

MAKING A COMPLAINT IN AN ADULT GUARDIANSHIP PROCEEDING IN THE DISTRICT OF COLUMBIA



Office of the Register of Wills

**Probate Division
515 5th Street, NW, Third Floor
Washington, DC 20001**

All attached forms and documents are available through the division's website:
<http://www.dccourts.gov/internet/formlocator.jsf>

Making a Complaint in an Adult Guardianship Proceeding

Intervention proceedings are opened for adults 18 or older who live in the District of Columbia, are incapacitated, and need assistance with health care, quality of life, or placement decisions or the handling of finances or other assets. After the Court has determined that a fiduciary should be appointed to assist the incapacitated adult, that fiduciary has legal duties and responsibilities to that person, called a "ward." A person may be appointed as a guardian, a conservator, or both to act as a fiduciary for the ward.

If a member of the public believes that a guardian is not providing adequately for the health and well-being of a ward or a conservator is not managing a ward's property in a manner to promote the best interests of the ward, he or she may make a complaint using this new and streamlined complaint procedure. This complaint procedure is not for emergencies, objections to fee petitions, or objections to inventories or accounts.

SUBMITTING THE COMPLAINT

Any person may submit a written complaint concerning a court-appointed guardian or conservator by mail or in person. The complaint should contain as much detail as possible to help the Court determine what course of action will be most beneficial to the ward under the circumstances. The complaint cannot be submitted anonymously and must be signed by the person submitting the complaint.

- a) The Complaint form is available on the Court's website, http://www.dccourts.gov/internet/legal/aud_probate/intiddlegal.jsf then click the forms link, on the "Probate Matters" page available under "Featured Topics." The form in this brochure may also be used.
 - i. Submitting in person: The Complaint may be submitted in person at the Probate Clerk's office, located in Room 314, in an envelope with a completed intake form. The clerk will review the intake form and stamp it "Received". The envelope containing the Complaint is placed in a box for later staff review.
 - ii. Submitting by mail: A Complaint received by mail will be stamped "Received" and forwarded to staff for review. Complaints that are mailed should be sent to "Office of the

Register of Wills, 515 5th Street NW, Room 314, Washington, DC 20001.”

- b) The Complaint is then reviewed by staff to determine if the complaint can be accepted using this new process.
- c) A complaint will not be accepted and will be returned to the filer if:
 - i. The complaint is incomplete.
 - ii. The complaint does not relate to the guardian or conservator’s duties to the ward
 - iii. The complaint appears to be about an emergency situation
 - iv. The complaint is about an inventory, account, or fee petition.

WHAT HAPPENS NEXT?

Once the complaint has been reviewed and accepted for filing:

- a) The complaint will be filed on the court docket of the case;
- b) A copy of the complaint will be mailed to the guardian or conservator to give them an opportunity to respond to the complaint; and
- c) The person who filed the complaint will receive, by mail, confirmation that the complaint has been accepted and a copy of the notice sent to the guardian or conservator.

Responses to the complaint, if timely filed, will also be reviewed by staff, who will thereafter make a recommendation to the Court. Recommendations to Court could include:

- a) That the fiduciary be directed to respond to the complaint if the fiduciary has not already done so;
- b) That the fiduciary be directed to file a supplemental response about a particular issue;
- c) That a visitor from the Visitor Panel be appointed;
- d) That an examiner be appointed;
- e) That mediation between the parties be scheduled;
- f) That the court hold a hearing;

- g) That the court consider referring the complaint to the appropriate law enforcement agency;
- h) That no further action be taken on the complaint.

The person who filed the complaint will receive notice of the recommendation made to the court. If the court decides to issue an order, the order issued by the court will be sent to the person who filed the complaint and to all other parties, participants, and persons who have filed a request for notice in the case.

ANSWERS TO FREQUENTLY ASKED QUESTIONS

Can I submit an anonymous complaint?

No. All complaints filed with the court must be signed by the filer. In addition, the person making the complaint may be required to attend a hearing to provide further information about the nature of the complaint.

I am concerned about the ward's situation, and I think the fiduciary is not doing anything about it. Can I file a complaint?

Yes. Anyone concerned about the welfare of a person under guardianship or conservatorship may file a complaint to bring any issues to the Court's attention. The complaint process is an additional tool to ensure the well-being of the ward.

What if I think that the ward is in an emergency situation that the guardian is not addressing? Should I file a complaint?

The complaint process is not for emergency situations. If there is no life-threatening emergency or the situation does not involve emergency health care, the complaint process may be appropriate.

Will the guardian or conservator find out about my complaint?

Yes. Complaints that are accepted for filing will be forwarded to the fiduciary for a response.

I cannot or do not want to attend the scheduled hearing. Can I skip the hearing?

No. Any member of the public who brings an issue with a guardian or conservator to the Court's attention must be available to attend a scheduled hearing. You may indicate on the Complaint form what days and times work re best for you to attend. The hearing may be rescheduled or canceled if the complainant fails to attend.

I am not sure what the guardian's job is. How can I find out?

The General Authorities and Duties and the Practice Standards for Guardians are located in this brochure and in the “Now that You’re a Guardian” brochure, available on the court’s website at http://www.dccourts.gov/internet/legal/aud_probate/brochvideo.jsf#int and in the Probate Clerk’s Office.

I am not sure what the conservator’s job is. How can I find out?

The General Authorities and Duties and the Practice Standards for Conservators are located in this brochure and in the “Now that You’re a Conservator” brochure, available on the court’s website at http://www.dccourts.gov/internet/legal/aud_probate/brochvideo.jsf#int and in the Probate Clerk’s Office.

I filed a complaint, but the recommendation was no court action. I am sure that there is a problem. What can I do?

Please read the letter from the Office of the Register of Wills carefully. Your complaint may not have provided enough information about the ward’s circumstances, or a complaint may not be the best way to address your concerns. If you still feel there are circumstances in the ward’s life that require Court intervention, you may file a petition post appointment. The forms are available on the Court’s website at http://www.dccourts.gov/internet/legal/aud_probate/int-iddlegal.jsf then click the forms link.

I am the guardian or conservator. What if I think the complaint is unwarranted?

Guardians and conservators will have the opportunity to respond. The guardian or conservator will receive a copy of the complaint and a cover sheet to file with the response to the complaint. The guardian or conservator will have 15 days from the date of the mailing of the complaint to respond before a recommendation is forwarded to a judge.

What if someone files multiple complaints against me as guardian or conservator?

Complaints against the guardian or conservator are not meant to be punitive but instead to air concerns about the fiduciary’s performance. Complaints will be filed on the docket. Repeat complaints will be noted for the Court’s attention. The judge will decide whether to permit multiple filings.

I am an attorney guardian or conservator. Do I e-file my response?

Yes. To e-file your response, you must use the “Fiduciary Response to Complaint Regarding an Intervention Proceeding” cover sheet at the first

page of your filing. When you submit your response via Case File Express, you will label your document as "Other Filing" to ensure it is docketed correctly. Failure to use the cover sheet as part of your filing will result in your submission being rejected for filing.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
PROBATE DIVISION

_____ INT _____
_____ IDD _____

In re:

An Adult

COMPLAINT REGARDING AN INTERVENTION PROCEEDING

Please answer each question. If you do not know the answer or it does not apply please write "Unknown" or "N/A." The court will not review this complaint if you do not fill in each section. If your answers are hand-written, print clearly. When completed, mail or deliver the completed form to the Probate Division, 515 5th Street, NW, Room 314, Washington, DC 20001, and keep a copy for your records.

Concerns about

- Guardian Conservator Don't know

1. Guardian or Conservator

Name of Guardian or Conservator

2. Complainant

Note that if you do not provide an address that allows the Office of the Register of Wills to contact you, your complaint will not be filed.

Your Name: _____

Your Address: _____

Your Phone Number (____) _____ Your Email: _____

Your relationship to the ward or to the case:

3. Description of your complaint

a. Date and time of incident: _____

b. Please refer to the duties of a guardian and conservator in the brochure and describe what the guardian or conservator did or did not do, what they said, or any other actions that cause you to believe they have failed in their duties. Be as specific as possible. Attach copies of relevant documents, such as court orders, petitions, letters to the ward, etc. Attach a separate sheet, if necessary.

Practice Standard 1
GENERAL AUTHORITY AND DUTIES

STANDARD 1.1

NON-LAWYERS

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

STANDARD 1.2

ATTORNEY QUALIFICATIONS

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

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

STANDARD 1.2.1

ATTORNEY CERTIFICATION

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

STANDARD 1.3

Basic Obligations for All Persons Appointed in Probate Cases

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

STANDARD 1.4

BASIC OBLIGATIONS FOR ATTORNEYS IN PROBATE CASES

- Counsel clients concerning matters related to their cases;
- Assess each client's needs for services;
- Develop a case theory and strategy to follow at hearings

- and during negotiations;
- Cooperate and communicate civilly with other parties and professionals in the case;
- Maintain a manageable caseload.

STANDARD 1.5 GENERAL OBLIGATIONS FOR ALL FIDUCIARIES

- STANDARD 1.5.1 The fiduciary shall provide competent management of the property and income of the estate. In the discharge of this duty, the fiduciary shall exercise prudence and diligence.
- STANDARD 1.5.2 The fiduciary shall make decisions in accordance with the ascertainable preferences of the ward or the creator of the testamentary instrument and, when not in conflict, the beneficiaries of said ward or testamentary instrument.
- STANDARD 1.5.3 The fiduciary shall recognize that although decisions are open to the scrutiny of other interested parties, the fiduciary is the ultimate decision maker.
- STANDARD 1.5.4 The fiduciary shall exhibit the highest degree of trust, loyalty and fidelity in relation to the estate or ward.
- STANDARD 1.5.5 The fiduciary shall exercise prudence in the investment of funds of the estate.
- STANDARD 1.5.6 The fiduciary shall disclose any personal or agency interest that can be perceived as self-serving or adverse to the interest or position of the ward. The fiduciary shall disclose any conflict of interest or appearance of a conflict of interest when dealing with the needs of the ward.
- STANDARD 1.5.7 The fiduciary shall provide periodic accountings to the ward and interested persons, not less than annually.

Practice Standard 6
GUARDIAN

- STANDARD 6.1 The Guardian shall timely file reports to the Court and interested persons.
- STANDARD 6.2 The Guardian shall maintain an ongoing familiarity with the laws and standards applicable to the discharge of the Guardian's duties.
- STANDARD 6.3 The Guardian shall maintain regular contact with the ward.
- STANDARD 6.4 Contact with the *ward* shall be in the home or facility where the ward is placed whenever practicable.
- STANDARD 6.5 The Guardian shall ensure that the self-reliance and independence of the ward are maximized and that the ward is involved in decision-making regarding habilitation, health care, recreation and other personal choices when appropriate.
- STANDARD 6.6 The Guardian shall ensure that the ward's residence is appropriate and is the least restrictive environment to meet the ward's needs.
- STANDARD 6.7 The Guardian shall arrange for appropriate and regular health care services.
- STANDARD 6.8 The Guardian shall secure any health care directives executed by the ward. In the absence of such directives, the Guardian shall investigate the ward's desires as to health care and end-of-life decisions.
- STANDARD 6.9 The Guardian shall communicate with the Conservator regularly based upon the circumstances of the ward. If the Court does not appoint a Conservator, the Guardian shall endeavor to obtain the resources necessary to meet the ward's needs.
- STANDARD 6.10 The Guardian shall establish a system to enable efficient access to information related to the health, safety, and well-being of the ward.
- STANDARD 6.11 The Guardian shall timely file reports to the Court and serve all interested persons.

Practice Standard 7 CONSERVATOR

- STANDARD 7.1 The Conservator shall comply with all statutory requirements. These requirements include:
- Post and maintain a surety bond pursuant to the appointment order or other requirements set by the Court.
 - Complete all required appraisals and file inventories of personal property owned by the ward at the time of the appointment.
 - Record Letters of Conservatorship with the District of Columbia Recorder of Deeds.
 - Marshal all assets of the ward.
 - Develop the Conservatorship Plan and file timely with the Court.
- STANDARD 7.2 The Conservator shall manage the ward's assets and income. Management includes:
- Manage all property, including real property, personal property, income and disbursements from the estate in a competent manner to the benefit of the ward.
 - Maintain the ward's assets in a safe manner and keep accurate records at all times of all transactions involving estate assets.
 - Ensure that the ward's assets are maintained separately from the assets of others – including those of the Conservator – unless otherwise directed by the Court.
 - Evaluate the appropriateness of encumbering or disposing of any real or personal property, including applying for home equity conversion loans.
- STANDARD 7.3 The Conservator shall communicate with the ward.
- STANDARD 7.4 The Conservator shall use due diligence in determining who shall be retained to provide professional services in the management of the ward's income and assets.
- STANDARD 7.5 The Conservator shall comply with all reporting and accounting requirements established by the Court.

The full Probate Practice Standards can be found at:

http://www.dccourts.gov/internet/legal/aud_probate/practicestandards.jsf