

SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

PROBATE
ATTORNEY PRACTICE STANDARDS

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

By

The Probate Division Education Committee
José López, Presiding Judge, Probate Division
A. Franklin Burgess, Jr., Deputy Presiding Judge, Probate Division
Kaye K. Christian, Immediate-Past Presiding Judge, Probate Division
District of Columbia Courts
500 Indiana Ave., NW
Washington, D.C. 20001

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Table of Contents

ACKNOWLEDGEMENTS.....	3
STATEMENT OF PURPOSE.....	5
PROBATE ATTORNEY PRACTICE STANDARDS.....	6-53
Practice Standard 1 General Authority and Duties.....	6
Practice Standard 2 Counsel for Petitioner	11
Practice Standard 3 Counsel for the Subject	15
Practice Standard 4 <i>Guardian ad litem</i>	20
Practice Standard 5-A Visitor	21
Practice Standard 5-B Examiner.....	23
Practice Standard 6 Guardian.....	25
Practice Standard 7 Conservator.....	32
Practice Standard 8 Compensation of Guardians and Conservators	36
Practice Standard 9 Guardians of Minors.....	37
Practice Standard 10 Personal Representatives and Attorneys Representing Personal Representatives.....	45
Practice Standard 11 Special Administrators and Special Masters.....	52

ACKNOWLEDGEMENTS

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

The committee was co-chaired by the current and former Presiding Judges of the Division, José M. López and Kaye K. Christian.

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

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

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

Kaye K. Christian, Co-chair
Immediate-Past Presiding Judge, Probate Division
Currently, Associate Judge, Family Court
Superior Court of the District of Columbia

José López, Co-chair
Presiding Judge, Probate Division

A. Franklin Burgess, Jr.
Deputy Presiding Judge, Probate Division

Robert Bunn, Esq.
Private Practitioner

Michael F. Curtin, Esq.
Private Practitioner

Kimberly K. Edley, Esq.
Private Practitioner

Renee I. Fox, Esq.
Private Practitioner

Robert A. Gazzola, Esq.
Private Practitioner

Iris Green, Esq.
Private Practitioner

Karen Aileen Howze
Magistrate Judge
Family Court
Superior Court of the District of Columbia

Darrel S. Parker, Esq.
Private Practitioner

Anne Meister, Esq.
Private Practitioner

Barbara Miller, Esq.
Private Practitioner

Edward Varrone, Esq.
Private Practitioner

We also acknowledge former Bar Counsel, Joyce Peters, and her staff, whose review and comments led to an improved product.

STATEMENT OF PURPOSE

The Superior Court Probate Attorney Practice Standards address the general authority and duty of attorneys and other professionals who are appointed to Probate matters from the panel maintained by the Probate Division of the Superior Court of the District of Columbia.

The standards identify in all instances the duties and responsibilities of attorneys and other professionals appointed by the Court to serve in matters before the Probate Division. The standards provide guidance so that attorneys can fulfill their duties and responsibilities as defined by District of Columbia law and the Rules of the Superior Court of the District of Columbia.

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

These standards do not govern attorneys and other professionals not members of the panel maintained by the Probate Division of The Superior Court. Nevertheless, it is the hope of the Probate Education Committee that these standards may be useful and would be adhered to by other practitioners in the Probate Division.

PRACTICE STANDARD 1
GENERAL AUTHORITY AND DUTIES

Standard 1.1 **Non-lawyers**

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

Standard 1.2 **Attorney Qualifications**

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

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

Standard 1.2.1 **Attorney Certification**

Attorneys seeking inclusion in the panel for appointment maintained by the Probate Division of the Superior Court of the District of Columbia shall receive training certification through the Probate Division.

PRACTICE SUGGESTION:

- As part of the training process, new attorneys to the practice are encouraged to seek the advice and guidance of more experienced lawyers who have practiced in the Probate Division. Experienced attorneys are encouraged to make themselves available to mentor new attorneys as they gain experience in the practice.
- Experienced attorneys are encouraged to avail themselves of training opportunities regularly provided through the Estates, Trusts and Probate Law Section of the District of Columbia Bar, including formal training sessions and the informal sessions that have been established by the Section.

Standard 1.3

Basic Obligations For All Persons Appointed In Probate Cases:

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

Standard 1.4

Basic Obligations For Attorneys In Probate Cases:

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

See DC Bar Voluntary Standards for Civility in Professional Conduct, adopted by DC Bar Board of Governors June 18, 1996; Amended March 11, 1997;

- Maintain a manageable caseload.

STANDARD 1.5 General Obligations For All Fiduciaries

STANDARD 1.5.1 The fiduciary shall provide competent management of the property and income of the estate. In the discharge of this duty, the fiduciary shall exercise prudence and diligence.

AUTHORITY: SCR-PD 1

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

PRACTICE SUGGESTIONS:

- Promptly pay all bills and financial obligations of the ward and the estate.
- Ensure that the ward and the estate remain in compliance with all applicable laws and regulations.
- Make informed financial, investment and administrative decisions. Do not delegate responsibility for such actions to a non-fiduciary.

STANDARD 1.5.2 The fiduciary shall make decisions in accordance with the ascertainable preferences of the ward or the creator of the testamentary instrument and, when not in conflict, the beneficiaries of said ward or testamentary instrument.

AUTHORITY: SCR-PD 5

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

PRACTICE SUGGESTIONS:

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

STANDARD 1.5.3 The fiduciary shall recognize that although decisions are open to the scrutiny of other interested parties, the fiduciary is the ultimate decision maker.

AUTHORITY: SCR-PD 5

PRACTICE SUGGESTIONS:

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

STANDARD 1.5.4 The fiduciary shall exhibit the highest degree of trust, loyalty and fidelity in relation to the estate or ward.

AUTHORITY: SCR-CD RULE 304

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

STANDARD 1.5.5 The fiduciary shall exercise prudence in the investment of funds of the estate.

AUTHORITY: SCR-PD 5

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

PRACTICE SUGGESTIONS:

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

STANDARD 1.5.6 The fiduciary shall disclose any personal or agency interest that can be perceived as self-serving or adverse to the interest or position of the ward. The fiduciary shall disclose any conflict of interest or appearance of a conflict when dealing with the needs of the ward.

AUTHORITY: D.C. CODE § 21-2047, SCR-P D 5, SCR-P D 304

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

PRACTICE SUGGESTIONS:

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

STANDARD 1.5.7 The fiduciary shall provide periodic accountings to the ward and interested persons, not less than annually.

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

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

PRACTICE SUGGESTIONS:

- Maintain complete records of the financial affairs of the ward and make them available, where legally required, to the ward and interested persons.
- Ensure that the ward and interested persons are aware of any compensation the fiduciary receives for services as well as any compensation paid to others.

PRACTICE STANDARD 2
COUNSEL FOR PETITIONER

COMMENT

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

The principal activities of Counsel for the Petitioner are the intake conference, document preparation, filing the petition, hearing preparation and presentation of evidence at the Intervention Hearing.

STANDARD 2.1

Counsel for the Petitioner must be familiar with the procedures for appointment of Guardians and Conservators, including the statutory language and the Court Rules governing Intervention Proceedings.

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.1(a)
AND 1.1(b)

PRACTICE SUGGESTIONS:

- Explain the Intervention Proceedings, costs and the roles of Counsel for the Petitioner, Counsel for the Subject as well as the role of a Visitor, Examiner or Guardian *ad litem*.
- Explain the fees for services rendered by all parties and the method for requesting payment through the Court.
- Discuss the clear and convincing evidence requirement; ascertain whether witnesses aside from the immediate family exist.
- Discuss alternatives to an Intervention Proceeding with the petitioner.
- Get social security number of proposed ward.

- Request that the client provide a family tree, if possible, and any information regarding the subject's history, including financial information, any advance directives or last will and testaments.
- Determine whether any powers of attorney exist, when they were prepared and by whom. In addition, determine who is the nominated attorney-in-fact.
- Thoroughly explain duties of both Guardian and Conservator; show petitioner a sample inventory, accounting and form reports. Discuss the likely costs of the Intervention Proceeding.
- If the petitioner wishes to serve as a fiduciary, ascertain whether there are any impediments including, but not limited to, conflicts of interest, inability to obtain bond or inability to travel. Discuss frankly with the petitioner the problems that may arise.
- Advise the petitioner to attend the Intervention Hearing.
- Discuss the best method for personal service on the subject.

Medical Reports and Recommendations:

- If the petitioner provides a medical report, ascertain whether the physician indicates on the report his or her qualifications and whether those qualifications are appropriate to make the recommendation regarding capacity or incapacity contained in the report. Make sure that the report focuses on capacity or incapacity as defined in D.C. Code § 21-2011 (11).
- Determine whether the physician will discuss the report with you.
- If the medical evaluation does not meet the statutory requirement and the physician will not amend the report, request that the Court appoint an examiner. Explain to your client the examiner's role and why you believe an examiner is necessary.

Other Suggestions:

- Ensure that all forms used in the preparation of all documents for filing are current.
- Prepare the Petition for General Proceeding and have the client review it for accuracy.

STANDARD 2.2 **Counsel for the Petitioner shall be knowledgeable about all filing procedures for Interventions.**

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.1(a) AND 1.1(b)

PRACTICE SUGGESTIONS:

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

STANDARD 2.3 **Counsel for the Petitioner shall communicate with the parties, witnesses and maintain communication with the petitioner following the filing of the Intervention Petition and pending the hearing.**

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

PRACTICE SUGGESTIONS:

- When Counsel for the Subject is appointed, contact counsel to ascertain whether counsel is accepting the appointment and to provide any additional information not contained in the petition.

- Prepare the notice pursuant to SCR-PD 325(b) once Counsel for the Subject is appointed.
- Perfect personal service. Assure personal service upon the subject within the time prescribed by statute and file the affidavit of service with the Court.
- Contact witnesses regarding the hearing date and issue subpoenas to those whose testimony is critical to the resolution of the matter.
- Communicate with any Visitor to learn if there are any relevant issues to address.
- Once Counsel for the Subject has met with the subject, confer with counsel regarding the position of the subject regarding the Intervention and determine whether any agreement can be reached, whether any stipulations can be agreed upon and discuss the recommendations of who would be best to serve as Guardian or Conservator. If an agreement is reached, and if practical, notify the Court prior to the hearing.
- If the matter is contested, define the issues.

PRACTICE STANDARD 3
COUNSEL FOR THE SUBJECT

COMMENT

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

Counsel is the subject’s advocate and is not an impartial investigator. The subject is a client just like any other client. The attorney-client privilege and rules of confidentiality apply. To the greatest extent possible, the subject determines his or her own best interests and counsel advocates those interests.

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

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

When a Guardian ad litem is appointed, Counsel for the Subject regards the Guardian ad litem as the “substitute” client.

On occasion, a subject for whom counsel is appointed may retain counsel. In that event, Probate Rule 305(b) applies.

STANDARD 3.1

Counsel for the Subject shall abide by the laws and Court Rules governing Intervention Proceedings.

AUTHORITY:

SCR-PD 305 AND 321(d)

PRACTICE SUGGESTIONS:

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

STANDARD 3.2 **Counsel for the Subject shall maintain an attorney-client relationship with the subject.**

AUTHORITY: D.C. CODE § 21-2033(b) AND SCR-P D 305

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

PRACTICE SUGGESTIONS:

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

STANDARD 3.3 **Counsel for the Subject shall determine, and advocate for, the least restrictive alternative(s) to meet the needs and wishes as stated by the subject.**

AUTHORITY: D.C. CODE § 21-2044(1) AND § 21-2055(a)

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

STANDARD 3.4

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

AUTHORITY: D.C. CODE § 21-2033(a), § 21-2011(26), § 21-2033(c) AND SCR-P D 305.

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

PRACTICE SUGGESTIONS:

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

STANDARD 3.5

Counsel for the Subject shall represent zealously the subject’s legitimate interests.

AUTHORITY: D.C. CODE § 21-2033(b) AND SCR-P D 305

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.3, 1.4 AND 2.2

PRACTICE SUGGESTIONS:

- Ensure that the subject’s rights are protected, including appropriate service of notice.
- Protect the subject’s right to counsel and the subject’s right to be present at all hearings.
- Conduct appropriate investigation of relevant facts and circumstances in support of the subject’s wishes and desires.

- When appropriate, and pursuant to SCR-PD 312, seek court authority to conduct pretrial discovery. (Note that pretrial discovery in intervention cases may be conducted only as allowed by the Court.)
- Respond to all pleadings as appropriate.
- Determine whether the subject has an existing trust or durable power of attorney, which may obviate the need for Court-ordered assistance.
- Consider whether to offer evidence on the issue of capacity.
- Determine whether the subject's interest would be served by settlement.
- If appropriate, request that the Intervention Hearing be closed. See D.C. Code §21-2041(h), D.C. Code §21-2054(e).
- Communicate with other parties prior to the Intervention Hearing.
- Discuss settlement alternatives with the petitioner (or Counsel for the Petitioner) and other interested persons. If appropriate, be prepared to enter into stipulations as to facts or the terms of the final order.
- If appropriate, issue and serve subpoenas for documents or witnesses.
- Determine the evidence and witnesses to be presented to the Court.

STANDARD 3.6

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

AUTHORITY:

D.C. CODE § 21-2041 AND § 21-2054

APPLICABLE ETHICAL RULES:

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

PRACTICE SUGGESTIONS:

- Review the statutory duties and powers of a Guardian and a Conservator before the Intervention Hearing, and determine (with the involvement of the subject, if possible) which powers are appropriate. Often, the terms of the orders of appointment, and the powers and limitations on the powers of the

Guardian and Conservator provide an opportunity to advance the interests and desires of the subject, and ensure the least restrictive alternative.

- Ensure that the subject's desires and intentions are communicated to the Court during the Intervention Hearing, including the subject's choice of a Conservator or Guardian when appropriate.

PRACTICE STANDARD 4
GUARDIAN *AD LITEM*

STANDARD 4.1 **The Guardian *ad litem* shall assist in determining the interests of the subject.**

AUTHORITY:

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

PRACTICE SUGGESTIONS:

- Be familiar with the procedures required for appointment of Guardians and Conservators.
- Ascertain the interests of the subject of the proceeding, especially when the subject is unable to express his or her views.
- Review legal documents executed by the subject and interview persons who most likely have personal knowledge of the subject's wishes.
- Communicate with Counsel for the Subject so counsel can advocate more effectively on behalf of the subject once the Guardian *ad litem* has determined the best interests of the subject.
- Communicate with other parties as to the determination of the subject's interests, including any Visitor or Examiner, and Counsel for the Petitioner.
- Attend all Intervention Proceedings and conferences involving appointment of a Guardian and Conservator, and communicate the interests of the subject during such proceedings as the Court directs.
- Do not file a report unless requested by the Court.

PRACTICE STANDARD 5-A
VISITOR

COMMENT

The Visitor is an independent investigator who is expected to reach his or her own conclusions regarding the subject's circumstances. The court will, on occasion, appoint a Visitor to conduct a special investigation into specific issues raised by the petition.

STANDARD 5-A.1 The Visitor shall thoroughly investigate the current circumstances of the subject of the intervention proceeding and respond specifically to any issues raised in the petition or as requested by the Court in the order of appointment.

Authority: D.C. Code § 21-2033(c) and SCR-PD 327(b)

PRACTICE SUGGESTIONS:

- 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.
- Communicate with the subject in a manner that will allow the subject, to the extent possible, to understand the nature of the proceedings and the Visitor's role in these proceedings.
- Visit the present place of abode of the subject and any place proposed as a subsequent residence for the subject.
- Meet with appropriate persons to determine potential or existing conflicts of interest that would preclude the appointment of any person nominated by any party to serve as Guardian or Conservator.
- Nominate a person to serve as Guardian or Conservator if the petitioner or other parties have not named a nominee.
- File a written report at least 10 days prior to the intervention hearing and mail a copy to all persons listed on the order of appointment.
- Attend the intervention hearing and be prepared to testify unless excused by the Court.

- Maintain complete records of any services provided and record time spent using tenths of an hour.
- Prepare a fee petition upon completion of services and state the basis for the rate of compensation requested. File the fee petition either by mail or in person and send a copy to all interested persons and persons granted permission to participate, including any person listed in the Court's findings of fact, conclusions of law, and order.

Note: A Visitor's appointment terminates upon disposition of the matter unless otherwise directed by the Court.

PRACTICE STANDARD 5-B
EXAMINER

COMMENT

The Examiner is a person qualified in the diagnosis, care, or treatment of causes and conditions giving rise to the subject's alleged incapacity, such as a gerontologist, psychiatrist, or qualified mental retardation professional.

STANDARD 5-B.1: The Examiner shall examine the individual alleged to be incapacitated and make findings indicating whether the individual's ability to receive and evaluate information is impaired to such an extent that he or she lacks the capacity:

(1) to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income;

(2) to take those actions necessary to provide health care, food, shelter, clothing, personal hygiene, and other care for him or herself so that serious physical illness is not more likely to occur; or

(3) to meet all or some essential requirements for his or her habilitation or therapeutic needs.

PRACTICE SUGGESTIONS:

Authority: D.C. Code § 21-2041; 21-2054 and SCR-PD 326

- Make arrangements to conduct an examination of the allegedly incapacitated subject to timely comply with the court rule that requires that the examiner's report be filed at least 10 days before the scheduled hearing. (SCR-PD 326)
- Review reasonably available records and/or other materials that may have a bearing on the subject's present capacity, including but not limited to medical records; recent letters written by the subject; and available legal documents, e.g., powers of attorney, recent wills and/or trusts, and personal business records.
- List the names and relationships of other persons interviewed in connection with the examination of the subject, including but not limited to treating health care professionals, e.g., physicians and mental health care providers; persons living in the same residence as the subject; and relatives or friends in close contact with the subject.
- Describe the specific nature of the subject's impairment and the basis for this assessment.

- List any facts that may support a contrary assessment.
- Indicate whether the subject has the potential for regaining some or all of his or her capacity and the basis for this conclusion.
- Indicate whether the subject's incapacity arises out of mental retardation.
- In a case involving mental retardation, indicate in the written report whether the Examiner is a qualified mental retardation professional who can give a complete social, psychological, and medical evaluation of the individual. D. C. Code § 20-2011(24)(A) – (G) sets out the requirements for a qualified mental retardation professional.
- File a written report at least 10 days prior to the intervention hearing and mail a copy to all persons listed on the order of appointment.
- Unless excused by the Court, attend the intervention hearing. Bring notes, test results, and other materials and be prepared to testify regarding the subject's capacity.
- Maintain complete records of any services provided and record time spent using tenths of an hour.
- Prepare a fee petition upon completion of services and state the basis for the rate of compensation requested. File the fee petition either by mail or in person and send a copy to all interested persons and persons granted permission to participate, including any person listed in the Court's findings of fact, conclusions of law, and order.

Note: The Examiner does not serve as an advocate. The Examiner should not include in the report a recommendation regarding who the Guardian and/or Conservator should be. This does not preclude the Examiner from including in the report facts that may bear on characteristics of a Guardian that might be beneficial or detrimental to the ward. The Examiner's appointment terminates upon disposition of the matter unless otherwise directed by the Court.

PRACTICE STANDARD 6 GUARDIAN

COMMENT

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

Immediately following the appointment, the Guardian must gather information and begin planning for the care of the ward. The appointed Guardian must determine the current status of the ward as well as the manner that the ward lived prior to incapacity. This information is invaluable to determine where a ward should live and with whom, what recreational and social services will be appropriate for the ward and to create a sense of comfort for the ward as the Guardianship is established.

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

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

Frequently, Guardians are faced with the decision to either withhold or withdraw medical treatment. Guardians should refer to the standards for consenting to and withholding consent for medical treatment pursuant to D.C. Code Section 21-2047. Once the Guardian has reviewed the code requirements, the Guardian should consider the wishes of the ward. In the event that the

ward's position is not clear, the Guardian may seek Court authorization or Court approval for the review of the ward's circumstances by the Bio-ethics Committee.

STANDARD 6.1

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

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

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

STANDARD 6.2

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

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

PRACTICE SUGGESTIONS:

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

STANDARD 6.3

The Guardian shall maintain regular contact with the ward.

AUTHORITY: D.C. CODE § 21-2047

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

STANDARD 6.4

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

AUTHORITY: D.C. CODE § 21-2047(a)(1)

PRACTICE SUGGESTIONS:

- Meet the ward, preferably in the *ward's* place of residence, and explain the role of the Guardian, the *ward's* rights, assess the ward's physical, social,

educational, vocational and other care needs, and determine the existing support systems (family, faith community, *etc.*) available to the ward.

- Ensure that the ward or the ward's care providers can reach the Guardian for emergencies.

STANDARD 6.5

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

AUTHORITY: D.C. CODE § 21-2044(a) AND § 21-2047(b)(6);
ORDER OF APPOINTMENT

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

PRACTICE SUGGESTIONS:

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

STANDARD 6.6

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

AUTHORITY: D.C. CODE § 21-2047(a)(3) AND § 21-2047(b)(2)

PRACTICE SUGGESTIONS:

- Assess the appropriateness of the ward's residence at the time of appointment, arrange for appropriate changes to meet the needs of the ward and regularly reassess the appropriateness of the placement.

- Accommodate the ward's desires as to his or her place of residence to the greatest extent possible with the ward's safety and well being remaining paramount.
- Ensure that appropriate supportive services are available to the ward.
- If the ward is placed in a residential facility, ensure that the facility meets the needs of the ward and that the facility is licensed.

STANDARD 6.7 **The Guardian shall arrange for appropriate and regular health care services.**

AUTHORITY:

D.C. CODE § 21-2047(a)(1) AND § 21-2047(b)(4)

PRACTICE SUGGESTIONS:

- Evaluate whether a comprehensive health assessment is needed at the time of the Guardian's appointment and at any time during the Guardianship.
- Obtain appropriate medical records as needed.
- Determine who are the ward's medical care providers and whether it is appropriate for the ward to continue to receive services from such providers.
- Be knowledgeable about health care providers who provide services, including dentists, primary care physicians and any other medical specialists required for the health and well being of the ward.
- Maintain appropriate health insurance when possible or apply for appropriate public medical benefits.
- Arrange appropriate medical examinations and treatment including dental, hearing, vision, and podiatry.
- Be aware that the ward has a right to confidentiality of medical information and act accordingly. Consider requesting that the Court seal reports that contain sensitive or confidential information regarding the ward.
- Consider seeking a second opinion for any medical treatment or any recommendation against medical treatment.

STANDARD 6.8 **The Guardian shall secure any health care directives executed by the ward. In the absence of such directives, the Guardian**

shall investigate the ward’s desires as to health care and end-of-life decisions.

AUTHORITY: D.C. CODE § 21-2044(a) AND § 21-2047(c)(3)

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

PRACTICE SUGGESTIONS:

- Consult with the ward, the ward’s family, friends, clergy and others who are or who have been significant in the life of the ward to assist in determining what the ward’s preferences are as to health care and end-of-life decisions.
- Assess whether a Do Not Resuscitate Order should be entered. When appropriate, promptly seek Court authorization for DNR and other end-stage orders.
- Consider requesting a Bio-Ethics Review or consultation prior to making end-of-life decisions or seeking Court authorization for decisions involving critical medical procedures or end-of-life decisions.

STANDARD 6.9

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

AUTHORITY: D.C. CODE §§ 21-2047(a)(2), (3) AND (4); §§ 21-2047(b)(1), (3), AND (5); D.C. CODE § 21-2065(b), AND SCR-P D 329

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

STANDARD 6.10

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

AUTHORITY: D.C. CODE § 21-2047

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

PRACTICE SUGGESTIONS:

- Maintain a separate file for each ward to include:
 - ❑ The date of birth, address, telephone number, Social Security number, medical insurance information, name, address and phone number of the ward’s physician and diagnosis. Other information that may be helpful: Medication (prescription and over the counter) taken by the ward, dosage, prescribing physician and the reasons for the medications.
 - ❑ All legal documents.
 - ❑ Advance directives.
 - ❑ List of all service providers with contact information and a description of the services provided to the ward.
 - ❑ Documentation of the ward’s known values, lifestyle preferences, religious preferences and wishes regarding medical and other care.
 - ❑ Documentation of the Guardian’s contacts with the ward or any other persons who have a relationship with the ward.
- Maintain regular communication with all persons providing direct services to the ward.
- Convene, attend or participate in case management or treatment meetings related to the physical, mental and habilitation needs of the ward.
- Ensure that care plans are being implemented on a regular basis by examining charts, notes and documents regarding the ward at the ward’s place of residence and any other program site (*e.g.* day care centers, rehabilitation services, *etc.*).

STANDARD 6.11 The Guardian shall timely file reports to the Court and serve all interested persons.

AUTHORITY:

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

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT 1.1 AND 1.3

PRACTICE SUGGESTIONS:

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

PRACTICE STANDARD 7
CONSERVATOR

STANDARD 7.1

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

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

AUTHORITY:

D.C. CODE § 21-2056 ET SEQ.

APPLICABLE ETHICAL RULES:

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

PRACTICE SUGGESTIONS:

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

STANDARD 7.2

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

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

AUTHORITY:

D.C. CODE § 21-2055 (b)(2)

APPLICABLE ETHICAL RULES:

D.C. RULES OF PROFESSIONAL CONDUCT 1.15 AND 1.17

PRACTICE SUGGESTIONS:

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

- Determine whether a will exists and, if so, the Conservator should consider maintaining possession of the original will and other important papers of the ward in a safe and secure place.
- Manage the ward's income and assets consistent with the ward's estate plan, if such a plan exists, and if possible and prudent.
- Notify creditors and the postal service of the Conservatorship and ensure that mail is transferred to the Conservator.

STANDARD 7.3 **The Conservator shall communicate with the ward.**

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

PRACTICE SUGGESTIONS:

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

STANDARD 7.4 **The Conservator shall use due diligence in determining who shall be retained to provide professional services in the management of the ward's income and assets.**

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

PRACTICE SUGGESTIONS:

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

STANDARD 7.5 **The Conservator shall comply with all reporting and accounting requirements established by the Court.**

AUTHORITY: D.C. CODE § 21-2065.

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

PRACTICE SUGGESTIONS:

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

PRACTICE STANDARD 8

COMPENSATION OF GUARDIANS AND CONSERVATORS

COMMENT

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

STANDARD 8.1

All fees requested by Guardians and Conservators shall be reasonable and related to the duties performed by Guardians and Conservators for services compensable under the District of Columbia law and Court Rules.

AUTHORITY:

D.C. CODE §21-2060

PRACTICE SUGGESTIONS:

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

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

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

PRACTICE SUGGESTIONS:

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

STANDARD 9.3

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

AUTHORITY: D. C. CODE § 21-108, § 21-115 AND § 21-106(c),
AND SCR-P D 221(a)

APPLICABLE ETHICAL RULES: D.C. RULES OF P ROFESSIONAL CONDUCT 1.3,
1.4(b) AND 1.14

PRACTICE SUGGESTIONS:

- Obtain information concerning the age of the child, the child's residence and domicile and other information required by SCR-PD 221 when serving as Counsel for the Petitioner.
- Ensure that the proposed Guardian of a Minor is not under any legal disability.
- Since both biological parents have statutory priority for appointment as Guardians of a Minor, endeavor to obtain the written consent of the other parent when petitioning on behalf of one parent.
- If consent cannot be obtained, be aware that a hearing will be necessary and the non-consenting parent must be served with notice, which is provided by

the issuance of a citation, which is served on the non-consenting parent by the U.S. Marshal Service.

- Arrange for both the proposed Guardian of a Minor and the child to attend the hearing if one is necessary. The Court may waive the presence of the minor under certain circumstances.
- Be aware that minors who are over the age of 14 have a statutory right to select the guardian.
- Determine whether the proposed Guardian of a Minor will qualify for a surety bond before filing a petition for appointment.
- If the proposed Guardian of a Minor cannot obtain a surety bond, consider seeking the appointment of an attorney as Guardian of the Minor so that the bond required by the Court to protect the minor's estate can be secured.
- Be aware that an attorney may not serve as guardian of more than five minors at any one time, unless the minors are entitled to shares of the same estate.
- When petitioning for the appointment of a guardian for multiple minors who are entitled to share in the same estate, file a single petition, thus avoiding the need for multiple bonds.

STANDARD 9.4

When seeking appointment of a Guardian of a Minor, counsel shall present a properly drafted petition along with complete supporting documentation such as consents to the proposed appointment and a proposed order, and arrange for the minor to be present.

AUTHORITY: SCR-PD 221(b).

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

PRACTICE SUGGESTIONS:

- Appear in the Office of the Register of Wills along with the minor, present the petition and all consents to the staff of the Office of the Register of Wills; the staff will interview the petitioner and advise the petitioner of the responsibilities of a Guardian of a Minor.

- Be prepared to appear before the Court if required to finalize the appointment of a Guardian of a Minor.

STANDARD 9.5 Before expending guardianship funds, the Guardian of a Minor shall obtain prior Court approval.

AUTHORITY: D.C. CODE § 21-143 AND SCR-P D 222(a)

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

PRACTICE SUGGESTIONS:

- Submit a petition for authority to expend guardianship funds using SCR-PD Form 1 or employing a format substantially consistent with that form.
- Advise the biological parents that they are legally obligated to support their children and are generally required to use their own funds to meet their children's needs.
- If seeking Court authority to use guardianship Funds to pay for the care and maintenance of a child, submit verified financial statements from the biological parents demonstrating why they are unable to bear the proposed cost. Financial statement forms are available in the Office of the Register of Wills.
- If guardianship funds have been expended without prior Court approval, file a petition for ratification of expenditures. The Court may, however, deny the petition and may also remove the Guardian of the Minor and require reimbursement of the estate by the removed guardian.
- Petition for continuing authority to expend a certain amount each month or each year on the child's recurring needs if the child's circumstances are such that funds are needed on a recurring basis.
- Be aware that even if Court approval is sought and granted, all expenditures are ward to proper accounting.
- Title all items, accounts or property purchased with guardianship funds in the name of the Guardian of the Minor in the guardian's fiduciary capacity (not individually), unless otherwise directed by the Court.

- Be aware that petitions for routine expenditures of funds will normally be granted or denied based on the pleadings. By contrast, a petition for authority to expend a substantial sum of money, *e.g.* to purchase a home or vehicle for the minor, will generally require a Court hearing, and may involve the appointment of a Guardian *ad litem* to represent the best interests of the child.
- File all federal, state and District of Columbia tax returns that are required on the child's behalf and pay any tax that may be due. Be aware that the tax rules applicable to children differ from those applicable to adults.

STANDARD 9.6 Guardian of a Minor shall obtain prior Court approval before investing guardianship funds in anything other than a federally insured bank account or U.S. Treasury Securities backed by the Full Faith and Credit of the United States Government.

AUTHORITY: SCR-PD 5

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

PRACTICE SUGGESTIONS:

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

STANDARD 9.7 Guardian of a Minor shall timely file an inventory and annual accounts.

AUTHORITY: SCR-PD 204(a)(2), SCR-P D 204(a)(4); SCR-PD 204(d) AND SCR-PD 206

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.1, 1.3(c) AND 8.4(d)

PRACTICE SUGGESTIONS:

- File the inventory within 90 days after qualification, showing assets as of the date of qualification.
- File annual accounts and all supporting documentation within 30 days of the anniversary of qualification.
- Pay all Court costs at the time of submission of the first account. The amount of the Court costs depends on the size of the estate and the nature of the assets. If, after the initial payment of Court costs, the size or nature of the estate changes, additional Court costs may be assessed.
- Promptly respond to any requirements letters issued by the Office of the Register of Wills if additional documentation is needed.

STANDARD 9.8 **In seeking compensation, a Guardian of a Minor, counsel for a Guardian of a Minor or a Guardian *ad litem* shall accept compensation from the estate only as provided by Court Rule.**

AUTHORITY: SCR-PD 225

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

PRACTICE SUGGESTIONS:

- Be aware that "ordinary services" is broadly defined by Court Rule to include marshalling of assets, collection of income, payment of bills and support costs, supervision and oversight of investments and the preparation of inventories and accounts. A Guardian of a Minor need not petition for the payment of the annual commission. The commission need only be listed in the annual accounting as a proposed disbursement but can be paid only upon approval of the account.
- Be aware that extraordinary services, such as those rendered in connection with the purchase of a home or vehicle, are compensable only by petition.
- Be aware that legal services are compensable for services such as the preparation of pleadings and representation at a Court hearing. If a

practitioner renders ordinary services, such as the preparation of an account, that practitioner may be compensated only by assignment of the guardian's commission. Attorneys' fees are generally requested by a petition filed with the annual account. However, a petition for fees rendered in connection with the appointment of a Guardian of a Minor may be filed at any time. See SCR PD 225(e).

- Be aware that when a minor turns 18 and the guardianship terminates, a "turnover commission" not exceeding 5 percent of the net assets to be turned over may be included as a proposed disbursement in the final account of the Guardian of a Minor. In many cases the turnover commission constitutes the bulk of the compensation the guardian will receive, particularly when expenditures over the years have been modest. In most instances, it is not necessary to file a petition or statement of services in support of a request for a turnover commission. However, if a guardianship terminates within three years of the guardian's appointment, and the net assets exceed \$100,000 in value, an itemized statement of services must be filed.

STANDARD 9.9

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

AUTHORITY: SCR-PD 204(a)(5)

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.3 AND 1.15

PRACTICE SUGGESTIONS:

- File the final account within 60 days of the date the minor attains majority.
- Upon Court approval of the final account, promptly distribute the assets of the former ward.
- If prompt distribution cannot be made, such as when the ward cannot be located, petition the Court to deposit funds into the Court Registry and explore alternative methods for distribution depending upon the circumstances.
- Obtain a receipt from the former ward upon distribution of the assets and promptly file the receipt with the Court.

- Be aware that the guardian's bond continues until approval of the final account and the filing of a receipt or receipts. A *pro rata* refund of the bond premium may be obtained if the former ward attains the age of majority midway through the accounting year.
- If there is a continuing disability such as mental impairment that will continue past the age of majority, promptly seek appointment of a Conservator or establishment of a Special Needs Trust to avoid any lapse in authority to act on behalf of the disabled ward.
- Be aware that the age of majority in the District of Columbia is 18. If the former ward consents, the assets can be placed in a trust or invested in long-term instruments or the like to attempt to preserve the assets for the future use of the ward. Without consent by the ward or the establishment by the Court of a Conservatorship or Special Needs Trust, the assets must be distributed outright upon approval of the final account.

PRACTICE STANDARD 10
ATTORNEYS APPOINTED AS
PERSONAL REPRESENTATIVES

STANDARD 10.1 The attorney appointed as a Personal Representative must be knowledgeable about the statutes and Court Rules governing testate and intestate administration, and small and large estates.

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

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

PRACTICE SUGGESTIONS:

- The attorney appointed as Personal Representative must be knowledgeable about the following:
 - ❑ The applicable District of Columbia Statutes on Descent and Distribution.
 - ❑ The appropriate form of Probate to use.
 - ❑ The types of Estate Administration: Supervised and Unsupervised, and when to request one or the other in the Probate petition.
- The Personal Representative should determine whether a bond is required, and ascertain whether waivers of bond can be obtained.
- The Personal Representative must be aware that certain sureties may, as a condition of issuing a bond, require that the estate be supervised.
- The Personal Representative must be aware that in some circumstances other estates must be opened in order to complete the administration of the estate for which he or she was appointed.
- The Personal Representative must be aware that publication costs must be paid promptly so that the verifications and proofs of publication may be filed in a timely manner.

STANDARD 10.2 The Personal Representative must be aware of the fiduciary obligations to the estate, its heirs and creditors.

AUTHORITY: D.C. CODE § 20-701(a), § 20-702, § 20-704, § 20-705, § 20-743, § 47-1805.3, SCR-P D 5(a)(3), AND INTERNAL REVENUE CODE § 2031 AND § 6075.

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.1 AND 1.4

PRACTICE SUGGESTIONS:

- The Personal Representative must be aware that estate funds shall not be commingled with non-estate funds under any circumstances.
- The Personal Representative must determine whether any conflicts of interest exist between the interests of various heirs.
- The Personal Representative should file an IRS Form 56 (Notice of Fiduciary Relationship) and a Form SS-4 to request a tax identification number for the estate and open an estate bank account(s) through which all estate business is conducted. In the absence of express provisions in any trust instrument or will to the contrary, no account shall exceed the federally insured limit, currently \$100,000.00.
- The Personal Representative must be aware that Federal and District of Columbia income tax returns must be filed on behalf of the decedent for the year in which the decedent died, and ensure that the tax returns are prepared and filed.
- If the value of an estate exceeds the amounts provided by law, the Personal Representative must file Federal and District of Columbia Estate Tax returns.
- The Personal Representative must prepare and file all claims for refunds for federal and state taxes.
- The Personal Representative must send the Notice of Appointment and General Information Sheet to all interested persons and known creditors by certified mail.
- The Personal Representative must pay for the Proofs of Publications and ensure their timely filing.

- The Personal Representative must be aware of his or her investment and fiduciary responsibilities, including the duty to maintain accurate records of all expenses and payments during the administration of the estate along with keeping appropriate receipts for expenditures.

STANDARD 10.3 The Personal Representative must be aware that the Personal Representative owes a fiduciary obligation to the estate, its heirs and creditors.

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

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

PRACTICE SUGGESTIONS:

- The Personal Representative should be aware that if the Personal Representative has to engage an attorney, the attorney represents the Personal Representative and not the estate. Under District of Columbia case law, the attorney has an attorney-client relationship with the fiduciary, and not with the beneficiaries.
- The Personal Representative should avoid giving legal advice to beneficiaries and interested persons.

STANDARD 10.4 The Personal Representative must prepare an inventory in all estates.

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

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

PRACTICE SUGGESTIONS:

- The Personal Representative must verify and document the value of estate assets at the time of the decedent's death.
- The Personal Representative should be aware of the availability of the appraiser in the Office of the Register of Wills who will appraise all tangible personalty upon request.

- The Personal Representative should be aware that for real property either the assessed value set by the District of Columbia Office of Tax and Revenue or an appraisal by a qualified, licensed appraiser may be used for the inventory.
- In supervised administrations or in estates of decedents dying prior to July 1, 1995, the Personal Representative should be aware that an inventory, or an affidavit in lieu of inventory, must be filed with the Court.
- The Personal Representative should be aware of the requirements for sale of real property prior to and after 1994.

STANDARD 10.5 The Personal Representative must know the statutes and Court Rules governing the filing and payment of claims.

AUTHORITY: D.C. CODE § 20-901, ET SEQ.

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

PRACTICE SUGGESTIONS:

- The Personal Representative must be aware of the procedure for disallowing claims that are believed, after a review of the claims' validity, not to be obligations of the estate.
- The Personal Representative must pay all claims allowed against the estate in order of priority no later than eight (8) months from the date of the first publication of the Notice of Appointment.
- The Personal Representative must be aware that in estates where the decedent was the settlor of a trust in existence at the time of the settlor's death, D.C. Code § 19 -1305.05 and D.C. Code § 19-1306.04 should be consulted.

STANDARD 10.6 The Personal Representative must know the statutes and Court Rules governing the preparation, filing and auditing of accounts.

AUTHORITY: D.C. OFFICIAL CODE § 20-721, ET SEQ.

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

PRACTICE SUGGESTIONS:

- The Personal Representative must know what is required for the proper preparation of the estate accounts.
- In unsupervised estates, the Personal Representative must prepare accounts and mail the accounts to interested persons at reasonable intervals or upon reasonable demand.
- In supervised estates, the Personal Representative should prepare typewritten accounts on forms prescribed by the Office of the Register of Wills or as provided in SCR-PD 401.
- In pre-1995 and in supervised estates, the Personal Representative must file the first account within one (1) year and one (1) day of the first publication of the Notice of Appointment, and subsequent accounts are due every nine (9) months or upon the termination of the Personal Representative's appointment.
- If the final account is an account for an estate of a decedent dying before April 1, 1987, the Personal Representative must also file a Certificate of Satisfaction of District of Columbia inheritance and/or estate taxes.

STANDARD 10.7 The Personal Representative must know the statutes and Court Rules governing distributions, renunciation by the surviving spouse, intestate succession, the family allowance, the Homestead Allowance for decedents dying on or after April 27, 2001 and exempt property for decedents dying on or after April 27, 2001.

AUTHORITY: D.C. CODE § 19-101.01, ET SEQ., § 19-113, § 19-301, TITLE 19, CH. 3; TITLE 20, CH. 11; § 20-741(24), § 20-1102(d) AND § 20-1106.

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

PRACTICE SUGGESTIONS:

- The Personal Representative must know that, where appropriate, partial distributions to heirs and legatees may be made during the administration of the estate.
- In a supervised administration, the Personal Representative must make final distributions within 30 days of the approval of the final account, unless extended by the Court for good cause shown.

- The Personal Representative should consult D.C. Code Section 20-1106 concerning distributions to minors.

STANDARD 10.8 The Personal Representative must know the requirements for closing an estate and the time periods for service and filing of documents required to close the estate.

AUTHORITY: D.C. CODE § 20-1301, ET SEQ.

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

PRACTICE SUGGESTIONS:

- The Personal Representative must verify all statements made in the closing pleadings.
- The Personal Representative must prepare the account, Notice of Account, Certificate of Completion, and any other documents needed for closing the estate, and to serve all pertinent documents on all interested persons.
- The Personal Representative must know his or her responsibilities with regard to distributions and the payment of claims.
- The Personal Representative must obtain stamped-filed copies of the Certificate of Completion.
- In a supervised or pre-1995 Estate, the Personal Representative must ensure that the final account is timely filed and that all requirements are satisfied in a timely manner.
- The Personal Representative should know that when extensions of time are needed for completion of the account or to meet audit requirements, he or she should formally request an extension of time.
- The Personal Representative must attach receipts and canceled checks to any accounts filed with the Court.
- The Personal Representative should know that distribution should be completed within the time required by Court Rules once the Final Account is approved for supervised and pre-1995 estates.

- The Personal Representative must obtain receipts for distributions in supervised estates and estate of decedents dying before July 1, 1995, and that it is prudent to obtain receipts in unsupervised estates.

STANDARD 10.9 An attorney who represents a Personal Representative shall adhere to the same standards set for attorneys appointed as Personal Representatives, except that when an attorney serves as a Personal Representative, the attorney is responsible for performing all fiduciary duties.

AUTHORITY: D.C. CODE § 20-741(24)

APPLICABLE ETHICAL RULES: D.C. RULES OF PROFESSIONAL CONDUCT 1.1, 1.3, 1.15 AND 8.4(d)

PRACTICE SUGGESTIONS:

- See practice suggestions under Standards 10.1 through 10.8.

PRACTICE STANDARD 11
SPECIAL ADMINISTRATORS AND SPECIAL MASTERS

STANDARD 11.1 The attorney who serves as Special Administrator must know the purpose of a Special Administrator and the fiduciary obligations that a Special Administrator owes to the estate.

AUTHORITY: D.C. CODE § 20-531 ET SEQ

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

PRACTICE SUGGESTIONS:

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

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

STANDARD 11.2 An attorney serving as Special Master must know the statutory requirements and rules governing the role of the Special Master.

AUTHORITY:

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

PRACTICE SUGGESTIONS:

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