

Rule 225. Compensation of conservators and guardians of minors.

(a) Compensation to a conservator or guardian for ordinary services.

Compensation to a conservator or guardian for ordinary services shall be by commission which shall not exceed 5% of amounts disbursed from the estate. Ordinary services shall be those normally performed by a fiduciary in administering such an estate and shall include, but not be limited to, the following:

- (1) Qualification as the fiduciary;
- (2) Collection of the ward's assets and income;
- (3) Payment of the ward's debts and costs of maintenance, as authorized or ratified by the Court;
- (4) General supervision of the ward's investments and policy relating thereto, including safekeeping; and
- (5) Preparation and filing of all inventories, accounts, and reports to the Court.

(b) Time and method for claiming compensation for ordinary services.

A claim for commission for ordinary services may only be made in an annual account and, except as otherwise provided in these rules, no statement of services is required. The amount or percentage of commission claimed need only be reflected in the account itself.

(c) Compensation to fiduciary for extraordinary services.

At the time of filing an annual account or at any other time upon the showing of good cause, a conservator or guardian may petition the Court for compensation for extraordinary services rendered. Extraordinary services shall be in addition to those services set forth in subsection (a). The petition shall include the following:

- (1) Statement of jurisdiction and controlling Court rule;
- (2) Statement of services rendered sufficiently complete on its face to establish that the requested payment is reasonable and, as appropriate, that the services are in fact extraordinary;
- (3) The time devoted thereto, and the normal hourly rate of the fiduciary, if any;
- (4) Evidence of the necessity or purpose of the services;
- (5) Results achieved, including the benefit to the estate or ward, if any;
- (6) Statement of all prior allowances from the estate to the claimant or other fiduciary or counsel, to the extent known;
- (7) The ability of the estate to meet future needs of the ward and to compensate fairly the fiduciary, and;
- (8) Statement that notice in accordance with Probate Rule 225(f) has been given and to whom given.

(d) Turnover commission.

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

(1) The fiduciary's death, resignation or incapacity.

If services by the fiduciary are terminated by the fiduciary's death, resignation, or incapacity, a statement of services shall be filed in support of the turnover commission claimed. That statement shall indicate what has been done by the fiduciary, what remains to be done by the successor fiduciary and such other information as would justify the commission claimed.

(2) The ward's death, restoration to competency or attainment of majority.

If within three (3) years of the fiduciary's appointment, a conservatorship or guardianship terminates because of the ward's death, restoration to competency or attainment of majority, and if the net assets to be turned over exceed \$ 100,000.00, the fiduciary shall either file a statement of services in support of the turnover commission claimed or apply for a waiver of the requirement for a statement of services by filing a written request with the Court.

(e) Compensation to attorneys.

(1) Attorney fees.

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

(2) Performance of fiduciary's ordinary services; assignment of commission. If an attorney performs on behalf of a conservator or guardian any of the above ordinary services in administering the estate, the Court may authorize the attorney to be compensated from the estate in the conservatorship or guardianship proceeding only by the conservator's or guardian's written assignment of the fiduciary's commission in whole or in part, which assignment shall be filed with the Court.

Assignment of Commission as used in this rule shall refer to those instances in which an attorney has, pursuant to an agreement with the fiduciary, performed some or all of the services normally expected of the fiduciary in administering the estate and has obtained an assignment from or written consent of the fiduciary to receive part or all of the fiduciary's commission as compensation for the attorney's services.

(f) Notice of and consents to petitions for compensation for extraordinary services or for attorney fees.

Notice of the filing of a petition for compensation for extraordinary services by the fiduciary or for attorney's fees (other than for ordinary commissions) and a copy of the petition shall be given to the fiduciary (if appropriate) and to all other parties and affected persons as determined by the Court by first class mail within five (5) days before or after the filing. The petition shall have attached to it a certification that copies and a notice of its filing have been provided in accordance with this rule.

(1) Form of notice.

The notice required shall be substantially in the following form and appended to the petition:

In re: \_\_\_\_\_ )  
   ) )  
.....) ..... No.

NOTICE TO PARTIES AND AFFECTED PERSONS

To: .....  
.....

Notice is hereby given that a Petition for Compensation for Extraordinary Services and/or for Attorney's Fees has been or will be filed with the Court on or before ....., 20..... You have the right to file objections to that Petition within twenty (20) days of the stated filing date.

.....  
Signature of Fiduciary

Name, address and telephone no. of fiduciary:

.....  
.....  
.....  
.....

Date: .....

(2) Form of consent. Consents to the petition shall be in the following form and, once filed, constitute a waiver of the right to object thereto:

In re: )  
)

.....) ..... No. ....

**CONSENT TO COMPENSATION AND/OR FEES**

I, ....., have received a copy of the petition for compensation in the amount of \$ ..... for ..... and \$ ..... for ..... I consent to the payment of the amounts requested.

I waive the right to file objections to the above stated amounts and I consent to the approval by the Court of payment of such amounts.

.....

Signature

Date: .....

(g) Reference to Register of Wills of petition for compensation for extraordinary services or for attorney fees.

All petitions for compensation to a fiduciary for extraordinary services and attorney's fees shall be referred to the Register of Wills for appropriate recommendations.

(h) Discretion reserved to Court.

The Court may, at any time, require a statement of services or any additional verified documentation in determining an appropriate commission in any particular case.

(i) Objections to petition for compensation.

Within twenty (20) days of mailing of notice, parties and affected persons may file with the Register a written objection to the petition for compensation for extraordinary services by the fiduciary or for attorney's fees. The written objection shall include specific statements of the grounds for contesting the petition and shall be mailed to the fiduciary and the fiduciary's attorney. If a written objection is not filed within the prescribed time, the Court may treat the petition as conceded. A party or affected person may specifically request an oral hearing by endorsing at the bottom of the objection, above the signature, "Oral Hearing Requested"; but the Court, in its discretion, may decide the matter without a hearing.

**COMMENT:**

No compensation shall be awarded for supervision of a ward's person.

Generally, the preparation and filing of routine tax returns and accountings are considered to be ordinary services. If the services involved were in whole or in part extraordinary, compensation for such services may be claimed by petition pursuant to subsection (c) of this rule. If the fiduciary retains the services of a tax preparer, payment of the tax preparer's fee may be made subject to the Probate Rule 223 requirement that expenditures be made only upon prior authorization of the Court. (Amended, Oct. 22, 1996, eff. Feb. 1, 1997.)

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

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

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

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