Guardianship Reports

(a) **FORM.** A guardian must file a report on the form maintained by the Register of Wills or a form that is similar in format and content. The report must be verified in the manner described in Rule 103(c).

(b) **WHEN TO REPORT.**

(1) *Existing Guardianship.* A limited or general guardian must submit a written report to the court at least semi-annually on the condition of the ward and the ward's estate that has been subject to the guardian's possession or control. Unless otherwise ordered by the court, the first report is due 6 months from the date of appointment of the guardian and each succeeding report is due at 6-month intervals. On petition of a person interested in the ward's welfare or on its own initiative, the court may order the guardian to submit a report at such other times as the court may direct.

(2) *Death of Ward.* The guardian must file a notice of death promptly after the ward dies and, within 60 days after the death of the ward, the guardian must file a final report.

(c) **SERVICE.** Guardianship reports must be served upon all parties, upon any person who has filed an effective request for notice, and upon any other persons as the court may direct. The reports must be served by first class mail within 7 days after the report is filed. Proof of service must be by certificate of service.

(d) **OBJECTION TO GUARDIANSHIP REPORT.** Any objection to a guardianship report must be filed within 45 days after the report is filed.

### **Rule 317. Individual Conservatorship Plan and Inventory**

(a) **FILING.** The limited conservator or conservator must file the inventory required by Rule 112 together with an individual conservatorship plan.

(b) **SERVICE.**

(1) *In General.* The limited conservator or conservator must serve a copy of the plan and inventory on the following individuals by first class mail within 7 days after the filing of the plan and inventory:

(A) the protected individual;

(B) all parties and their attorneys of record;

(C) the individual most closely related to the protected individual by blood, marriage, or domestic partnership unless that individual's whereabouts is unknown and cannot be reasonably ascertained;

(D) any individual dependent upon the support of the protected individual;

(E) the individual or facility, if any, having custody of the subject of the intervention proceeding;

(F) the individual, if any, proposed for appointment by a will as a guardian;

(G) the individual, if any, appointed or proposed for appointment as a guardian ad litem;

(H) the duly appointed guardian, if any;

(I) if no persons listed above exist, any previously appointed visitor;

(J) any person who has filed an effective request for notice pursuant to Rule 306; and

(K) the Department of Veterans Affairs, if veterans benefits are being received by the protected individual.

(2) *Proof.* Proof of service must be by certificate of service.

(c) **RESPONSE TO CONSERVATORSHIP PLAN.** Any person interested in the welfare of the protected individual may file a petition for modification of the conservatorship plan or request other appropriate relief, which will be treated as a petition for a proceeding after the appointment of a conservator. If no petition to modify the conservatorship plan is filed, the plan may be placed in the file without court review or other action.

## **COMMENT**

Rule 112 includes the general requirements for an inventory.

If a subject or ward is receiving veterans benefits, see Civil Rule 5-II, which governs pleadings and orders affecting estates of veterans. Pleadings and orders must be served on the Department of Veterans Affairs.

### **Rule 318. Claims of Creditors**

(a) **IN GENERAL.** A claimant whose presented claim has not been paid or whose claim has been denied in whole or in part may petition the court for determination of the claim at any time before it is barred by the applicable statute of limitations by filing and serving on the conservator a petition for determination of claim on the form maintained by the Register of Wills or on a form that is substantially similar in format and content.

(b) **RESPONSE.** The conservator may file and serve on the claimant a response to the petition no later 14 days after the petition is served.

### **Rule 319. Accounts and Reports of Conservators**

(a) **IN GENERAL.** Except as provided in Rule 319(d), a conservator must file the account required by Rule 113 together with a report and notice of filing. The report and notice of filing must be filed on the forms maintained by the Register of Wills or forms that are substantially similar in format and content.

(b) **TIME FOR FILING.**

(1) *Temporary Conservator.* A temporary conservator must submit an account and a report to the court for administration of the estate within 60 days after termination of the appointment of the temporary conservator, except that if the temporary conservator is appointed permanent conservator, an account of the temporary conservator is not required.

(2) *Permanent Conservator.* A limited or general permanent conservator must submit an account and a report to the court for administration of the estate:

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

(B) within 60 days after the resignation or removal of the conservator;

(C) upon termination of the conservatorship, as provided in Rule 320; and

(D) at any other times as the court may direct.

(3) *Additional Times.* A conservator must file a report when there is a significant change in the protected individual's capacity to manage his or her financial resources.

(c) SERVICE.

(1) *In General.* A conservator must serve personally or by first class mail a copy of the account and report on the following individuals within 7 days after filing the account and report:

(A) the protected individual;

(B) any known successor in interest of the protected individual;

(C) any guardian of the protected individual;

(D) any individual dependent upon the support of the protected individual;

(E) any party;

(F) any person who has filed an effective request for notice; and

(G) any other person directed by the court.

(2) *Proof.* A certificate of service must be attached to the account.

(d) SPECIAL CONSERVATOR OR PERSON GRANTED AUTHORITY UNDER A PROTECTIVE ARRANGEMENT.

(1) *In General.* A special conservator or a person granted authority under a protective arrangement must file a report setting forth all matters done pursuant to the order of appointment. If a special conservator was required to furnish a bond or if ordered by the court, the report must be accompanied by an account.

(2) *Time for Filing.* The special conservator or person granted authority under a protective arrangement must file the report and any account:

(A) within 30 days after completing the tasks for which the special conservator was appointed or the actions provided for in the order for a protective arrangement;

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

(C) when otherwise ordered by the court.

(3) *Termination.*

(A) *Requesting in Report.* A special conservator's report may include a request for termination of the appointment. The special conservator is not required to file a separate petition under Rule 320.

(B) *Court Order.* The special conservator's appointment terminates on the court's order.

(4) *Service.* The report and any account must be served as provided in Rule 319(c).

(e) **OBJECTION TO ACCOUNT.** Any objection to the account must be filed and served on all persons entitled to a copy of the notice of hearing on the account within 14 days after receipt of notice of the hearing.

(f) **RETENTION OF DOCUMENTATION.** A conservator must 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.

## **COMMENT**

Section (f), which addresses retention of documentation, does not impact a conservator's retention responsibilities imposed by other statutes, regulations, or rules, such as the D.C. Rules of Professional Conduct.

## **Rule 320. Termination of Conservatorship**

(a) **IN GENERAL.** A conservatorship is terminated by court order.

(b) **TERMINATION UPON DEATH.**

(1) *Petition for Termination and Final Account.* Upon the death of the protected individual, the conservator must promptly file a notice of death. The conservator must file a petition for termination, accompanied by a final account and report, within 60 days after the date of death.

(2) *Expenditures After Death.*

(A) *In General*. After the death of the protected individual, the conservator is not permitted to make any expenditures, except for expenses of administration and any expenditures authorized by the court.

(B) *Petition for Authorization to Make Expenditures*. The conservator may file a petition for authorization to make expenditures, other than for administration expenses. Except for good cause, the petition must be filed no later than 30 days after the date of death. The court may act on the petition without a hearing.

(3) *Hearing*. The court must schedule a hearing on the final account and the petition for termination.

(4) *Order of Termination*. Upon approval of the final account, the court must enter an order of termination. The order of termination must provide for expenses of administration and direct the conservator to file a verified statement evidencing transfer of the assets within 60 days after the order of termination, unless the court finds good cause for extending or shortening the time for filing the verified statement. The verified statement must 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) *Deposit into Estates Deposit Account*. In the event that the conservator is unable to make distribution of assets within the time required by the order of termination, the conservator must, 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) *Appointment of Special Administrator*. If the estate of the protected individual consists of assets that are in need of protection, and no other fiduciary has been appointed, the conservator may, in the petition for termination, advise the court of the need for protection and file with the petition a proposed order for the appointment of a special administrator. Upon consideration of the petition and proposed order, the court may appoint a special administrator under D.C. Code § 20-531 (2012 Repl.).

(c) TERMINATION OTHER THAN UPON DEATH.

(1) *Petition to Terminate Conservatorship*. The conservator or any other interested person may file a petition to terminate the conservatorship under Rule 314. The protected individual may file a petition to terminate the conservatorship that will be subject to the same procedures as a petition to commence an intervention proceeding under Rule 301.

(2) *Preliminary Order of Termination*. If, after notice and hearing, the court determines that the petition should be granted, the court must issue a preliminary order of termination directing the conservator to file the final account and report within 60 days, unless the court finds good cause for extending or shortening the time for filing.

(3) *Final Order of Termination.* Upon approval of the final account, the court must enter a final order of termination. The final order of termination must 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 must be filed within 30 days after the order of termination, unless the court finds good cause for extending or shortening the time for filing the verified statement. The verified statement must 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 (2012 Repl.), 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. Ct. 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).

The termination of a special conservatorship or other protective arrangement is provided in the rule governing accounts and reports of conservators.

### **Rule 321. Liability of Conservator to Third Parties**

(a) IN GENERAL. Matters pertaining to the personal liability of a conservator are determined in a separate proceeding for accounting, surcharge, or indemnification or other appropriate proceeding or action.

(b) COMPLAINT. A third party may commence a proceeding regarding personal liability of the conservator by filing a complaint.

(c) APPLYING CIVIL RULES. The Superior Court Rules of Civil Procedure apply to a proceeding regarding personal liability of the conservator.

## COMMENT

D.C. Code § 21-2074 (2012 Repl.) governs the personal liability of a conservator.



**Rule 322. Compensation from Assets of the Subject, Protected Individual, or Ward, or from the Guardianship Fund**

(a) IN GENERAL. As approved by prior court order, for services rendered in an intervention proceeding, any case reviewer, visitor, attorney, examiner, conservator, special conservator, guardian ad litem, or guardian is entitled to reasonable compensation paid from:

(1) the assets of the subject of the proceeding, the protected individual, or the ward; or

(2) if the assets will be depleted as described in D.C. Code § 21-2060 (2021 Supp.), the Guardianship Fund.

(b) PETITIONS FOR COMPENSATION.

(1) *Guardian, Conservator, Guardian ad Litem, or Attorney.* To receive compensation from assets of the subject of the proceeding, the protected individual, or the ward or from the Guardianship Fund, a guardian, conservator, guardian ad litem, or attorney must file a petition for compensation that includes the following:

(A) the type of service rendered and a summary of that service;

(B) the amount of time spent;

(C) the hourly rate of compensation and any basis for that rate;

(D) the size of the estate administered;

(E) a description of the results and benefits to the subject of the proceeding, the protected individual, or the ward, as a result of the services rendered;

(F) the nature, extent, and cost of services performed by others that are fiduciary obligations, such as accounting and tax preparation services;

(G) the amount and source of compensation previously allowed to all persons;

(H) information regarding whether the petitioner has been or has an agreement to be compensated from a source other than the estate or the Guardianship Fund;

(I) if payment is sought from the assets of the subject of the proceeding, the protected individual, or the ward and the petition for compensation is filed after the death of the subject, individual or ward, an estimate of the number of hours that will be required for termination of the conservatorship; and

(J) if payment is sought from the Guardianship Fund, information indicating:

(i) that the estate of the subject of the proceeding, the protected individual, or the ward is presumed to be depleted under the provisions of D.C. Code § 21-2060(a-1) (2021 Supp.), including the specific statutory basis for the presumption; or

(ii) that the subject of the proceeding, the protected individual, or the ward is unable to pay the requested compensation without substantial financial hardship to that person or his or her family, the specific reasons why payment would cause substantial financial hardship, and the following information or, if any of the required information is not provided, the efforts made to obtain that information:

- the nature and extent of that person’s assets, including contingent assets and noting which assets are liquid;
- the nature and extent of that person’s income;
- the character and extent of that person’s debts;
- whether that person owns a residence, and if so, whether that person or his or her dependent resides in that residence or expect to return to the residence;
- whether that person has a burial fund or has a prepaid funeral or burial contract or plan and, if so, the value of the fund or amount of prepayment; and
- a description of that person’s expenditures.

(2) *Petitions of Examiners and Visitors.* In order to be compensated from the assets of the subject of the proceeding, the protection individual, or the ward or from the Guardianship Fund, an examiner or visitor must file a petition for compensation that includes the following:

- (A) the type of service rendered and a summary of that service;
- (B) the amount of time spent; and
- (C) the basis of any hourly rate of compensation.

(3) *Verification.* A petition for compensation must be verified in the manner described in Rule 103(c).

(c) **NOTICE OF PETITION AND CERTIFICATION.** A petition for compensation must be filed together with a notice of the petition for compensation and a certification stating that the fiduciary or attorney is not late with filings in other cases in which the attorney or fiduciary is appointed. The notice and certification must be on the forms maintained by the Register of Wills or forms that are substantially similar in format and content.

(d) **TIME FOR FILING.**

(1) *Guardian's Petition for Compensation.* A guardian's petition for compensation must be filed no later than 30 days after the anniversary date of the guardian's appointment, except that a guardian's final petition for compensation must be filed no later than 60 days after termination of the guardianship.

(2) *Conservator's Petition for Compensation.* A conservator's petition for compensation must be filed either with the annual accounting or at any time prior to the approval of the annual accounting, except that a conservator's final petition for compensation must be filed no later than 30 days after the filing of the final account.

(3) *Interim Petition for Compensation.* An interim petition for compensation for establishing a guardianship, conservatorship, or entry of a protective order must be filed promptly upon conclusion of the hearing establishing the guardianship, conservatorship, or protective arrangement, but not later than 90 days after conclusion of the hearing.

(e) SERVICE.

(1) *In General.* The petition for compensation and the notice of petition for compensation must be served on:

(A) the subject of the proceeding, the protected individual, or the ward;

(B) the parties to the proceeding and persons granted permission to participate in the proceeding;

(C) any person who has filed an effective request for notice; and

(D) any other person as directed by the court or the Register of Wills.

(2) *Certificate of Service.* A petition must include a certificate of service, stating that the petition and the notice of petition for compensation were served.

(f) OBJECTIONS. An individual who is required to be served with the petition and notice may file an objection to the petition. The objection must be filed within 21 days after the petition and notice have been served. The court may rule on objections with or without a hearing.

(g) CONSENTS.

(1) *In General.* An individual who is required to be served with the petition and notice of the petition for compensation may file a consent to the petition for compensation. A consent must be on the form maintained by the Register of Wills or on a form that is substantially similar in format and content.

(2) *Effect of Consent.* If all individuals who are required to be served with the petition and notice file consents, the notice and the 21-day period for filing objections will be waived and the petition

for compensation must be immediately reviewed by the court. A consent to the petition, once filed, constitutes a waiver of the right to object to that petition.

## COMMENT

As pointed out in *In re Estate of Grealis*, 902 A.2d 821, 825-6 (D.C. 2006), this rule cannot and is not intended to expand the reach of D.C. Code § 21-2060 (2021 Supp.). In *Grealis*, the District of Columbia Court of Appeals interpreted D.C. Code § 21-2060 (2021 Supp.) as requiring court approval only when payment is made from the assets of the subject of the proceeding, the protected individual, or the ward, or from the Guardianship Fund. 902 A.2d at 824-6. No order is required for payment from the personal or private funds of someone other than the subject of the proceeding, the protected individual, or the ward. *Id.*

### Rule 323. Foreign Guardians or Conservators

(a) DUTIES AND POWERS. A guardian or conservator, who is appointed by a court in the ward's or protected person's state of residence may exercise all powers of a guardian or conservator appointed in the District of Columbia and may maintain actions and proceedings in the District of Columbia subject to conditions imposed upon non-resident parties if:

(1) a guardian or conservator has not been appointed in the District of Columbia and no petition for protective proceeding is pending in the District of Columbia; and

(2) the guardian or conservator appointed by the other state files:

(A) copies of the letters of appointment authenticated in accordance with 28 U.S.C. § 1738;

(B) copies of any bond authenticated in accordance with 28 U.S.C. § 1738; and

(C) a power of attorney appointing an agent in the District of Columbia to accept service of process, on the form maintained by the Register of Wills or a form that is substantially similar in format and content.

(b) CERTIFICATE OF NO PENDING PROCEEDING. The Register of Wills must determine whether an intervention proceeding related to the ward or protected person is pending in this court. If no proceeding is pending, the Register of Wills must issue a certificate that no intervention proceeding is pending.

(c) CERTIFICATE OF COMPLIANCE. Upon request, the Register of Wills must issue a certificate that the guardian or conservator has complied with the requirements of Rule 323(a).

(d) SUSPENSION OF POWERS. The powers of a guardian or conservator appointed in another state are suspended if this court appoints a guardian or conservator with authority over the same individual or property.

## **COMMENT**

This rule implements the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (D.C. Code §§ 21-2401.01 to -2405.03 (2012 Repl.)). With regard to conservators, the rule applies to any fiduciary that exercises powers similar to a conservator in this jurisdiction, regardless of whether the other state refers to the fiduciary as a “guardian of the estate” or uses another term.

## **CHAPTER 4 - FOREIGN ESTATE PROCEEDINGS**

### **Rule 401. Foreign Estate Proceedings**

(a) **COMMENCING AN ACTION.** A foreign estate proceeding is commenced by filing:

(1) a copy of the documents filed in the original jurisdiction in which the estate proceeding was first commenced, including the will admitted to probate (if any), the order of appointment, and Letters of Administration, authenticated as provided in 28 U.S.C. § 1738;

(2) an original of a notice of appointment of foreign personal representative and notice to creditors, on the form prescribed by the Register of Wills; and

(3) the appointment of an agent to accept service of process, on the form prescribed by the Register of Wills.

(b) **PUBLICATION OF NOTICE OF APPOINTMENT AND NOTICE TO CREDITORS.** The Register of Wills must provide the date of first publication and forward copies of the notice of appointment and notice to creditors to the designated newspapers for publication.

(c) **AFFIDAVIT OF PUBLICATION.** The foreign personal representative must file affidavits that the notice of appointment has been published as required by law.

(d) **CERTIFICATION OF NON-FILING OR RELEASE OF CLAIMS.** After the filing of proofs of publication and the expiration of the period for presenting or filing claims, the Register of Wills must, upon request and if appropriate, issue a certificate stating that no claim has been filed or that all claims filed have been released.

## **CHAPTER 5 - PROPERTY AND ESTATES OF MINOR CHILDREN**

### **Rule 501. Appointment of Guardian for Minor Child**

(a) **COMMENCING AN ACTION.** A proceeding to appoint a guardian for a minor child is commenced by filing a petition that is verified in the manner described in Rule 103(c). The petition must include the following:

- (1) the proposed guardian's residence and citizenship;
- (2) whether the proposed guardian has a legal disability;
- (3) the relationship of the proposed guardian to the minor;
- (4) by what right the petitioner makes application, and, if the application is not for petitioner's appointment, by what right the proposed guardian may be appointed;
- (5) the minor's name, residence, and date of birth;
- (6) the names and residence(s) of the minor's parents and the date of death of any deceased parent; and
- (7) the nature, location, and estimated value of the real and personal property to which the minor is entitled, and the annual rental value of the real property.

(b) **PRESENCE AND SELECTION.** Unless the minor's presence is excused for sufficient cause, the minor must be present when the petition is filed, and, if over 14 years of age, is entitled to select the proposed guardian.

(c) **CONSENT OF OR NOTICE TO PARENTS.**

(1) *In General.* If a parent is not filing the petition for appointment of a guardian, either:

(A) a written consent of that parent must be filed with the petition; or

(B) unless the whereabouts of that parent are unknown, that parent must be personally served with a summons and copy of the petition in accordance with Civil Rule 4(c)(2)-(3) and (e)(2)(A).

(2) *Whereabouts of Parent Unknown.* If the whereabouts of a parent are unknown and the petitioner files an affidavit showing diligent efforts to ascertain the whereabouts of the parent, the court may authorize service by publication in the manner provided by applicable statute or may provide for a different method of notice.

(3) *Waiving Notice.* The court may waive notice of the petition if the petitioner files an affidavit showing good cause.

(d) **BOND.** If the petitioner is the proposed guardian, the petitioner must file a bond with the petition.

(e) **ORDER APPOINTING GUARDIAN.** The order of appointment must state the minor's date of birth and, if the minor is over 14 years of age, must state that:

(1) the minor was present and selected the guardian; or

(2) the minor's presence was excused.

### **Rule 502. Bond**

(a) **REQUIREMENT AND AMOUNT.** Except as provided in Rule 502(b), a guardian of the property and estate of a minor child must execute a bond with surety approved by the court, conditioned for the faithful performance of the guardian's duties, before taking control of any assets of the minor child. The penalty of the bond must be the amount equal to the amount of the personal property, the annual income from the personal property, and the yearly rents to be derived from the real estate. If it becomes necessary to sell real estate, the guardian must execute an additional bond in the amount required by the court before accepting the proceeds from the sale of real estate.

(b) **EXCEPTIONS.** No bond is required from a regulated financial institution, as defined in D.C. Code § 26-551.02(18) (2012 Repl.), or a national bank as provided in *12 U.S.C. § 92a(f)*.

### **Rule 503. Property of the Minor**

A guardian appointed by this court is not permitted, without prior court approval, to 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 504. Expenditures and Sales by a Guardian**

(a) **EXPENDITURES.**

(1) *In General.* Prior court authorization is required for a guardian to make any expenditure from a minor's estate. A guardian may request prior court authorization for an expenditure by filing a petition on the form maintained by the Register of Wills or a form that is substantially similar in format and content.

(2) *Records.* When practicable, a guardian must obtain a voucher for any disbursement. A guardian must maintain accurate records of all receipts and disbursements.

(b) **SALE OF PROPERTY.** A guardian is not permitted to sell or otherwise dispose of estate property or encumber it without prior court order.

(c) **EXPENDITURES AND SALES FOR INVESTMENT.**

(1) *Expenditure or Sale for Investment.* Prior court authorization is required for a guardian to make any expenditure or sale for investment, except one made in accordance with a plan or program approved under Rule 504(c)(2). A guardian may request prior court authorization for an expenditure or sale for investment by filing a petition on the form maintained by the Register of Wills or a form that is substantially similar in format and content.

(2) *Investment Plan or Program.* A guardian may apply for court approval of an investment plan or program in accordance with Probate Division rules governing investments by a fiduciary. If the court approves the plan or program and the transaction complies with the approved plan or program, a guardian may carry out the investment plan or program without court approval of specific transactions. The petition must be on the form maintained by the Register of Wills or a form that is substantially similar in format and content.

(d) **FAILURE TO COMPLY.** If a guardian fails to comply with the provisions of this rule, the failure may be treated as an irregularity or default under Rule 114.

### **Rule 505. Court Sales of Real and Personal Property**

(a) **SALE OF REAL PROPERTY.** Unless otherwise provided in these rules, a sale of real estate or any interest in land under an order of this court is governed by the 28 U.S.C. § 2001 in the same manner as if that statute was, by its terms, applicable to proceedings in this court.

(b) **PUBLIC SALE PROCEDURES.** Unless the court order otherwise, the officer making a public sale must proceed under the following rules:

(1) *Publication.* The officer must give prior 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 2 equal installments, payable on or before 1 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 filed promptly with the court. After the report is filed and on motion and notice, the court may, in its discretion, ratify the sale with or without further notice. If the sale is 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 will 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 will 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 PROCEDURES.

(1) *Order for Sale.* The court must schedule a hearing before ordering a private sale. Notice of the hearing must be provided to all parties and affected persons by publication or as otherwise directed by the court. The court may order the private sale if the court finds that the best interests of the estate will be conserved by a private sale.

(2) *Appraisers.*

(A) *In General.* Before confirming a private sale, the court must appoint:

(i) 3 disinterested persons to appraise the property; or

(ii) different groups of 3 appraisers each to appraise properties of different classes or situated in different locations.

(B) *Licensure.* The 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 of the sale must be published in the newspaper or newspapers of general circulation in the District of Columbia as the court may direct, and the sale may not be confirmed if a bona fide offer is subsequently made, under such conditions as the court may prescribe, which guarantees at least a 10% net increase over the price specified in the 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 will 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. If 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. For special cause, the court may increase or reduce the compensation.

(f) SALE OF PERSONAL PROPERTY. Unless otherwise provided in this rule, 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 that statute was, by its terms, applicable to proceedings in this court. The officer making the sale must account and distribute as provided by Rule 505(d). The court may determine the compensation and expenses allowed the officer making the sale.

## **Rule 506. Accounts**

(a) **IN GENERAL.** The guardian must file the account required by Rule 113 annually within 30 days after the anniversary date of the guardian's appointment.

(b) **FINAL ACCOUNT.**

(1) *In General.* The guardian must file a final account within 60 days after termination of the guardianship or resignation or removal of the guardian.

(2) *Guardian's Death or Incapacity.* Upon the guardian's death or incapacity, the guardian or the guardian's personal representative must file a final account within 60 days after the date of the successor's appointment.

(c) **NOTICE OF ACCOUNT.**

(1) *In General.* Within 7 days after filing the account, the guardian must send, by first class mail, notice of the filing to the minor, any adult having care and custody of the minor, 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 format and content.

(2) *Proof of Notice.* The guardian must file a certification that the notice has been provided.

(d) **OBJECTIONS TO ACCOUNT.** The minor and any person entitled to receive notice of the filing of the account have 30 days after receiving the notice to file any objections to the account. Any objection must be served on the guardian and all persons entitled to receive the notice.

(e) **EXCLUSION FROM UNIFORM TRANSFERS TO MINORS ACT PROCEEDINGS.** Unless otherwise ordered by the court for good cause, this rule does not apply to any proceeding for the appointment of a custodian or successor custodian under the Uniform Transfers to Minors Act.

## **Rule 507. Contested Proceedings Commenced by Complaint**

(a) **TYPE OF PROCEEDING.** Any party in interest may file a verified complaint

(1) to contest a petition for the appointment of a guardian of a minor's estate or a custodian of a minor;

(2) to remove a guardian of a minor's estate;

(3) to ratify and confirm a contract for the sale of a minor's interest in real estate;

(4) for instructions; or

(5) for any other action regarding the guardian of a minor's estate or a custodian of a minor.

(b) APPLYING CIVIL RULES.

(1) *In General.* Except as modified in Rule 507(b)(2)-(4) or as otherwise ordered by the court, the Superior Court Rules of Civil Procedure apply to a contested proceeding commenced by a complaint under Rule 507(a).

(2) *Summons.* Together with the complaint, the plaintiff must complete and file a summons for each defendant. In an action brought pursuant to this rule to contest a petition for the appointment of, or to remove, a guardian of a minor's estate or a custodian of a minor, 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 only must be directed to the guardian or custodian and may be directed to others.

(3) *Notice.* In such actions against an estate in which the interested persons are not named parties, the guardian or custodian 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 guardian or custodian must file a certificate reflecting service of the notice at the time of filing a response.

(4) *Initial Scheduling and Settlement Conference.* The court must schedule an initial scheduling and settlement conference to be held within 120 days after the complaint is filed.

**Rule 508. Compensation**

(a) COMPENSATION FOR ORDINARY SERVICES. Compensation to a guardian for ordinary services is by commission. A commission 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 the following:

- (1) qualification as the guardian;
- (2) collection of the minor's assets and income;
- (3) payment of the minor's debts and costs of maintenance, as authorized or ratified by the court;
- (4) general supervision of the minor's investments and policy relating to investments, 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 guardian must submit a claim for commission for ordinary services in the annual account. The amount and percentage of commission claimed must be reflected in the account. Except as otherwise provided by these rules or court order, no separate statement of services is required.

(c) **COMPENSATION FOR EXTRAORDINARY SERVICES.** At the time of filing an annual account or at any other time on good cause, a guardian may petition the court for compensation for extraordinary services rendered. Extraordinary services are in addition to those services set out in Rule 508(a). The petition must include the following:

- (1) a statement of jurisdiction and controlling court rule;
- (2) a statement of services rendered sufficient to establish that the requested payment is reasonable and, if appropriate, that the services are in fact extraordinary;
- (3) the amount of time spent and the normal hourly rate of the guardian, if any;
- (4) evidence of the necessity or purpose of the services;
- (5) the results achieved, including the benefit to the estate or minor, if any;
- (6) statement of all prior allowances from the estate to the guardian or other fiduciary or counsel, to the extent known;
- (7) the ability of the estate to meet future needs of the minor and to compensate fairly the guardian; and
- (8) a statement that notice of the petition has been given and to whom given.

(d) **TURNOVER COMMISSION.** In a guardian's final account, the guardian may claim a commission for turning over the assets to a successor fiduciary or to the former minor. A turnover commission may not exceed 5% of the net assets to be turned over. A turnover commission is in addition to the commission for ordinary services based on disbursements actually made during the accounting period. The amount and percentage claimed must be reflected in the final account. Except as otherwise provided by these rules or court order, no separate statement of services is required.

(1) *The Guardian's Death, Resignation, or Incapacity.* If the guardian dies, resigns, or becomes incapacitated, the guardian or guardian's representative must file a statement of services in support of the turnover commission claimed. The statement must indicate:

- (A) what the guardian has done;
- (B) if applicable, what remains to be done by the successor guardian; and
- (C) any other information justifying the commission claimed.

(2) *The Minor's Death or Attainment of Majority.* If the minor attains the age of majority within 3 years after the guardian's appointment and the net assets to be turned over exceed \$100,000.00, the guardian must either:

(A) file a statement of services in support of the turnover commission claimed; or

(B) 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) *In General.* At the time of the filing of an annual account or at any other time on 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 guardian in the administration of the estate, including:

(A) instructing and advising the guardian in regard to applicable laws so that the guardian may properly administer the estate for which he or she is responsible; and

(B) 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.

(2) *Qualification of the Guardian.* At any time, an attorney may petition for fees for legal services in connection with the qualification of the guardian. The petition for fees must be accompanied by a statement of services that addresses those matters required to be addressed in a petition for compensation for extraordinary services.

(3) *Performance of Guardian's Ordinary Services; Assignment of Commission.* If an attorney performs any ordinary services described in Rule 508(a) and the guardian has filed a written assignment of all or part of the guardian's commission, the court may authorize the attorney to be compensated from the estate in the guardianship proceeding. An assignment of commission refers to those instances in which an attorney:

(A) pursuant to an agreement with the guardian, has performed some or all of the services normally expected to be performed by the guardian in administering the estate; and

(B) has obtained an assignment from or written consent of the guardian to receive all or part of the guardian'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.

(1) *Notice of Petition.* A petition for compensation for extraordinary services or for attorney's fees (other than for ordinary commissions) must be accompanied by a notice on the form maintained by the Register of Wills or a form that is substantially similar in format and content. A copy of the petition and notice must be served on the following individuals by first class mail within 7 days after filing:

(A) the guardian (if appropriate); and

(B) to all other parties and affected persons as determined by the court.

(2) *Certificate of Service*. The petition must include a certification that a copy of the petition and notice were served as required by Rule 508(f)(1).

(3) *Consent*. An individual who is required to be served with the petition and notice may file a consent to the petition. A consent must be on the form maintained by the Register of Wills or a form that is substantially similar in format and content. Once filed, a consent constitutes a waiver of the right to object to the petition.

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

(h) ADDITIONAL DOCUMENTATION. The court may require additional 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 a petition for compensation for extraordinary services 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 guardian and the guardian's attorney. If an objection is not filed within the prescribed time, the court may treat the petition as conceded.

## COMMENT

Generally, the preparation and filing of routine tax returns and accountings are considered to be ordinary services. If the services involved were in whole or in part extraordinary, compensation for such services may be claimed by petition pursuant to subsection (c) of this rule. If the guardian 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 is cautious in awarding turnover commissions claimed under subsection (d)(1) of this rule, by reason of the death, resignation or incapacity of a guardian. The court will take into account the fact that the ward's funds will be disbursed again and will reserve a sufficient portion of the commission as is likely, under the facts and circumstances of the particular case, to compensate the successor guardian fairly.

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

Payments for attorney fees are independent of the guardian'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 guardian

is an attorney will not preclude the guardian from petitioning for attorney fees for legal services rendered.

**Rule 509. Custodian of Minors Under Uniform Transfers to Minors Act**

(a) **PETITION FOR SUCCESSOR CUSTODIAN.** A petition for the appointment of a successor custodian of custodial property under the Uniform Transfer to Minors Act (D.C. Code §§ 21-301 to -324 (2012 Repl.)) must be verified by the petitioner. The petition must include:

- (1) the proposed successor custodian's residence and citizenship;
- (2) whether the propose successor custodian has a legal disability;
- (3) the relationship of the proposed successor custodian to the minor;
- (4) by what right the petitioner makes application, and, if the application is not for petitioner's appointment, by what right the proposed successor custodian may be appointed;
- (5) the minor's name, residence, and date of birth;
- (6) the names and residence(s) of the minor's parents and the date of death of any deceased parent;
- (7) the nature, location and estimated value of the custodial property;
- (8) whether to require the successor custodian to give appropriate bond; and
- (9) whether an accounting of the predecessor custodian should be required.

(b) **OTHER TRANSFERS BY A FIDUCIARY.** A petition by a trustee for an irrevocable transfer in excess of \$10,000 in value to a minor must be verified by the petitioner. The petition must set forth:

- (1) the name, residence, and date of birth of the minor for whom authority to distribute is sought, as well as the basis for the minor's entitlement to share in the trust;
- (2) the nature, location, and estimated value of the trust assets to be distributed to the minor;
- (3) facts to show that the transfer is in the best interests of the minor;
- (4) facts to show that the transfer is not prohibited by or inconsistent with the trust agreement, or other governing instrument; and

(5) facts to show that the trustee will effect the transfer in accordance with applicable law (and, in particular, where the custodial property is money, by payment or delivery to the broker or the financial institution for credit in the custodial account).

**Rule 510. Petition to Remove Custodian of Minor Under the Uniform Transfers to Minors Act.**

(a) **PETITION FOR ORDER TO SHOW CAUSE.** To remove a custodian under the District of Columbia Uniform Transfers to Minors Act for cause and designate a successor custodian other than the transferor or to require the custodian to give appropriate bond, the transferor, the transferor's legal representative, an adult member of the minor's family, the minor's guardian or conservator, or the minor (if the minor is 14 years of age or older) may file a petition for an order to show cause directing the custodian to appear and show cause why the custodian should not be removed and a successor appointed or why the custodian should not be required to give appropriate bond.

(b) **CONTENT OF THE PETITION.** The petition must include the following:

(1) the name, address, telephone number, and any other pertinent identifying information about the custodian subject to the order to show cause;

(2) a statement of the jurisdiction of the Superior Court over the subject matter and the custodian;

(3) the facts and law that would establish cause for removal of the custodian or require the custodian to give appropriate bond;

(4) a concise demand for relief; and

(5) any other information that the petitioner determines to be relevant to the court's decision to issue the order to show cause or reasons, if any, why any of the foregoing information is not supplied.

(c) **ISSUANCE OF ORDER.** The court may grant the petition and issue an order to show cause without waiting for any response to the petition.

**CHAPTER 6 - TRUSTS**

**Rule 601. Notice of Existence of Trust That Was Revocable at the Settlor's Death**

(a) **APPLICABILITY.** This rule only applies to a trust that was revocable at the settlor's death.

(b) **COMMENCING AN ACTION.** A trustee may commence a proceeding to provide public notice of a trust that was revocable at the settlor's death by filing:



(1) a notice of existence of revocable trust, on the form maintained by the Register of Wills or a form that is substantially similar in format and content, completed to the extent possible (excluding the date of first publication and the deadline for filing objections and claims);

(2) a certification of trust, on the form maintained by the Register of Wills or a form that is substantially similar in format and content; and

(3) a list of those persons entitled to receive the notice of existence of revocable trust.

(c) **PUBLICATION OF THE NOTICE.** The Register of Wills must complete the notice of existence of revocable trust form and forward copies to a newspaper of general circulation in the District of Columbia and a legal newspaper, for publication once a week for three successive weeks.

(d) **MAILING OF THE NOTICE.** To obtain the protections of D.C. Code §§ 20-903 and 19-1306.04 (2012 Repl.), within 15 days after the date of first publication of the notice of existence of revocable trust, the trustee must serve, by registered or certified mail, a copy of the notice on:

(1) each qualified beneficiary of the trust;

(2) heir of the decedent;

(3) other interested persons as defined in D.C. Code § 20-101(d) (2012 Repl.) if the trust were a will; and

(4) all creditors whose identities are known or ascertainable by reasonably diligent effort.

(e) **PROOF OF PUBLICATION AND CERTIFICATE OF NOTICE.** Within 90 days after the date of first publication of the notice of existence of revocable trust, the trustee may file:

(1) an affidavit or declaration of an officer or agent of each publisher stating the dates of publication accompanied by a copy of the notice as published;

(2) a verification and certificate of notice of existence of revocable trust, on the form maintained by the Register of Wills or a form that is substantially similar in format and content, specifying the date of mailing of the notice and the names and addresses of the persons to whom the notice was mailed; and

(3) a list of the names or description of each qualified beneficiary of the trust; heir of the decedent; other interested persons as defined in D.C. Code § 20-101(d) (2012 Repl.); and creditor to whom the notice was not mailed.

## **COMMENT**

This rule implements D.C. Code §§ 19-1305.05 and -1306.04 (2012 Repl.). In order for the trustee to obtain the benefit of those provisions, the trustee must be able to prove publication.

## **Rule 602. Claim Against a Trust That Was Revocable at the Settlor's Death**

(a) **APPLICABILITY.** This rule governs claims against a trust that was revocable at the settlor's death when the trustee has filed the notice of existence of revocable trust in accordance with Rule 601.

(b) **REQUIREMENTS.** A claim must indicate that:

(1) the settlor's residuary probate estate is inadequate to satisfy the claim and the claim is for:

(A) costs of administration of the settlor's estate;

(B) an expense of the settlor's funeral and disposal of remains;

(C) a statutory allowance to a surviving spouse or child under D.C. Code §§ 19-101.02 to -.04 (2012 Repl.); or

(D) a claim of the settlor's creditors;

(2) all persons whose interest in the trust would be affected by the payment have filed consents with the court; or

(3) the payment is authorized under the terms of the trust regardless of the sufficiency of the settlor's residuary probate estate.

(c) **FORM; FILING AND SERVICE.**

(1) *Form.* A claim against a revocable trust must be made on the form maintained by the Register of Wills or a form that is substantially similar in format and content.

(2) *Filing and Service.*

(A) *In General.* Within 6 months after the date of first publication of the notice of existence of revocable trust, the claim must be filed and served on the trustee by personal service or by certified mail, return receipt requested.

(B) *Estate Administration Proceeding.* If a proceeding to administer the decedent's estate, other than a small estate, is commenced in the District of Columbia after a notice is filed under Rule 601, the claim must be filed in both the trust proceeding and the decedent's estate proceeding.

(d) **TRUSTEE'S RESPONSE.**

(1) *In General.* On receipt of a claim, the trustee must

(A) pay the claim or

(B) mail to the claimant a notice of action on the claim on the form maintained by the Register of Wills or a form that is substantially similar to that form.

(2) *Disallowed Claim.* If the trustee disallows the claim, the trustee must specifically advise the claimant whether the claim was disallowed because the trustee disputes the validity of the claim, the adequacy of the settlor's residuary probate estate to pay the claim, or both.

(e) PETITION FOR PAYMENT FROM TRUST.

(1) *Petition.* If, within 8 months after the date of the first publication of the notice of existence of revocable trust, the trustee takes no action on the claim or, after having allowed the claim, fails to pay it, the claimant or the personal representative of the settlor's probate estate may file a petition requesting an order directing the trustee to pay the claim from the trust.

(2) *Court Action.* The court may order the trustee to pay to the claimant or the personal representative the amount of trust property necessary to pay the claim if the claim meets the requirements of Rule 602(b).

(3) *Complaint.* If the trustee disallowed the claim because the trustee disputed the validity of the claim, the adequacy of the settlor's residuary probate estate to pay the claim, or both, the claimant must file a complaint for payment of the claim from the trust within 60 days after the trustee mailed the notice disallowing the claim.

**COMMENT**

This rule implements D.C. Code § 19-1305.05 (2012 Repl.). As provided in D.C. Code § 19-1305.05(d) (2012 Repl.), the procedures set out in this rule are substantially consistent with the procedures governing claims in decedent estates set out D.C. Code §§ 20-901 to -914 (2012 Repl.).

If a notice of existence of revocable trust is not filed under Rule 601, a claimant seeking payment from the trust of any expense or claim listed in Rule 602(b) must file a complaint under Rule 603.

**Rule 603. Trust Proceedings Commenced by Complaint**

(a) TYPE OF PROCEEDING.

(1) *When Required.* The following actions are commenced by filing a complaint:

(A) an action for payment of a claim from a revocable trust when a notice of existence of a trust that was revocable at the settlor's death is not filed under Rule 601;

(B) an action for payment of a claim that was disallowed by the trustee against a trust that was revocable at the settlor's death; and

(C) an action to challenge the validity of a trust.

(2) *By Court Order.* Unless a statute provides otherwise, on request of an interested person or on its own initiative, the court may order that a petition be treated as a complaint or that a complaint be filed.

(b) APPLYING CIVIL RULES.

(1) *In General.* Except as modified in Rule 603(b)(2) or as otherwise ordered by the court, the Superior Court Rules of Civil Procedure apply to a contested proceeding commenced by a complaint under Rule 603(a)(1) or (2).

(2) *Summons.*

(A) *In General.* Together with the complaint, the plaintiff must complete and file a summons for each defendant on the form maintained by the Register of Wills. On filing of the complaint and summons, the clerk must issue the summons and an initial order to be served with the complaint in accordance with the civil rules.

(B) *Consenting Defendants.* The plaintiff is not required to serve a summons on any defendant whose consent answer to the relief requested in the complaint is filed with the complaint.

(c) REQUIRED PARTIES.

(1) *In General.* The defendants must include the following persons if they are not plaintiffs:

(A) the settlor, if living;

(B) each qualified beneficiary, or any representative of that qualified beneficiary, whose interest in the trust is or may be affected in the action;

(C) the trustee; and

(D) if contesting the validity of the trust, interested persons as set forth in D.C. Code § 19-1306.04(a)(3) (2012 Repl.).

(2) *Beneficiary Not Named as a Party.*

(A) *Content of Complaint.* When a beneficiary of the trust is not named as a party in the complaint, the complaint must state:

(i) the name and address of each beneficiary not named as a party;

(ii) the nature of that beneficiary's interest;

(iii) why that beneficiary does not need to be a party to the action; and

(iv) whether the trustee or any other person has discretion to affect the beneficiary's present or future beneficial enjoyment of the trust estate and, if so, describe the nature of that discretion and state whether the discretion either has been or may be exercised.

(B) *Notice of Complaint.* The plaintiff must serve a copy of the complaint personally or by first class mail on each beneficiary not named as a defendant, a representative of that beneficiary, an agent authorized to receive notice to that beneficiary, or a person of suitable age and discretion then residing with that beneficiary.

(d) **NO CONTINUING SUPERVISION.** Unless otherwise ordered by the court, after the conclusion of the proceeding, the court will not continue to supervise a trust action initiated under this rule.

#### **COMMENT**

D.C. Code § 19-1302.01(b) (2012 Repl.) provides that a trust is not subject to continuing judicial supervision unless ordered by the court.

The circumstances in which one person may represent and bind another person with respect to that other person's interest in a trust are set out in D.C. Code §§ 19-1303.01 to -.05 (2012 Repl.).

#### **Rule 604. Other Trust Proceedings**

(a) **IN GENERAL.** The settlor, if living, the trustee, a qualified beneficiary, or an interested person may commence a trust proceeding or seek relief in an existing trust proceeding by filing:

(1) a petition; or

(2) an objection to an accounting or report in a trust under court supervision.

(b) **TREATED AS COMPLAINT.** Unless a statute provides otherwise, on request of an interested person or on its own initiative, the court may order that a petition be treated as a complaint or that a complaint be filed.

(c) **PROCEDURES FOR PETITIONS AND OBJECTIONS.** Rule 105 governs the procedures for petitions and objections filed with respect to trusts, including service of petitions.

(d) **NO CONTINUING SUPERVISION.** Unless otherwise ordered by the court, after the conclusion of the proceeding, the court will not continue to supervise a trust action initiated under this rule.

## COMMENT

Common trust-related petitions include 1) petitions for appointment of a successor, substitute, or additional trustee; and 2) petitions to establish a trust such as a trust created pursuant to an order entered in a civil action in which damages are paid by the defendant, a testamentary or other trust created in a decedent's estate administration proceeding, or a trust established under 42 U.S.C. §1396(d)(4)(a) (generally referred to as a "special needs trust" or "supplemental needs trust").

### **Rule 605. Bond**

(a) **REQUIREMENT.** Except as provided in Rule 605(d), a trustee is required to execute a bond, with surety approved by the court, conditioned on performance of the trustee's duties, only if:

- (1) the court finds that a bond is needed to protect the interests of the beneficiaries, or
- (2) the terms of the trust require a bond and the court has not dispensed with the requirement.

(b) **AMOUNT OF BOND.** When a bond is required, the court must specify the amount of the bond considering, among other factors, the value of the trust property, the annual income of the trust, the trust property subject to the bond, and its liabilities.

(c) **MODIFICATION AND TERMINATION.** The court may modify or terminate the bond at any time.

(d) **EXCEPTION.** No bond is required from a regulated financial institution, as defined in D.C. Code, § 26-551.02(18) (2021 Supp.), or a national bank as provided in 12 U.S.C. § 92a(f), even if required by the terms of the trust.

### **Rule 606. Account in a Trust Under Court Supervision**

(a) **IN GENERAL.** In a trust supervised by the court, the trustee must file an account annually within 60 days after the anniversary date of:

- (1) the order providing for continuing supervision of the administration of the trust; or
- (2) the trustee's appointment.

(b) **FINAL ACCOUNT.**

(1) *In General.* The trustee must file a final account within 60 days after termination of the trust or resignation or removal of the trustee.

- (2) *Death of Trustee.*

(A) *Notice of Death.* On the death of the trustee, the trustee's personal representative, a trust beneficiary, a representative of a trust beneficiary, or any interested person must promptly file a notice of death.

(B) *Final Account.* The successor trustee must file the deceased trustee's final account within 60 days after the date of the successor's appointment.

(c) SERVICE. The trustee must serve a copy of any account, personally or by first class mail, on each qualified beneficiary and any other person required to be served.

(d) OBJECTIONS TO ACCOUNT. Any person entitled to receive the account has 30 days after receiving the account to file any objections to the account. Any objection must be served on the trustee and all persons entitled to receive the account.

### **Rule 607. Service of Inventory**

The trustee must serve a copy of any inventory, personally or by first class mail, on each qualified beneficiary and any other person required to be served.

### **COMMENT**

This rule addresses service of an inventory in a trust case. Rule 112 addresses other requirements for inventories.