SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
ADMINISTRATIVE ORDER 23-20

Probate Division Fee Guidelines for Court-Appointed Fiduciaries

WHEREAS, D.C. Code § 21-2060(a) provides the statutory basis for compensation and allows compensation to court-appointed fiduciaries in the Probate Division of the District of Columbia Superior Court;

WHEREAS, the Fee Guidelines Working Group, composed of judges and members from both the private and public sector, crafted the District of Columbia Superior Court Probate Division Fee Petitions Guidelines ("Guidelines");

WHEREAS, the Guidelines are intended to promote consistency and fairness in the billing for, and approval of, compensation for court-appointed fiduciaries in the Probate Division of the District of Columbia Superior Court;

WHEREAS, a request for compensation shall be in the form of a verified petition filed by the fiduciary. The petition must indicate whether the fiduciary is seeking compensation from the estate, the Guardianship Fund, or both;

WHEREAS, fee petitions shall be considered by the case-assigned Associate Judge, a Senior Judge or a Magistrate Judge of the Court;

WHEREAS, the Court, when determining whether tasks performed by fiduciaries are part of a fiduciary's duties under Titles 19, 20 and 21 of the D.C. Code, and are therefore compensable, shall consider the reasonableness of the compensation;

WHEREAS, the Court, when addressing the reasonableness of compensation, shall consider the time, labor, and skill to perform the legal services, the fee customarily charged in the area for similar services, the fiduciaries' experience and ability; and the limitations imposed by the client or ward;

WHEREAS, the Court shall approve the amount of compensation, as well as the source of the compensation;

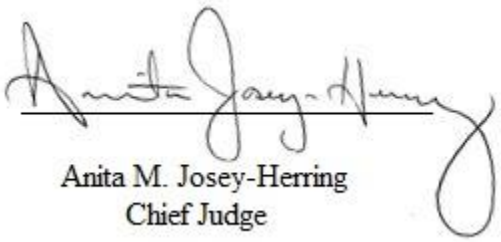
NOW, THEREFORE, it is hereby,

ORDERED, that the District of Columbia Superior Court Probate Division Fee Petitions Guidelines are hereby adopted for use until further Order of the Court; and

FURTHER ORDERED, that this Administrative Order shall be effective on November

1, 2023, and shall remain in effect until further order of the Court.

SO ORDERED.



Anita M. Josey-Herring
Chief Judge

Date: September 29, 2023

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DISTRICT OF COLUMBIA SUPERIOR COURT PROBATE DIVISION
FEE PETITION GUIDELINES

APPROVED BY ADMINISTRATIVE ORDER 23-20 ON September 29, 2023

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BACKGROUND

The need for greater consistency and fairness in the billing for, and approval of, compensation for court-appointed fiduciaries in the Probate Division of the District of Columbia Superior Court has been an ongoing concern. Fiduciaries in the Probate Division, whether serving as guardian, conservator, trustee or in another type of court-appointed role, provide a valuable service to vulnerable and incapacitated adults in our community. Their work is often challenging, time-consuming and, on occasion, requires the handling of emotional and threatening situations. It is difficult to attract and retain highly-qualified fiduciaries without the promise of consistent and appropriate financial compensation. It has been challenging for the Court to ensure consistency in decision-making among individual Judges reviewing the voluminous Petitions for Compensation filed with the Probate Division without clearly-established guidelines for determining appropriate compensation. At the same time, the billing practices of fiduciaries vary significantly. At times, such practices result in fee petitions that are excessive or that seek compensation for tasks that are not compensable or do not merit the requested hourly rate.

With these and related concerns in mind, in December 2015, then-Chief Judge Lee F. Satterfield authorized then-Deputy Presiding Judge (later Presiding Judge) of the Probate Division, Gerald I. Fisher, to convene a working group to study the problems and present proposed solutions. The members of the working group represent a broad cross-section of stakeholders: judges, current and former probate fiduciary panel members, government attorneys, and direct services attorneys who have experience in this area of the law and experience handling cases involving vulnerable and incapacitated individuals and decedents' estates.

The members representing the District of Columbia Superior Court and the Probate Division included Judges Fisher, Russell F. Canan, Darlene M. Soltys, Alfred S. Irving, Jr., and Marisa J. Demeo, all of whom have served in the Probate Division. Nicole Stevens, the Register of Wills and Director of the Probate Division, is also a member of the working group. Maureen Conly, Esq., an attorney with the Legal Branch of the Probate Division, has served as the working group's reporter and has documented and supported the group's efforts through her meticulous minutes, draft revisions, and legal research.

The members representing private practitioners and fiduciary panel members included: C. Hope Brown Johnson, Esq.; Robert Bunn, Esq.; Kimberly K. Edley, Esq.; and Robert A. Gazzola, Esq. Ron M. Landsman, Esq. and May-lis Manley, Esq. participated as representatives of non-profit Shared Horizons, which manages a pooled special needs trust.

The members from the government and direct services agencies included: Jennifer Berger, Esq. (representing Legal Counsel for the Elderly at the time she participated); Neha Patel, Esq. (Office of the General Counsel for the District of Columbia Department on Disability Services); and Amy Schmidt, Esq., Monique Gudger, Esq., and Antoine

Williams, Esq. (all from the District of Columbia Office of the Attorney General's Civil Enforcement Section).

For purposes of issuing these guidelines, the working group's recommendations were modified to (A) address rule number changes resulting from the Superior Court Probate Rule revision that took effect on August 22, 2022; (B) integrate District of Columbia Court of Appeals decisions issued after the work of the working group concluded; and (C) take into account the panel attorney rate change provided by Administrative Order 23-01, issued March 27, 2023.

Finally, while these guidelines were created to address compensation in intervention cases, as many tasks performed by personal representatives of decedents' estates are similar to those performed by fiduciaries in intervention cases, these guidelines also may apply to decedent's estate cases, when the question of reasonable compensation is before a judge.

COMPENSABLE TASKS AND RATE OF PAY

This section provides guidance with the goal of encouraging and promoting consistency in the fiduciary submission and judicial review of fee petitions regarding those tasks that are compensable, and the reasonable hourly rates charged for performing such tasks.

Obtaining fees from either the ward's[1] estate[2] or the Guardianship Fund is a two-step process: "The person seeking fees must file a petition setting forth 'the character and summary of the service rendered' 'in reasonable detail'; the trial court must then determine whether the fees requested are reasonable." *In re Brown*, 211 A.3d 165, 167 (D.C. 2019) (citing Super. Ct. Prob. R. 308(a), (b)(1)).[3] This first step in the compensation process will be discussed in a later section entitled "PREPARATION OF FEE PETITIONS." The instant section covers the second step in the process.

D.C. Code §§ 21-2047 and 21-2070 set forth what powers and duties a fiduciary has, some of which are mandatory and others discretionary.

[1] "Ward" means an individual for whom a guardian has been appointed. D.C. Code § 21-2011(27) (2023). "Protected individual" means an individual for whom a conservator has been appointed or other protective order has been entered, as provided in §§ 21-2055 and 21-2056. D.C. Code § 21-2011(22) (2023). This document uses the word "ward" to refer both to "wards" and "protected individuals" because the Probate Bar and judges colloquially use the term "ward" to refer to both categories of persons.

[2] Ward's estate or "estate of the ward" means the property of the [ward or protective individual] whose affairs are subject to Title 21, Chapter 20, Guardianship, Protective Proceedings, and Durable Power of Attorney.

[3] While the decision cites to Super. Ct. Prob. R. 308, Rule 308 was renumbered and amended as Rule 322.

Certain of the powers and duties may require the fiduciary to perform legal services or apply legal skills. Some of the powers and duties may not require the legal skills of an attorney but may merit compensation at attorney rates because of the complexity of the task. As the Court of Appeals noted in *In re Robinson*, "none of the general guardianship duties enumerated in D.C. Code § 21-2047(a) are inherently legal." 216 A.3d 887, 891 (D.C. 2019). The Court of Appeals further observed that, it is "clear that 'core aspects of a guardian's services' are indeed 'interpersonal in nature.' 'A number of the general guardianship duties are aimed at ensuring that the guardian has enough regular contact with the ward that the guardian has an up-to-date understanding of the ward's physical and mental health.'" *In re Wilson*, 277 A.3d 940, 947 (D.C. 2022) (citing *In re Robinson*, 216 A.3d at 891). "That may well mean that core guardianship services should not be compensated at legal rates." *In re Robinson*, 216 A.3d at 891.

To assess the reasonableness of requested attorney's fees, the court will consider the "(1) time, labor, and skill to perform the legal services; (2) fee customarily charged in the area for similar services; (3) attorneys' experience and ability; and (4) limitations imposed by the client." *In re Brown*, 211 A.3d at 169 (quoting *In re Estate of McDaniel*, 953 A.2d 1021, 1024-25 (D.C. 2008)). *See also In re Goodwin*, 275 A.3d 283, 285 (D.C. 2022) (distinguishing between the appropriate hiring of contractors to perform services (e.g., cleaning, renovating, pet services, home health aides) and charging "exorbitant rates for menial tasks"); *In re Wilson*, 277 A.3d at 946 ("The notion of a blanket rule precluding a guardian from seeking compensation for tasks that might be called administrative or clerical is at odds with our 'expansive view of the kind of duties that are compensable under the Act."). *But see In re Gardner,* 268 A.3d 850, 859 n.14 (D.C. 2022) (""[W]e reject [the] argument that the court's designation of certain nonlegal tasks as administrative overhead was 'plainly wrong.'"). The fiduciary should be guided by these criteria (herein referred to as "*Brown/McDaniel"* factors), as well.[4]

The court must "consider whether certain tasks are non-legal, more appropriately billed at a paralegal rate, or excluded altogether." *In re Brown*, 211 A.3d at 169. A fiduciary should not expect to be compensated at the attorney rate for all tasks performed.[5]

[4] Of note, compensation amounts are guided by statute, not by contract between the guardian and any other party. *See In re Robinson* 280 A.3d 194, 196 (D.C. 2022).

[5] Further, while those performing work are entitled to fair and reasonable compensation, this may not mean full compensation for every task. This position is consistent with the District of Columbia Superior Court's Administrative Order 12-11 Attachment: *Voucher Preparation Guidelines for Attorneys Appointed Under the District of Columbia Criminal Justice Act.* Probate attorneys and other appointees in Guardianship Fund cases are paid pursuant to the District of Columbia Criminal Justice Act (DCCJA), 11 D.C. Code § 2601, and are subject to its requirements. The DCCJA is modeled after the federal Criminal Justice Act (CJA), 18 U.S.C. § 3006A, and follows interpretation of that statute in applying the local act. Compensation in CJA cases "was intended to prevent economic hardship and ease the financial burden of counsel in these cases, not to eliminate that burden entirely." *In re Crim. Just. Act Voucher,* 128 Daily Wash L. Rptr. 1565, 1571 (D.C. Super. Ct. May 12, 2000) (Henry F. Greene, J.) (quoting *United States v. Jewett,* 625 F. Supp. 498, 500 (W.D. Mo. 1985) ("Although the CJA provides for 'fair compensation,' it does not necessarily provide for 'full compensation'")). "[A] substantial element of appointed counsel's representation under the Act remains public service." *In re Crim. Just. Act Voucher,* 128 Daily Wash L. Rptr. at 1571 (quoting *United States v. Carnevale,* 624 F. Supp. 381, 384 (D.R.I. 1985)). "Charging for every minute that

When considering typical tasks for which the fiduciary seeks compensation, these guidelines adopt the principle that every fiduciary's action is presumed to be in the best interest of the ward and reasonable. However, whether the petitioned rate of compensation is reasonable for a particular task poses a separate question. Whether payment is sought from the estate of the ward or the Guardianship Fund, the rate of compensation for specific tasks should be examined to determine the reasonable rate. Furthermore, as fiduciaries, attorneys serving as guardians or conservators have an obligation to conserve funds of the ward for future use. *See* D.C. Code § 21-2047(a)(4) (2023); D.C. Code § 21-2063 (2023); *In re Robinson*, No. 2014 INT 000358, 2017 D.C. Super. LEXIS 10, at *16 (D.C. Super. Ct. Sept. 25, 2017) (Levie, J.).

The following should be considered when determining whether tasks performed by guardians, conservators and other fiduciaries are part of a fiduciary's duties under Titles 19, 20 and 21 of the D.C. Code, and are therefore compensable.[6]

1. Compensation for Performance of "Daily Living Tasks"

The "daily living tasks" or "health and habilitation tasks" are set forth in the Probate Attorney Practice Standards (*see* the District of Columbia Superior Court Administrative Orders 06-19 and 11-08). Practice Standard 6 explains that the guardian's paramount role is to ensure the health and well-being of the ward at all times. Practice Standard 7 explains that the conservator shall manage the estate of the ward and ward's income.

Activities of daily living (ADLs) are basic, personal, everyday activities, including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring. *See* 42 C.F.R. § 441.505 (2023). Instrumental activities of daily living (IADLs) are activities related to living independently in the community, including, but not limited to, meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community. *See id.*

Fiduciary duties do not include assisting wards with performing their ADLs, which are personal in nature and for which nursing care aide(s) (when affordable) may be required.[7] Some IADLs require performance or assistance by the fiduciary, but many do not. *See In re Al-Baseer*, No. 2002 INT 000276 (D.C. Super. Ct. June 26, 2013) (Long, J.). When

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can possibly be charged, even in good faith, is contrary to the spirit of the CJA and the continuing duty of all lawyers to provide *pro bono* legal representation." *In re Crim. Just. Act Voucher,* 128 Daily Wash L. Rptr. at 1571.

[6] These guidelines provide the general rule applicable to compensation; however, a fiduciary may always petition the court for compensation and explain why the general rule is not applicable in an individual case.

[7] While fiduciaries do not directly assist wards with ADLs, they may be responsible for helping put in place services and supports to assist wards with ADLs.

considering whether to assist wards with performing their IADLs, the fiduciary should determine whether the tasks are legal and/or comparably complex[8] or better suited to be performed by a non-fiduciary at no cost or reduced cost.

The court will determine the reasonable hourly rates for legal tasks and non-legal tasks, applying the *Brown/McDaniel* factors mentioned previously: "(1) time, labor, and skill to perform the legal services; (2) fee customarily charged in the area for similar services; (3) attorneys' experience and ability; and (4) limitations imposed by the client." *McDaniel*, 953 A.2d at 1025. These principles also apply when assessing the fees requested for other professional staff. An attorney is not entitled to his/her standard, legal hourly rate for performing services that do not require legal expertise or skill. *See In re Robinson*, No. 2014 INT 000358, 2017 D.C. Super. LEXIS 10, at *32. When payment is sought from the estate of the ward for non-legal tasks (such as personal shopping, caregiving services, and housekeeping), the rate of compensation may be determined by reference to the U.S. Bureau of Labor Statistics wage data by area and occupation or other comparable data.

While a fiduciary may assist a ward to perform his/her IADLs, the fiduciary should arrange, if economically feasible, to have a non-attorney with the appropriate skills perform the task. If the fiduciary wishes to perform the non-attorney task, the fiduciary should either seek prior approval of the Court or, in the absence of a request for Court approval, understand that the Court may grant a reduced rate of pay commensurate to the task. These guidelines recognize that there may be exceptional circumstances where the fiduciary must perform these tasks, but routine or excessive billing for such tasks will be subject to reduction or disallowance. Whenever a fiduciary seeks compensation for such tasks, the fiduciary must explain why he/she should be entitled to compensation.

It is this area of 'life maintenance tasks' that fiduciaries undertake which often results in dissimilar treatment by judges and which can be the subject of extra scrutiny and public complaints. There are IADL tasks that are routinely billed for, but that are not necessarily performed in the most efficient or cost-effective way. There may be some tasks that are reasonable but should be compensable at a lower rate.

The overarching principles for evaluating such tasks are:

1) whether the task falls within the powers and duties of the fiduciary and was necessary;
2) whether the task was performed in a cost-effective manner; and
3) whether the task can be performed by a non-lawyer, such as a paralegal, at a lower rate.

The size and nature of the law firms of which fiduciaries are members are as varied and distinct as the fiduciaries themselves. In some instances, a fiduciary operates as a sole practitioner, with no other counsel or staff. Other fiduciaries are members of a firm with

[8] This guidance does not provide an exhaustive list of what might constitute a comparably complex task, but suggests that tasks such as selling real property, foreclosing on property, and holding trusts as trustees may not require legal skills but are nevertheless comparably complex.

partners, associate attorneys, paralegals, administrative assistants, and/or support staff. The overarching principles are the same but will function differently among different fiduciaries. Even when operating as a solo practitioner, if the task performed by the fiduciary is not a legal or complex matter, compensation should be at a rate commensurate to the task, not at an attorney rate.

These guidelines strongly encourage the use of technology when it can be used to make the fiduciary's tasks less time-consuming and more cost efficient. For instance, most bills can be paid, and most banking can be done, online, and prescriptions can be refilled over the telephone and mailed or delivered to the ward's home. Groceries can be ordered on the internet, and online shopping for nearly every imaginable necessity is now commonplace. As with all internet transactions, the fiduciary will need to evaluate whether he/she can perform online business without financial risk to the ward or fiduciary, and whether proper receipts for accounting purposes can be obtained.

These guidelines are provided to assist fiduciaries in the performance of their duties. Fiduciaries, on the other hand, have the opportunity in their fee petitions to explain emergencies, unexpected events, and other reasons why a more cost-efficient approach was not used, which the court can then consider. In order not to over-burden the fiduciary's reporting requirements, this explanation can be a summary of why a series of transactions were conducted a particular way.

Each case and each service or expenditure must be evaluated independently. However, these guidelines attempt to address the more common tasks that come under judicial review, explain why the tasks are or are not compensable, and provide the applicable rate in the chart below. The list is not meant to be exhaustive, but merely offers guidance on such issues.

Likely Compensable Tasks	**Likely Attorney Rate**	**Common Cost-Saving Measures**	**Likely Non-Attorney Rate**
Making medical/health care decisions and/or other types of housing/living decisions for the ward	Yes.	None.	
Visiting the ward at least once a month in person* (See note after table.)	Yes.	None.	
Arranging medical and other necessary appointments	Yes.	If the task can be delegated to a staff member, this would	

		be a cost-saving measure.	
Accompanying the ward to medical appointments	Yes, if it is anticipated that medical decisions may need to be made during the visit.	If it is not expected that medical decisions will need to be made, then determine if a family member or other non-attorney is available and would be appropriate. Or, if appropriate, sign consent and authorization forms prior to appointment to avoid having to attend in person for this purpose.	
Arranging for prescriptions to be filled and delivered	Yes.	If the task can be delegated to a staff member, this would be a cost-saving measure.	
Communication with medical staff, nursing staff, day care providers, home health aides, and family members	Yes.		
Attending Individual Support Plan (ISP) meetings for wards who receive services funded/arranged by the District of Columbia Department on Disability Services (DDS)	Yes.		
Making decisions about where the ward should live	Yes.		

Making arrangements for moving ward to a new location	Yes.	If the task can be delegated to a staff member, this would be a cost-saving measure.	
Arranging for and managing benefits, such as Social Security, Medicare, Medicaid, retirement benefits and pensions, life insurance policies, health insurance, advanced planning for funeral/cremation services, etc.	Yes.	If the task requires an in-person appointment which would require extended travel time or extended wait time, the fiduciary should consider cost-saving measures, such as taking care of more than one ward on a visit and/or doing other billable work while waiting to be called.	
Arranging, if appropriate, activities in the community	Yes.	If the task can be delegated to a staff member, this would be a cost-saving measure.	
Banking tasks	Yes, provided cost-saving measures are implemented.	Utilizing online banking or tending to the banking needs of multiple wards during the same trip, as opposed to visiting the bank, making withdrawals, preparing cash receipt.	If the fiduciary fails to implement cost-saving measures, then the Court may consider a non-attorney rate or disallowance.
Paying routine bills	Yes, provided cost-saving measures are implemented.	Paying bills electronically is more efficient than writing checks, addressing envelopes, and traveling to the post office to mail the payments – or	If the fiduciary fails to implement cost-saving measures, the Court may consider a non-attorney rate or disallowance.

		making in-person payments.	
Arranging for home maintenance jobs	Yes, but should consider cost-saving measures.	Arranging for workers, for trash removal, remediation, exterminators, etc., and non-attorney to supervise if supervision is necessary as opposed to being present full-time to supervise the work.	If the fiduciary fails to implement cost-saving measures, then the Court may consider a non-attorney rate, or disallowance.
Arranging for utilities to be installed/repaired	Yes, but should consider cost-saving measures.	Contacting utility companies, print media, telephone and service providers to set up/repair services will be compensable, but if the task can be delegated to a staff member, this would be a cost-saving measure.	
Arranging for transportation	Yes, arranging for transportation would likely be at the attorney rate, but guardian personally transporting the ward would not, and should consider cost-saving measures.	Arranging for transportation service to be available when needed as opposed to contacting a transportation service every time transportation is needed.	
Buying or shopping at restaurants, grocery stores, convenience stores, hardware stores, etc.	No, unless emergency, which should be explained, and then rate would likely be non-attorney.	Arranging for repetitive shopping services and/or delivery of services.	Yes.

Accompanying the ward for personal grooming appointments, social occasions, family outings	No.	Arranging for a care provider to accompany the ward if needed.	Yes, if accompaniment is needed.
Doing the ward's laundry	No.	Arranging for laundry service for the ward would be appropriate.	
Cleaning the ward's residence	No.	Arranging for cleaning service for the ward would be appropriate.	
Packing and moving the ward's personal items	No.	Arranging for packing and moving service for the ward would be appropriate.	

*Note: D.C. Code § 21-2043(e)(2) provides that a guardian is to "maintain regular and reasonable contact with each ward, including a minimum of one visit per month, unless otherwise specified by the court based on the expressed preferences of the ward or the ward's best interest."

2. Compensation for Attendance at Hearings

Any hearing where attendance of the fiduciary is required or is integral to exercising the powers and performing the duties of the guardian, conservator, trustee or personal representative as outlined in Titles 19, 20 and 21 of the D.C. Code is compensable. Where the need for the fiduciary's attendance at a proceeding is not apparent, the fiduciary should include an explanation why it was necessary for the fiduciary to attend, given the involvement of other representatives of the ward at the proceeding, for example, a defense attorney in a criminal matter where the ward is involved.

A non-exhaustive list of hearings is included below. In each instance, these guidelines list what specific type of hearing would commonly be related to a ward and whether attendance is ordinarily compensable.

General Category of Hearing	**Specific Type of Hearing**	**Compensation Considerations**
Administrative hearings	Administrative or other court hearings on property code violations involving the ward.	Ordinarily compensable.

Appellate Court hearings	Appellate Court hearings where the fiduciary is an attorney of record pursuing appeal for the benefit of the ward or beneficiary, or if the attorney of record requires the fiduciary's presence.	Would ordinarily be compensable. Where wrongdoing or delinquencies of the fiduciary are alleged but appealed successfully by the fiduciary, the Court should compensate the fiduciary. See *Discussion* following the list for further information regarding fee petition disputes.
Auditor-Master hearings	Auditor-Master hearings concerning the ward or beneficiary's accounts or the account of a fiduciary holding property in which the ward or beneficiary has an interest.	The fiduciary should be compensated for the hearing unless the breach was proven or the fiduciary was at fault, in which case, the Court will determine whether the fees should be reduced or denied.
Bankruptcy hearings	Bankruptcy hearings in which the ward or beneficiary may be a claimant or in which the ward or beneficiary filed a bankruptcy petition.	In those circumstances where the ward or beneficiary has both a guardian and conservator, *presumably only the conservator would be needed* to participate in a bankruptcy proceeding. However, there may be situations where it may be necessary for the guardian to participate as well.
Civil or Small Claims hearings	Civil or Small Claims hearings regarding litigation involving the ward or beneficiary, including court-ordered mediation.	Would ordinarily be compensable.
Criminal case hearings	Criminal case hearings in which the ward or beneficiary is a defendant or a victim, and where the fiduciary has consulted with the ward or beneficiary and his/her criminal defense attorney to determine that the	While wards are defendants, fiduciaries often will attend criminal hearings. These guidelines do not find it is presumptively appropriate for a fiduciary to attend a ward's criminal hearing. The fee petition should

	fiduciary's presence is necessary in his/her role as fiduciary and in the best interest of the ward or beneficiary.	explain why the presence of the guardian was necessary and in the best interest of the ward or beneficiary. A fiduciary acting as a witness should ordinarily not be compensated but should receive those witness fees that are legally allowed.
Domestic Violence court hearings	Domestic Violence court hearings to which the ward or beneficiary is a party.	The fee petition should include an explanation why the presence of the fiduciary was necessary and in the best interest of the ward or beneficiary.
Family Court hearings	Family Court hearings in which the ward or beneficiary is a party, especially Abuse and Neglect hearings where the ward or beneficiary is a parent or adult child.	The fee petition should include an explanation why the presence of the fiduciary was necessary and in the best interest of the ward or beneficiary.
Landlord and Tenant hearings	Landlord and Tenant hearings involving the ward.	Would ordinarily be compensable.
Mental Habilitation Court hearings	Mental Habilitation Court annual and status hearings where the ward or beneficiary is the respondent.	Guardians may seek compensation from the Guardianship Fund for acting as the ward's substitute decision-maker regarding commitment of a ward pursuant to D.C. Code § 7-1301.01 *et seq.*
Civil or Criminal mental health commitment hearings	Civil and Criminal commitment hearings alleging danger to self or others or incompetency where the ward or beneficiary is the respondent.	The fee petition should explain why the presence of the fiduciary was necessary and in the best interest of the ward or beneficiary.
Probate Court hearings	Probate Court hearings involving: 1) the fiduciary directly regarding the ward or beneficiary (such	Would ordinarily be compensable. Where breach of fiduciary duty is alleged or, in a summary hearing, where it is alleged

	as a hearing about the guardianship, conservatorship); 2) approval of accounts; 3) petitions post appointment and summary hearings; 4) Will or Trust matters involving the ward (such as when the ward is a beneficiary, trustee or a personal representative).	that the fiduciary has not complied with a requirement, then compensation may not be appropriate. The fiduciary should be compensated for the hearing unless the breach was proven or the fiduciary was at fault, in which case, the Court will determine whether the fees should be reduced or denied.

Generally, a Fiduciary Panel member who has been appointed as guardian *ad litem* in a division other than the Probate Division cannot be compensated from the Guardianship Fund. *See Sullivan v. District of Columbia*, 829 A.2d 221, 226, 229 (D.C. 2003). However, if the attorney seeks compensation for "services rendered as a petitioner in the intervention proceeding[]" that led to appointment of a fiduciary, work that squarely falls within the ambit of the Act, then compensation is not barred. *In re Weaks*, 224 A.3d 1028, 1032 (D.C. 2020).

Discussion and Further Recommendations Regarding Appellate Court Hearings Involving Disputes over Attorney Fee Petitions:

This section addresses the circumstance when a fiduciary's fee petition is denied or reduced, and he/she files a motion to reconsider and/or an appeal. A question that arises is whether the Court can compensate the fiduciary for appellate work related to his/her fees. The simple answer from the appellate court is, yes, the trial court has the authority to do so; however, not every lawyer's appellate work on a fee petition dispute is compensable.

The Court of Appeals held in *In re Smith* that "[a]llowing compensation for work on an appeal related to a compensation claim can be reasonably thought to benefit wards and prospective wards generally (even if not any particular ward) by fostering the availability of guardians, who may be more willing to serve with the understanding that they can be compensated for their work in protecting their right to compensation." 138 A.3d 1181, 1186 (D.C. 2016) (*Smith II*). In that way, allowing compensation for appeal work assists in "[p]rovid[ing] a system of general and limited guardianships for incapacitated individuals[.]" *Id.* In the very same case, the appellate court also found that the trial court could deny fees for appellate work over a compensation dispute where these objectives were not served, "such as where a guardian unsuccessfully pursues on appeal a claim for reimbursement that the Superior Court has rejected as unreasonable in amount, or

where a conservator appeals from an order surcharging him for mismanagement of [the estate of a ward].” *Id.*

Should the trial court decide to compensate an attorney for his/her appellate work, the court must address the source and the rate of the fees.

D.C. Code § 21-2060(a) provides, as follows: “[c]ompensation shall be paid from the estate of the ward or person or, if the estate of the ward or person will be depleted by payouts made under this subsection, from a fund established by the District.” The meaning of the statute is plain: Unless the estate of the ward or person will be depleted, the fees must be paid out of the estate. If the estate would be depleted, then the fees must be paid out of the Guardianship Fund. In the situation where charges are billed to the ward’s estate to litigate fee petitions, the statute results in an application that is arguably unfair to the ward, because s/he is being charged additional fees, at private rates, as a result of a District of Columbia Superior Court judge’s initial determination that the attorney’s fees were excessive.

Where a successful motion to reconsider or appeal of the reduction of a fee petition is not shown to directly benefit the ward, the Court should direct payment solely at the Guardianship Fund rate even in the cases where payments are made from the estate of the ward. This guideline weighs the concern raised by the Probate Bar that, if the Court only awards payment at the Guardianship Fund rate, it may discourage members of the Probate bar from seeking reconsiderations or appeals, but concludes that experience does not support that supposition and that the requirement to conserve the funds of the ward is of paramount importance.

3. Compensation for Travel Time

Travel is an integral function which enables a fiduciary to perform his/her duties, but it is another task that does not require legal or complex skills. A fiduciary spends more time on the road than a typical lawyer who spends the majority of his/her time either in the office or in court. For example, a fiduciary travels for the following purposes: to visit wards; to meet with family members, caregivers, and medical professionals; to arrange benefits and services; and/or to investigate living arrangements/conditions. As a result, travel expenses often constitute a high percentage of a fiduciary’s fee petition. Precisely because of this, these guidelines address compensation for travel time. Federal circuits are somewhat divided over the issues of whether and to what degree attorneys may be compensated for their travel time, with the majority favoring compensation but at no greater than one-half the attorney’s hourly rate. *See, e.g., Int’l Woodworkers of Am. v. Donovan*, 792 F.2d 762, 767 (9th Cir. 1985) (noting items routinely billed to a client, including attorney travel, are recoverable under Equal Access to Justice Act, 28 U.S.C. § 2412 (2021)); *Domegan v. Ponte*, 972 F.2d 401, 425 (1st Cir. 1992) (noting court's "disinclination" to compensate an attorney at professional rates for travel time), *vacated on other grounds,* 113 S. Ct. 1378 (1993). That is the position of the District of Columbia Circuit. *See Cooper v. U.S. R.R. Ret. Bd.*, 24 F.3d 1414, 1417 (D.C. Cir. 1994); *Miller v. Holtzman*, 575 F. Supp. 2d 2, 30 (D.D.C. 2008); *Doe v. Rumsfeld*, 501 F. Supp. 2d 186,

193 (D.D.C. 2007); *Blackman v. District of Columbia*, 397 F. Supp. 2d 12, 15 (D.D.C. 2005). But the practice in the Probate Division, at least in cases where fees are paid from the ward's estate, has been mixed, with some judges denying compensation altogether, others allowing one-half the hourly rate, and still others affording full compensation. In cases where the ward is indigent, the prevailing practice has been to compensate the attorney at the full hourly rate. This appears to be the practice in other divisions where attorneys are compensated pursuant to the DCCJA. With these considerations in mind, travel time for fees awarded from the Guardianship Fund should be paid at the attorney rate, but if payment is from the estate of the ward, it should be limited to half of the fiduciary's hourly rate, or no more than $150 hourly, whichever is lower. These two recommendations strike a balance between the divergent treatments of the travel compensation requests and reinforce the overriding principle that the estate of the ward should be preserved to the greatest extent possible and for more substantive work. If an excessive amount of the ward's estate is being billed to compensate the attorney for travel time, the Court retains the authority to disallow the expenditures or reduce the attorney's hourly rate.

Fiduciaries may seek compensation for time spent traveling to investigate an initial petition, to visit the ward, to local destinations to perform duties, and to distant locations to perform non-routine tasks when required to carry out fiduciary duties.

Travel to Court

Travel time to courts other than the District of Columbia Superior Court is compensable, but at the lower rate for travel.[9] Absent exigent or exceptional circumstances, trips are compensable only if they are necessary to advance the purposes for which the fiduciary was appointed, except when tasks could not be accomplished by other providers.

Travel to Significant Distances to Visit the Ward and for Other Reasons

The Court has jurisdiction to appoint a fiduciary when the subject of the proceeding is a resident of the District of Columbia, there is a significant connection to the District of Columbia, or if the Court finds it has special jurisdiction. *See* D.C. Code § 21-2402.03 (2023). The most common jurisdictional scenario before the Court at the initiation of a guardianship/conservatorship case is an incapacitated person who is a resident of the District of Columbia. Usually, when a fiduciary is appointed, and the ward is or will be moved outside of the District of Columbia, the case can be transferred to the court in the new jurisdiction. *See* D.C. Code § 21-2403.01 (2023) (statute governing transfer of guardianships/conservatorships). However, because of the limited number of long-term care facilities and/or facilities that offer highly specialized services in the District of Columbia, some wards who receive District of Columbia government benefits will live in out-of-District facilities which accept District of Columbia benefits. Data collected by the

[9] This position is consistent with the District of Columbia Superior Court's Administrative Order 12-11 Attachment: *Voucher Preparation Guidelines for Attorneys Appointed Under the District of Columbia Criminal Justice Act*, at 5 ("Attorneys are never compensated for traveling to and from the courthouse").

Register of Wills suggest intervention cases located beyond the District of Columbia and its contiguous counties/cities account for less than three percent of total intervention cases.[10] The transfer of the ward to an out-of-District facility would not necessarily change his/her D.C. domicile. *See* D.C. Code § 7-1301.03(22) (2023); *In re Orshansky*, 804 A.2d 1077, 1091 (D.C. 2002).

Monthly visits to the ward by the guardian are required by statute (D.C. Code § 21-2043(e)(2)). This raises the issue of when good cause may exist to depart from the statutory requirement for monthly in-person visits to a ward who resides at a significant distance from the District of Columbia and, if so, what is a significant distance for evaluating good cause. After looking to other states for guidance and taking into account the mileage limitations employed by the Register of Wills (ROW) for various purposes, 75 miles from the District of Columbia Superior Court is the appropriate distance.[11]

If a ward is moved 75 miles or more from the District of Columbia Superior Court, and the case will not be transferred to the court in the new jurisdiction, the guardian/conservator should file a petition post appointment: (1) recommending that the court authorize compensation for travel to satisfy the statutory requirement; or (2) seeking modification of the requirement of monthly personal visits, if such visits are – upon a finding of good cause – not necessary, and authorizing compensation for some fewer number of visits.

In addition, there are instances when court-appointed counsel for the subject, in preparing for an intervention proceeding, may have to travel outside of the jurisdiction to conduct interviews, investigations, and/or depositions. If the fiduciary seeks to travel a considerable distance with or on behalf of the ward, prior court approval should be sought.[12]

[10] To give a sense of distances, the following are provided as examples of distances from the District of Columbia Superior Court: Baltimore, MD (35 miles); Frederick, MD (42 miles); Annapolis, MD (29 miles); Dulles, VA (23 miles); Stafford, VA (37 miles); Richmond, VA (96 miles); Wardensville, WV (101 miles); and Dover, DE (82 miles).

[11] At the District of Columbia Superior Court, prior court authorization is required for travel beyond 60 miles from the courthouse for Counsel for Child Abuse and Neglect (CCAN) attorneys. District of Columbia Superior Court Administrative Order 04-05: *Plan for Furnishing Representation in Neglect Proceedings in the District of Columbia*, at 16. In addition, the CJA guidance requires prior court approval for travel outside of the District of Columbia metropolitan area, defined as outside of Montgomery, Prince George's, Arlington, and Fairfax Counties as well as the City of Alexandria. District of Columbia Superior Court Administrative Order 12-11 Attachment: *Voucher Preparation Guidelines for Attorneys Appointed Under the District of Columbia Criminal Justice Act*, at 6.

[12] Occasionally a ward is relocated to a distant jurisdiction to reside closer to family members. A fiduciary should consider whether a family member or traveling companion, who would not be compensated for travel time, can accompany the ward in lieu of the fiduciary to the new location.

Air Travel

Air travel for performance of any duties must be pre-approved. The time during which the fiduciary is waiting for his or her plane to depart, plus the time airborne, should not be compensated because the fiduciary is free to rest or use the time to work on other matters.

Public Transportation

The court does not compensate for time expended using public transportation. Unlike travel by car, where a fiduciary is driving and thus unable to work on other matters, public transportation provides an opportunity for an attorney to do so, including working on other matters related to a ward.

Travel to/from Fiduciary Home/Office Outside the District of Columbia

Another travel-related issue arises when guardians/conservators, who choose to live or have an office outside of the District of Columbia, seek to be compensated for the time it takes to commute to the District of Columbia to perform their duties. These guidelines adopt the same standard as contained in the District of Columbia Criminal Justice Act (DCCJA) voucher guidelines: "Where travel time to a destination from the attorney's home or office is greater than the time from the courthouse to that destination, the attorney is only entitled to the lesser of those times…. The rationale behind this rule is that the Court should not be subsidizing attorneys who choose to live or work in areas outside of the District of Columbia." Administrative Order 12-11 Attachment: *Voucher Preparation Guidelines for Attorneys Appointed Under the District of Columbia Criminal Justice Act*, at 5.

4. Compensation for Legal Research and Preparation of Reports and Pleadings

Compensation at the attorney rate is permitted for legal research concerning specific issues raised by a case, but not for basic research that would be unnecessary for an attorney with reasonable experience in District of Columbia law.[13] Panel Members who hold themselves "out as an expert in guardianship and probate work should not be reimbursed for legal research unless under 'extraordinary circumstances.'" *In re Williams*, No. 15-PR-1145, Mem. Op. & J. at 5-6 (D.C. July 7, 2017). "The Guardian shall maintain an ongoing familiarity with the laws and standards applicable to the discharge of the Guardian's duties." District of Columbia Superior Court Administrative Order 11-08, Probate Attorney Practice Standards, Standard 6.20 (2008).

[13] This position is consistent with the District of Columbia Superior Court's Administrative Order 12-11 Attachment: *Voucher Preparation Guidelines for Attorneys Appointed Under the District of Columbia Criminal Justice Act*, at 4 ("Time spent to educate an attorney in fundamental criminal law and procedure is not compensable under the Criminal Justice Act."). *See also In re Crim. Just. Act Voucher,* 128 Daily Wash L. Rptr. at 1571 ("an attorney may not claim the time it takes to obtain general competence in a particular area of law, or charge for legal research that one skilled in the law would not need to do," and the CJA may not "be used as a device to further the basic education of a lawyer at government expense") (quoting *Carnevale,* 624 F. Supp. at 388-89).")

Time spent writing non-frivolous motions, briefs, or memoranda is compensable. Having to meet with clerks and discuss issues associated with filings is compensable without prior approval only where such meetings or discussions are required by the Probate Division or its personnel for a reason other than to correct deficiencies in earlier filings. As to the issue of compensation for the actual filing, *see* the discussion in the *Administrative Support and Overhead* subsection of Compensation for Professional Staff Employed by the Fiduciary section below.

Preparation of reports is compensable; however, the fiduciary should be mindful not to overcharge in preparation fees. Because many experienced attorneys charge from one-half hour to a little over one-half hour to prepare a Guardianship Report, judges have limited the compensation to one hour, as reasonable. Relative to fee petitions, judges have limited the charge to two hours. As to Account preparation, judges are disinclined or reluctant to approve extensive administrative support from the fiduciary's firm when an outside accountant has been retained to perform the same services.

5. Compensation for Communications with Chambers Accepting Appointments

Judges typically do not compensate for communications by telephone, email, or other means with Chambers about a fiduciary's availability to be appointed.

6. Compensation for Preparing Acceptances, Criminal Background Checks, and Similar Forms

A Notice of Appearance is a one-page form that requires a few lines of text. The Criminal Statement is a six-page form that includes an attachment of Metropolitan Police Department and FBI Background reports. Judges typically compensate no more than one-tenth of an hour for review and preparation of these forms. Review and preparation of forms of similar complexity (such as a Notice of Death or Praecipe for Change of Address) should also be compensated at one-tenth of an hour.

7. Compensation for Professional Staff Employed by the Fiduciary

The guardianship statute requires that fiduciaries perform a significant number of tasks that are not delegable. One example is the monthly visit to the ward.

If a fiduciary or fiduciary's firm employs professional staff, delegating tasks to lower paid professionals in intervention cases is a preferable use of the Guardianship Fund and estate funds so long as there is still satisfactory performance of the tasks. This section addresses when fiduciaries seek approval from the court for payment for services performed by professional staff who are employees of the fiduciary (or of the fiduciary's firm) and provides more consistency regarding the fees awarded.

Generally, the fiduciary's fee petition should detail the qualifications of the professional to include educational background, employment history, and the tasks the professional performed so that the court can determine the reasonableness of the fees requested.

Fiduciaries should keep in mind that there may be community organizations which could provide services at low or no cost to wards and thereby preserve funds. A list of such organizations can be found on the Probate Division's website.

Below, the guidelines address the most common categories of professionals for which fiduciaries seek compensation. Applicable to each of these categories is the overarching principle that the court has the discretion to assess the hourly rate charged for the attorney and other professional staff based on the *Brown/McDaniel* factors addressed *supra*. To assist in this assessment, the fiduciary should submit all supportive documentation that establishes the fiduciary's suggested market rate.

Attorneys:

In Guardianship Fund cases, the presumptive hourly compensation rate for junior attorneys and non-panel attorneys who perform legal services at the direction of the guardian and in compliance with District of Columbia Rule 49 should be 90% of the panel attorney rate.

Because these attorneys have not qualified for panel membership, they should not be compensated at the panel rate and if a fiduciary intended to request the panel attorney rate, prior approval of the court would be required.

In non-Guardianship Fund cases, attorneys working under the supervision of the guardian, in compliance with District of Columbia Rule 49, and performing attorney-skilled work may be paid from the estate of the ward for work on that ward's case at their typical hourly rate, though the hourly rate remains subject to a reasonableness analysis considering the attorney's experience and expertise, relative to the work performed. *See Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 12 (D.D.C. 2000). In *Salazar*, the Court concluded that "a party who avers … the rate charged by [his/her] attorneys … must offer evidence as to the correct market rate for the attorneys' services." *Id.* Further, "[t]he party must both 'offer evidence to demonstrate [the] attorneys' experience, skill, reputation and the complexity of the case' and 'produce data concerning the prevailing market rates in the relevant community for attorneys of reasonably comparable skill, experience, and reputation.'" *Id.* (quoting *Covington v. District of Columbia*, 57 F.3d 1101, 1108 (D.C. Cir. 1995)).

Paralegals:

In Guardianship Fund cases, the presumptive hourly compensation rate for paralegal employees who perform paralegal duties should be 55% of the panel attorney rate.

In non-Guardianship Fund cases, paralegals employed by the fiduciary/fiduciary's firm performing paralegal-skilled work may be paid from the estate of the ward for work on that ward's case.

A paralegal's work for a non-Guardianship Fund case may be compensated at the market rate typically billed for that paralegal's work, subject to a reasonableness analysis and the exercise of the court's discretion. In *In re Porter*, No. 19-PR-728, Mem. Op. & J. (D.C. July 7, 2021), the court explained that a reasonable attorney fee includes compensation for paralegals at their market rates. However, a paralegal's work that does not demand the skill or expertise of a paralegal should not be compensated at a paralegal's market rate. It is a common occurrence that fiduciaries will bill for a paralegal's performance of non-legal tasks, which is subject to the same analysis outlined in the above section "Compensation for Performance of 'Daily Living Tasks.'" If a fiduciary seeks compensation for non-legal work performed by a paralegal at the rate of a paralegal, the trial court may reduce the rate of compensation for such tasks as determined by reference to the U.S. Bureau of Labor Statistics wage data. *See In re Robinson*, 216 A.3d 887 (D.C. 2019).

Social Workers:

In Guardianship Fund cases, the maximum hourly compensation rate for social work employees who perform social work duties should be 85% of the panel attorney rate. This is not to be confused with the hourly rate paid to those social workers who have been approved to serve as guardians on the Probate Panel.

In non-Guardianship Fund cases, social workers employed by the fiduciary or the fiduciary's firm performing licensed social work-skilled tasks may be paid from the estate of the ward on that ward's case.

Anyone practicing social work in the District of Columbia must be licensed in the District of Columbia or supervised by someone licensed in the District of Columbia. *See* D.C. Code § 3-1205.01 (2023); D.C. Code §§ 3-1208.01 -- 3-1208.06 (2023).

Administrative Support and Overhead:

Fiduciaries should not bill for work done by secretaries or administrative assistants, which is included in the firm's overhead. In addition, certain tasks, regardless of who performs them, are not compensable. *See, e.g., In re Gardner,* 268 A.3d 850, 859 n.14 (D.C. 2022) (""[W]e reject [the] argument that the court's designation of certain nonlegal tasks as administrative overhead was 'plainly wrong.'"); *Brown*, 211 A.3d 165 at 169 n.5 (D.C. 2019) (concluding that "tasks such as 'organizing folders, document preparation, copying and

updating a case list' are more appropriately considered clerical, not paralegal, tasks and are thus not compensable as attorney's fees." *See Vining v. District of Columbia*, 198 A.3d 738, 754 n.20 (D.C. 2018)).

That said, "[t]he notion of a blanket rule precluding a guardian from seeking compensation for tasks that might be called administrative or clerical is at odds with [the] 'expansive view of the kind of duties that are compensable under the Act." *In re Wilson*, 277 A.3d 940, 946 (D.C. 2022). As a result, when considering which administrative tasks are a part of overhead and which may be compensable and at what rate, fiduciaries and judges should (1) consult the above guidelines regarding "Daily Living Tasks" and (2) ensure that any administrative tasks for which fiduciaries seek compensation are performed as efficiently as possible.

8. Compensation for Contractors Retained by the Fiduciary

This section is designed to address when a fiduciary seeks compensation for retained contractors. The discussion begins with the conservator and then turns to the guardian. Generally, the court appoints a conservator to manage the estate of a protected individual. *See* D.C. Code § 21-2011 (2023). Where there are not sufficient assets to necessitate the appointment of a conservator, a guardian often handles limited assets of a ward such as monthly income from a federal pension or social security benefits. *See*, *e.g.*, D.C. Code § 21-2047(b)(1) (2023). Both conservators and guardians have authority to hire contractors.

Conservator:

A court-appointed conservator has broad powers to administer the estate of a ward without court approval for a wide range of authorized actions. *See* D.C. Code §§ 21-2070, 21-2071 (2023). There are instances where the fiduciary needs to retain the services of other professionals, including but not limited to attorneys, auditors, investment advisors, tax preparers, accountants, and certain types of healthcare professionals. Entering contracts for regular or annual services such as these would not require prior approval of the court according to the terms of the statutory sections below.

D.C. Code § 21-2070(c)(23) provides, in relevant part, as follows:

> (c) A conservator, acting reasonably in efforts to accomplish a purpose of the appointment, may act without court authorization or confirmation, to perform the following …
>
> > (23) Employ persons, including attorneys, auditors, investment advisors, or agents to advise or assist in the performance of administrative duties, act upon their recommendation without independent investigation, and instead of acting personally, employ 1 or more agents to perform any act of administration, whether discretionary or not…

Conservators routinely retain settlement attorneys or personal injury attorneys. Settlement attorneys are usually compensated at standard hourly rates or for a flat fee whereas personal injury attorneys routinely charge a percentage of the recovery. Conservators routinely engage accountants and auditors to assist with complicated tax issues and filings. Often, conservators enter contracts for ordinary services, such as nursing or home health care workers. When the work is not ordinary, conservators should obtain multiple bids to ensure that any charges or fees are reasonable.

D.C. Code § 21-2071 provides, in relevant part, as follows:

> A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected individual …

Common examples of these are payments to group and nursing homes and assisted living facilities, which are contractors that are hired to care for and house the ward.

While prior court approval to enter into contracts with the contractors in the circumstances outlined above is not required statutorily, any reimbursements requested[14] and any expenditures made are subject to court approval.[15]

As such, conservators should err on the side of seeking prior court approval when:

1) considering extraordinary and/or substantial expenses, especially where the conservator lacks experience or expertise in the subject matter;
2) contracting for non-routine or non-emergent legal services; and
3) employing an attorney when that will result in the expenditure of substantial assets or significantly deplete the potential recovery of the ward.

The fiduciary is strongly encouraged to obtain court approval before *any* attorney hired by a conservator or guardian is compensated with payment either from the estate of the ward or the Guardianship Fund. *See* D.C. Code § 21-2060(a) (2023) ("*As approved by order of the court*, any … attorney … is entitled to compensation for services rendered either in a guardianship proceeding, protective proceeding, or in connection with a guardianship or protective arrangement…) (emphasis added); *cf. In re Estate of Grealis*, 902 A.2d 821, 824 (D.C. 2006) (attorney's fees paid from personal funds and not from the ward's estate or the Guardianship Fund does not require a court order before payment).

[14] "Any guardian or conservator is entitled to reimbursement for room, board, and clothing personally provided to the ward from the estate of the ward, *but only as approved by order of the court.*" D.C. Code § 21-2060(a) (2023) (emphasis added).

[15] "Each conservator shall account to the court for administration of the trust…" D.C. Code § 21-2065(a) (2023).

Guardian:

While the guardian's authority over assets is much more limited than a conservator's, the guardian is nonetheless authorized by statute to administer the estate of a ward.

D.C. Code § 21-2047 provides, in relevant part, as follows:

> (a) In particular and without qualifying the foregoing, a general guardian or limited guardian shall:
>
> * * * *
>
> (3) Apply any available money of the ward to the ward's current needs for support, care, habilitation, and treatment;
>
> (b) A general guardian or limited guardian may:
>
> (1) Receive money payable for the support of the ward under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship…

Assuming funds are available, the guardian is authorized to hire contractors to perform the tasks listed in the next paragraph but should be guided by the same principles as the conservator. That is, regular services should not require prior approval of the court, but the guardian should err on the side of seeking prior court approval when extraordinary and/or unusually large expenses are expected.

Contractors hired by guardians fall into several categories: (a) care givers, such as aides, nurses and case managers (usually social workers) who arrange to, or themselves, buy medicine, food, clothing and other personal necessities; (b) repair and maintenance (including yard work) contractors when the subject has a home but there is no conservator appointed because funds are scarce or the house is jointly owned; (c) transportation suppliers for appointments; (d) attorneys representing the ward in practice areas wherein the fiduciary is not competent or for an out-of-state matter;[16] (e) movers (when a ward's belongings are being transported, for instance, when a dwelling is vacated); and (f) group and nursing homes and assisted living facilities hired to care for and house the ward.

9. Laffey Matrix

With some regularity, court-appointed attorneys who serve as either counsel, guardian, conservator, or guardian *ad litem* request that the Court use the *Laffey* matrix in determining the attorney hourly rate of pay when a fiduciary is seeking compensation from the ward's estate. The matrix is a framework which established hourly rates for lawyers first approved in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354, 371-75

[16] Before a fiduciary pays an attorney, D.C. Code § 21-2060(a) requires the fiduciary first to secure court approval. *See* discussion *supra* under Conservator subsection.

(D.D.C. 1983), *aff'd*, 746 F.2d 4 (D.C. Cir. 1984), *overruled in part on other grounds by Save Our Cumberland Mountains, Inc. v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988). While it is "[t]he most commonly used fee matrix' in the District of Columbia Circuit 'for lawyers who practice complex federal litigation,'" *see DL v. District of Columbia*, 924 F.3d 585, 589 (D.C. Cir. 2019) (quoting *Eley v. District of Columbia*, 793 F.3d 97, 100 (D.C. Cir. 2015)), it has been the consistent view of Superior Court judges that it is inapplicable in intervention cases.

> *Laffey* rates are premised on the notion that the attorney is engaged in complex federal litigation involving fee shifting, and that the rate needs to be high enough to encourage counsel to take on fee-shifting cases where counsel may not receive any payment should the case be lost. Guardianship cases typically do not require the level of skill of complex federal litigation. More to the point, the appointed fiduciaries in intervention cases where the ward is responsible for payment do not face a risk of non-payment. In addition, the subject/ward normally does not choose who serves as his or her fiduciary and the complement of attorneys eligible for appointment by the court is a closed list comprised of Probate Fiduciary Panel attorneys, as opposed to a full market of attorneys from whom the subject/ward might be able to shop for services at a lower rate.

In re Robinson, No. 2014 INT 0358 (D.C. Super. Ct. Feb. 26, 2019) (Fisher, J.). *See also Porter,* Mem. Op. & J. at 2 (holding that, "given the trial court's determination as to the lack of complexity in the present case, the trial court did not necessarily commit legal error by declining to apply the Laffey Matrix.").

Occasionally, attorneys will request alternatively that the Court use the United States Attorney's Office (USAO) matrix, which is "prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO) to evaluate requests for attorney's fees in civil cases in District of Columbia courts."[17] The USAO matrix, while providing lower hourly rates, is still inapplicable in intervention cases. As the USAO matrix itself explains, "[t]he matrix is intended for use in cases in which a fee-shifting statute permits the prevailing party to recover 'reasonable' attorney's fees.[18] *See, e.g.,* 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act)." The matrix also explains that, "[a] 'reasonable fee' is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases.[19] *See, e.g., Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010)." For the same reasons set forth in the *In re Robinson* case above, the USAO matrix is inappropriate in intervention cases.

[17] United States Attorney's Office for the District of Columbia (USAO) Civil Division, USAO ATTORNEY'S FEES MATRIX — 2015-2021, n.1, found at https://www.justice.gov/usao-dc/page/file/1305941/download.

[18] *Id.*

[19] *Id.,* n.2.

SOURCES OF COMPENSATION

Issues may arise over the source of compensation for fiduciaries. D.C. Code § 21-2060(a) provides that "[c]ompensation shall be paid from the estate of the ward or person" or, "if the estate of the ward or person will be depleted by payouts, compensation shall be made… from a fund established by the District." The Code does not define what constitutes the "estate of the ward"; nor does it provide what constitutes "depleted."

In an effort to provide a more consistent and fair application of the statute, these guidelines attempt to delineate those financial resources that may or may not be considered available to pay fees incurred in protective proceedings for a ward. This effort includes addressing a number of common circumstances, including whether and when it is appropriate to consider a ward's house, Special Needs Trust (SNT) funds and other trust assets as part of the estate of the ward, and thus available as a source of payment for fees. If the ward is receiving means-tested benefits, the estate of a ward is presumed to be depleted. The presumption is a rebuttable one and may be overcome depending upon the facts of each case. Means-tested benefits may include but are not limited to: Supplemental Security Income (SSI), Medicaid, Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), and DC Healthcare Alliance assistance.

1. The Home's Availability as a Resource

The court will not require a ward to sell the residence in which he or she is living to pay an applicant's fees, or, if not currently residing at home, a residence that the ward intends to return to within a reasonable period of time. *See In re Lizzie Mitchell et al*., No. 1990 INT 000056 (D.C. Super. Ct. Mar. 19, 1993) (Wolf, J.). Generally, real property is not considered a liquid asset of the estate for the purpose of determining whether compensation comes from estate of the ward or the Guardianship Fund.

A ward's estate may be considered depleted despite having title to a home if the home is the ward's primary residence. A ward's home should be excluded from consideration as a resource when the ward is temporarily absent, but there is an expectation that he or she will return to the home within a reasonable period of time. If the ward is permanently absent and certain individuals live in the home, the court may consider whether the home is an asset. The ward's primary residence is not considered an asset when the ward's spouse, domestic partner, disabled child or dependent relative resides in the home or the ward vacates to escape domestic abuse.

The above principles are partially borrowed from Medicaid law determining when a State may assert a claim on a beneficiary's home to recover Medicaid expenses.[20] Ultimately, however, whether a ward's home is available as an asset of his or her estate should be determined by the ward's medical, economic, and social circumstances. The Court should consider whether and when a return to the home is realistic or likely. As a guiding

[20] *See* 42 U.S.C. 1396p(a).

principle: If the ward has been absent from the home for less than six months, there should be a presumption that he or she will return.[21] Likewise, if the ward has been absent from the home for six months or more, the presumption should be that he or she will not return. Both presumptions are rebuttable.

The Court may find that the ward's primary residence is not an asset if it otherwise would result in an undue hardship or in other exceptional circumstances. Whatever the source of payment, the Guardianship Fund rate applies in most situations when the ward is receiving means-tested benefits.

At bottom, the ward's home should not be sold without court authorization.

2. Income Deductions and Long-term Care Benefits under Medicaid

In many cases, individuals receiving benefits for long-term care services and support from the District of Columbia Medicaid program are required to contribute a portion of their income toward the cost of their care (the District of Columbia pays the balance of the amount to which the provider is entitled). An individual beneficiary's contribution toward long-term care services and support is governed by District of Columbia Municipal Regulations (DCMR) § 29-9800 *et. seq.*

The treatment of income, once Medicaid eligibility is determined, is governed by DCMR § 29-9804. The District of Columbia's Medicaid rules allow otherwise ineligible individuals to count certain expenses as income deductions for the purpose of attaining income eligibility. *See* DCMR § 29-9801.6; 42 C.F.R. § 435.831. Under the program, individuals who meet all eligibility requirements except income limits must "spend down" their income to meet the qualifications. The rules allow deductions from a beneficiary's gross countable monthly income for eligible remedial expenses, which can include fees incurred for the services of a guardian or conservator. *See* DCMR § 29-9804.4(f).

Guardians and conservators who serve wards in this situation may be paid at their private rates when they submit fee petitions to the Court and the Court approves payment from the ward's estate.

The District of Columbia Medicaid program is entitled to reimbursement from the ward's estate for medical costs incurred on or after a person's 55th birthday. If the ward is age 55 or older, the guardian or conservator shall also notify the District of Columbia of the request to be paid from the ward's income. The District of Columbia is entitled to the opportunity to respond to the petition.

[21] Under the District of Columbia Medicaid policy, a six-month rule applies in determining whether a home is a countable asset. The District of Columbia Economic Security Agency (ESA) Policy Manual, Part VII "Special MA Processing" § 2.6.3, at 360 (updated Jan. 2019), https://dhs.dc.gov/page/esa-policy-manual.

3. Special Needs Trust

A Special Needs Trust (SNT), also known as a "Supplemental Needs Trust," is an irrevocable trust, authorized under the Social Security Act,[22] which preserves eligibility for federal and state means-tested benefits by exempting the beneficiary's assets in the SNT. The common feature of all SNTs is that they are designed to permit the beneficiary to qualify for means-tested government programs—primarily but not exclusively SSI, and Medicaid—while the SNT assets are preserved for needs and comforts not provided or not sufficiently provided by the needs-based program. The trust assets are to provide for a disabled beneficiary's needs beyond those of food, shelter, and medical care not provided by or not adequately funded by public benefit programs. Beneficiaries of SNTs do not control the assets and must request disbursements from the trustee overseeing the SNT. The trustee has sole discretion over the distribution of funds.

SNTs--stand alone or pooled--fall generally into two main categories. First-Party SNTs are funded with the beneficiary's own funds, and these assets may be available for payment of fiduciaries. Third-Party SNTs are created by individuals other than the trust beneficiary using the third-party's own financial resources. Third-Party SNTs are typically set up by parents with their own funds; as such, they are not normally subject to obligations of the beneficiary and are not subject to orders compensating court-appointed fiduciaries for handling matters for the beneficiary.

SNTs which are professionally managed by non-profit organizations can include both kinds of trusts and can also be Pooled SNTs (PSNTs) having multiple beneficiaries but with each beneficiary having a separate account.

After a review of the legislative history of D.C. Code § 21-2060(a-1), although there is a presumption that an estate is depleted when an individual is receiving Medicaid or other needs-based benefits, the presumption is rebuttable. This presumption also applies to cases of SNT beneficiaries who receive Medicaid or other needs-based benefits but have significant assets in their SNTs. The presumption may be overcome based on the facts and circumstances of each case. Factors to consider include the beneficiary's: age, health, anticipated life expectancy, care plan, social needs, medical and non-medical treatment not covered by Medicaid, and the amount of assets in the trust.

D.C. Code § 21-2060(a-1)(6) also suggests the standard to use when payment is nonetheless sought from the trust. Where the Code does not require resort to the Guardianship Fund, the ward may yet establish the "inability to pay any costs…without substantial financial hardship" to the ward or the ward's family. This standard necessarily looks to the ward's entire situation: present and future needs and the income and resources available to meet them.

To seek payment from the trust, the fiduciary must serve notice of the petition for compensation on the trustee and provide a basis for the request to receive payment from

[22] See 42 U.S.C. § 1396p(d)(4)(A) and (C).

the trust. Although it does not appear to be a requirement, the trustee should be given an opportunity to respond before the petition is ruled upon.

When a ward who is a beneficiary of a SNT dies and the fiduciary has been receiving payment for services from the corpus of the trust (usually at private rates), the fiduciary is no longer entitled to such payments from the trust. Instead, the fiduciary becomes a creditor of the ward's estate and must either seek payment from the ward's estate or seek payment from the Guardianship Fund at the Fund rate. That is because federal law establishes a hierarchy to the remainder of the deceased ward/beneficiary's assets, with the trustee and state Medicaid providers designated as the primary recipients and the fiduciary becoming a creditor. *See In re Stewart*, No. 2008 INT 303, Mem. in Supp. of Order Den. Fiduciary Compensation from the Vinner Special Needs Trust After the Death of the Ward (Nov. 14, 2017) (Fisher, J.).[23]

4. ABLE Accounts

ABLE accounts are another vehicle to protect the assets of beneficiaries of needs-based programs. ABLE accounts (sometimes called 529 ABLE) are a result of the Achieving a Better Life Experience ("ABLE") Act passed in 2014 to create tax-advantaged savings accounts for individuals with disabilities.[24] The accounts allow investment earnings to grow tax-free when used for qualified disability expenses (QDEs). Like SNTs, the funds contributed to these accounts do not count against the person's eligibility for most means-tested, government programs such as Medicaid and SSI.

An individual may be eligible for an ABLE account if:

a) The person's disability was present before the age of 26; and
b) One of the following is true:
    1) The person is eligible for SSI or SSDI because of a disability;
    2) The person experiences blindness as determined by the Social Security Act; or
    3) The person has a similarly severe disability with a written diagnosis from a licensed physician that can be produced if requested.

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[23] The hierarchy is created by the interplay of 42 U.S.C. § 1396p(d)(4)(C)(iv) and §§ SI 01120.203 B.2.g and B.3 of the Social Security Administration's Programs Operations Manual System (POMS), and provides the following order of priority:

a) Allowable administrative expenses relating to closing the trust, which consist of taxes the trust must pay and reasonable fees for administration of the trust estate such as an accounting of the trust.
b) Amounts paid as a fee to a pooled trust based on agreement with the deceased beneficiary or representative.
c) Reimbursement of State Medicaid providers for payments made during the beneficiary's lifetime.
d) Claims of creditors.
e) Named remainderman or heirs or the decedent's estate.

[24] Codified at 26 U.S.C. § 529A.

These accounts should be used to pay legal fees before SNTs where the ward has both an SNT and an ABLE account because the federal statute explicitly allows the ABLE account funds to pay legal fees. The presumption favoring payment from the Guardianship Fund also applies to ABLE accountholders who receive Medicaid, SSI, and other needs-based benefits. Once again, however, the presumption may be rebutted. The fiduciary must articulate a basis in the fee petition for the request for payment out of the ward's ABLE account. The Court's decision should be determined by the particular facts and circumstances of the case.

5. Other Types of Trusts

If a ward is a beneficiary of a trust other than an SNT, the assets may be available as a source of compensation depending on the terms of the trust instrument. To seek payment from the trust, the fiduciary must serve notice of the petition for compensation on the trustee and provide a basis for the request to receive payment from the trust. The trustee should have an opportunity to respond.

6. Compensation When a Petition is Dismissed or Denied

Occasionally, intervention proceedings are initiated where the subject of the proceeding has assets and the Court has appointed one or more fiduciaries or other actors, but the Court does not grant the petition because: (1) the petition is withdrawn before there is a determination of incapacity, (2) the proceeding terminates because the subject of the proceeding dies, or (3) the Court does not find that the subject requires the assistance of a guardian or conservator. In those situations, the Court must decide whether payment for the services of the fiduciaries or other actors should be made from the Guardianship Fund or from some other source (*e.g.,* the assets of the petitioner where the petition is deemed frivolous).

That determination will depend on the circumstances of each case. On the one hand, if the petition was frivolous or brought for an inappropriate purpose, it would be unfair to hold the subject responsible for the payment for services and expenses. On the other hand, often well-founded petitions are resolved by other protective measures – *e.g.*, execution of a power of attorney – that obviate the need to determine capacity yet require services by the appointed fiduciaries or other actors to represent the best interests of the subject. In the former situation, neither payment from the subject/ward's estate or from the Guardianship Fund would be appropriate. In the latter, payment from the estate of the subject/ward would be fitting.

PREPARATION OF FEE PETITIONS

Statutory Authority and Court Approval

D.C. Code § 21-2060(a) provides the statutory basis for compensation and allows compensation "for services rendered either in a guardianship proceeding, protective proceeding, or in connection with a guardianship or protective arrangement." Fee petitions must be reviewed and approved by a judge before an attorney can be compensated for services from the ward's estate or the Guardianship Fund. *See* D.C. Code § 21-2060(a) (2023). Fee petitions may be considered by the case-assigned Associate Judge, a Senior Judge or a Magistrate Judge. A fiduciary may request that a particular fee petition be considered by the case-assigned Associate Judge due to the complexities of the case.

Circumstances may require the Court to appoint the guardian or conservator to serve as an attorney on behalf of the ward in a related court case. The reasonable tasks performed in the related case are compensable by way of a fee petition. In any other court matter where the guardian or conservator seeks to act as attorney for the ward, the fiduciary should seek prior court approval, if the fiduciary seeks to be compensated either from the ward's assets or the Guardianship Fund. Family members serving as guardian and/or conservator may file petitions for compensation, which are also subject to court approval.

The Court must approve not only the amount of compensation, but also the source of the compensation, whether the fiduciary seeks to be paid from the ward's estate or from the Guardianship Fund. As to source, compensation must first be paid from the estate of the ward, if the estate has sufficient liquid assets. If the ward's estate is depleted or will be depleted to satisfy the fee request, the fiduciary will be paid in whole or in part from the Guardianship Fund. In certain instances, the Court will be required to define depletion for the purposes of determining the source of compensation. In some instances, it may be appropriate to approve partial compensation from the estate of the ward, with the balance paid from the Guardianship Fund. D.C. Code § 21-2060(a-1) provides factors to guide the determination whether a ward's estate is depleted. *See* Sec. 1 of SOURCES OF COMPENSATION: The Home's Availability as a Resource, *supra.* It is important to note that that a "ward's assets need not be zeroed out to be depleted; it is enough that the ward would suffer 'substantial financial hardship." *See In re Goodwin*, 275 A.3d 283, 287 (D.C. 2022) (citing D.C. Code § 21-2060(a-1)(6) (2023)).

Rules and Content of Fee Petitions

Super. Ct. Prob. R. 322 governs the submission and content of fee petitions. Super. Ct. Probate. R. 322(b)(1) requires that fiduciaries file a verified petition for compensation that sets forth the following, in reasonable detail:

- the character and summary of the services rendered;
- a description of the tasks performed so that a judge may make a reasonableness determination (*e.g.*, a request for payment for a communication should include the name of the participants and the subject discussed; travel entries should include the addresses of the origin and destination);
- the amount of time spent (block billing for a variety of tasks is generally not permissible);
- the basis of the claimed hourly rate;
- the size of the estate administered;
- the benefits that accrued to the ward from the work performed;
- the cost of services that others performed at the request of the fiduciary, such as accounting services; and
- the amount and source of compensation previously allowed to court-appointed persons.

The petition must include a certificate of service confirming the fiduciary served the petition and notice of the right to file objections upon all interested persons, at least 20 calendar days before filing the petition. *See* Super. Ct. Prob. R. 322(b)(1)(f). If payment is sought from a special needs trust, the trustee must also be served.

The petition must clearly indicate whether the petitioner has been compensated or has an agreement to be compensated from a source other than the estate of the ward or the Guardianship Fund. *See* Super. Ct. Prob. R. 322(b)(1)(I).[25] The petition must indicate whether the petitioner is seeking compensation from the estate, the Guardianship Fund, or both.

The statement of services should be presented in a format that is legible or easy to read. It is suggested that the statement of services be provided in well-organized columns using increments of six minutes or tenths of an hour (*e.g.*, 0.1, 0.2 of an hour). The font size of the statement of services, like the petition, itself, should be 12 points, and preferably in Times New Roman or Courier New typeface.

If the estate is depleted and a petitioner is requesting compensation from the Guardianship Fund, additional information must be provided:

- the nature and extent of the subject's assets, including contingent assets and noting which assets are liquid;
- the nature and extent of the subject's income;

- the character and extent of the subject's debts; whether the subject owns a residence and, if so, whether the subject or the subject's dependent(s) reside therein and, if not, whether and when the subject or the subject's dependent(s) expect to return to the residence;
- whether the subject has a burial fund or has prepaid funeral or burial expenses and, if so, the value of such fund or amount of prepayment; and
- a description of the subject's expenditures.

See Super. Ct. Prob. R. 322(b)(2).

If the petitioner is requesting compensation from the estate of the ward, the petition must set forth an explanation of any requested rate, as explained in section COMPENSABLE TASKS AND RATE OF PAY, *supra*.

When the ward is a beneficiary of a supplemental or special needs trust, fiduciaries should determine whether compensation will be requested from the Guardianship Fund or the trust. Clarification is presented in the "SOURCES OF COMPENSATION" section of this document.

When a ward receives Veterans benefits, any petitioner seeking fees must serve the pleading on the U.S. Department of Veterans Affairs, pursuant to Rule 5-II of the Superior Court Rules of Civil Procedure. The guardian or conservator shall advise the court whether the fiduciary is also serving in the capacity of a Federal Fiduciary and is receiving compensation from the U.S. Department of Veterans Affairs, pursuant to 38 C.F.R. § 13.220(a)(1).

Guardianship services performed after the death of a ward may be compensable if the services relate solely to settling and terminating the guardianship. This may include coordinating transfer of the body to the funeral home, settling certain funeral costs if there is a burial fund account, and coordinating the burial, if there are no involved family members. Ordinarily, funeral and burial arrangements should be performed by the ward's family. To the extent payment is sought from a special needs trust, however, federal law generally prohibits payment from the trust until all Medicaid liens have been satisfied.

When to File

A guardian's yearly petition for compensation shall be filed no later than 30 days from the anniversary date of the guardian's appointment. A guardian's final petition for compensation shall be filed no later than 60 days after termination of the guardianship. *See* Super. Ct. Prob. R. 322(d)(1).

A conservator's yearly petition for compensation shall be filed either with the annual accounting or at any time prior to the approval of the annual accounting. A conservator's final petition for compensation shall be filed no later than 30 days after the filing of the final account. *See* Super. Ct. Prob. R. 322(d)(2).

If a fee petition must be filed late, a fiduciary must file a motion for an extension of time, prior to the deadline. The motion must set forth the reason for the delay. The Court may deny compensation requests that are late and unexplained. Preparation of such motions is not a compensable task.

An interim petition for compensation for establishing a guardianship, conservatorship, or entry of a protective order shall be filed promptly upon conclusion of the hearing establishing the guardianship, conservatorship, or protective arrangement but no later than 90 days after conclusion of the hearing. *See* Super. Ct. Prob. R. 322(d)(3).

Motions for reconsideration must be filed within 10 days of the Court's order on the petition unless otherwise specified in the order. *See* Super. Ct. Prob. R. 322(h).

APPENDIX

Attachments

District of Columbia Superior Court Administrative Order 06-19 – Probate Practice Standards

District of Columbia Superior Court Administrative Order 11-08 – Amending the Probate Practice Standards

District of Columbia Superior Court Administrative Order 12-11 Attachment – Voucher Preparation Guidelines

List of Cases

1. *In re Al-Baseer*, No. 2002 INT 000276 (D.C. Super. Ct. June 26, 2013) (Long, J.).
2. *In re Allen*, No. 20-PR-593, Mem. Op. & J. (D.C. Aug. 31, 2022).
3. *In re Bingham*, 271 A.3d 1144 (D.C. 2022).
4. *In re Bourke*, No. 2001 INT 000221 (D.C. Super. Ct. Sept. 1, 2009) (Burgess, J.).
5. *In re Brown*, 211 A.3d 165 (D.C. 2019).
6. *In re Cannon*, 278 A.3d 726 (D.C. 2022).
7. *In re Champion*, No. 18-PR-233, Mem. Op. & J. (D.C. Jun. 28, 2019).
8. *In re Criminal Justice Act Voucher,* 128 Daily Wash L. Rptr. 1565, 1571 (Super. Ct. May 12, 2000) (Henry F. Greene, J.).
9. *DL v. District of Columbia,* 924 F.3d 585 (D.C. Cir. 2019).
10. *In re Dodd*, No. 2013 INT 000257 (D.C. Super. Ct. Feb. 28, 2013) (Christian, J.).
11. *Eley v. District of Columbia*, 793 F.3D 97 (D.C. Cir. 2015).
12. *In re Florence*, No. 20-PR-297, Mem. Op. & J. (D.C. Aug. 24, 2022).
13. *In re Gardner*, No. 17-PR-631, Mem. Op. & J. (D.C. Nov. 22, 2019).
14. *In re Gardner*, 268 A.3d 850 (D.C. 2022).
15. *In re George*, No. 2010 INT 000013 (D.C. Super. Ct. June 25, 2015) (Fisher, J.).
16. *In re Goodwin*, 275 A.3d 283 (D.C. 2022).
17. *In re Estate of Grealis*, 902 A.2d 821 (D.C. 2006).
18. *Hampton Courts Tenants Ass'n v. District of Columbia Rental Housing Comm'n,* 599 A.2d 1113, 1118 (D.C. 1991).
19. *In re Jones*, No. 20-PR645 & 21-PR-381, Mem. Op. & J. (D.C. Jul. 27, 2022).
20. *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd*, 746 F.2d 4 (D.C. Cir. 1984), *overruled in part on other grounds by Save Our Cumberland Mountains, Inc. v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1988).

21. *In re Mattos*, No. 20-PR-594, Mem. Op. & J. (D.C. Aug. 11, 2022).
22. *In re Estate of McDaniel*, 953 A.2d 1021 (D.C. 2008).
23. *In re Meese*, 907 F.2d 1192 (D.C. Cir. 1990).
24. *Missouri v. Jenkins*, 491 U.S. 274 (1989).
25. *In re Mitchell et al*., No. 1990 INT 000056 (D.C. Super. Ct. Mar. 19, 1993) (Wolf, J.).
26. *In re Olson*, 884 F.2d 1415 (D.C. Cir. 1989).
27. *In re Orshansky*, 804 A.2d 1077, 1091 (D.C. 2002).
28. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542 (2010).
29. *In re Porter*, No. 19-PR-728, Mem. Op. & J. (D.C. July 7, 2021).
30. *In re Robinson*, No. 2014 INT 000358 (D.C. Super. Ct. Sept. 25, 2017) (Levie, J.).
31. *In re Robinson*, No. 2014 INT 000358 (D.C. Super. Ct. Feb. 26, 2019) (Fisher, J.).
32. *In re Robinson*, 216 A.3d 887 (D.C. 2019).
33. *In re Robinson*, 280 A.3d 194 (D.C. 2022).
34. *Role Models America, Inc. v. Brownlee,* 353 F.3d 962 (D.C. Cir. 2004).
35. *Salazar v. District of Columbia*, 123 F. Supp. 2d 8 (D.D.C. 2000).
36. *In re Smith* 138 A.3d 1181, 1186 (D.C. 2016) ("Smith II").
37. *In re Stewart*, No. 2008 INT 303, Mem. in Supp. of Order Den. Fiduciary Compensation from the Vinner Special Needs Trust After the Death of the Ward (Nov. 14, 2017) (Fisher, J.)
38. *Sullivan v. District of Columbia*, 829 A.2d 221, 226, 229 (D.C. 2003).
39. *In re Turberville*, No. 20-PR-0050, Mem. Op. & J. (D.C. Sept. 8, 2022).
40. *Vining v. District of Columbia*, 198 A.3d 738 (D.C. 2018).
41. *In re Washington*, No. 17-PR-627, Mem. Op. & J. (D.C. Oct. 18, 2019).
42. *In re Weaks*, 224 A.3d 1028, 1032 (D.C. 2020).
43. *In re Williams*, No. 15-PR-1145, Mem. Op. & J. (D.C. July 7, 2017).
44. *In re Williams*, No. 2013 INT 000208 (D.C. Super. Ct. July 28, 2015) (Christian, J.).
45. *In re Wilson*, 277 A.3d 940 (D.C. 2022).