

# Probate Division

District of Columbia Superior Court



## Case Management Plan

### Cases Involving the Deceased

- Large Estate Proceedings
- Small Estate Proceedings
- Foreign Estate Proceedings
- Wills
- Disclaimers

### Cases Involving the Incapacitated

- Intervention Proceedings
- Interventions-Developmental Disability
- Foreign Intervention Proceedings
- Former Law Conservatorships
- Guardianships of Minor's Estates

### Cases Involving Trusts

- Trusts
- Notice of Revocable Trusts

### Major Litigation



# Overview

## Mission Statement

The mission of the Probate Division is to:

**SERVE** the court and the public in reaching a fair and timely resolution on all Probate cases;

**PROTECT** the financial interests of wards of the court and of beneficiaries in court-supervised estates;

**ENSURE** efficient and effective case management for all Probate cases;

**PROVIDE** the public with access in person, by telephone, by mail and via internet as appropriate - to information and public records; and

**MAINTAIN** a caring tradition of public service.

## Purpose

The purpose of the case management plan is inform court staff and the public regarding the specific procedures of the Probate Division for each of its 13 case types, which are grouped in this case management plan as follows:

Cases Involving the Deceased—Large Estate Proceedings; Small Estate Proceedings; Foreign Estate Proceedings; Wills; and Disclaimers.

Cases Involving the Incapacitated—Intervention Proceedings; Interventions-Developmental Disability; Foreign Intervention Proceedings; Former Law Conservatorships; and Guardianships of Minor's Estates.

Cases Involving Trusts—Trusts and Notice of Revocable Trusts.

Major Litigation.

## Goals

- To establish procedures for efficient and effective case processing for all Probate Division cases.
- To establish consistent expectations for participants in the court process.
- To resolve cases timely.

- To establish a system to hold internal and external consumers accountable for compliance.
- To enhance public confidence in the justice system.
- To protect the interests of the wards of the court and of beneficiaries in supervised estates.
- To empower the self-represented by providing *pro bono* legal services, referrals to community resources by the Guardianship Assistance Program, educational material online, and access by various mediums to information.

## **Benefits**

- Accessibility of case management plans to court staff and the public provides transparency of standards and expectations of all court participants.
- Identification of internal and external resources promotes progress and enhances case flow.
- Serves as a fundamental tool for case processing, management, performance measurement and monitoring, and communication.
- Enhances learning environment for court staff and all court participants.

# Table of Contents

<b>OVERVIEW .....</b>	<b>2</b>
Mission Statement .....	2
Purpose .....	2
Goals.....	2
Benefits .....	3
 <b>TABLE OF CONTENTS .....</b>	 <b>4</b>
 <b>CASES INVOLVING THE DECEASED .....</b>	 <b>7</b>
<b>LARGE ESTATE PROCEEDINGS (ADM) .....</b>	<b>8</b>
When to Open .....	8
How to Open .....	9
Large Estates Case Flow .....	11
Forms.....	12
Assistance to Pro Se Parties .....	12
Where to File.....	12
The Court Order .....	12
Schedule of Mandatory Filings .....	17
Duties .....	17
Processing of Pleadings Subsequent to Appointment of Fiduciary.....	17
Termination of Appointment .....	18
Performance Measures .....	19
 <b>SMALL ESTATE PROCEEDINGS (SEB) .....</b>	 <b>20</b>
When to Open .....	20
How to Open .....	20
Small Estate Case Flow .....	21
Forms.....	22
Assistance to Pro Se Parties .....	22
Where to File.....	22
The Court Order .....	22
Performance Measures .....	24
 <b>FOREIGN ESTATE PROCEEDING (FEP) .....</b>	 <b>25</b>
When to Open .....	25
How to Open .....	25
Foreign Estate Proceeding Case Flow.....	27
Forms.....	28
Where to File.....	28
 <b>WILLS (WIL).....</b>	 <b>29</b>

How, When and Where to Open .....	29
Will Case Flow .....	29
<b>DISCLAIMERS (DIS) .....</b>	<b>30</b>
When to Open .....	30
How to Open .....	30
Disclaimer Case Flow .....	31
Where to File .....	31
<b>CASES INVOLVING THE INCAPACITATED .....</b>	<b>32</b>
<b>INTERVENTION PROCEEDINGS (INT and IDD) .....</b>	<b>33</b>
When to Open .....	33
How to Open .....	33
Performance Measures .....	36
Intervention Proceedings Case Flow .....	37
Assistance to Pro Se Parties .....	38
Where to File .....	38
Pre-hearing Orders .....	38
The Initial Hearing .....	40
Exhibits .....	44
Schedule of Mandatory Filings .....	44
Summary Hearing .....	45
The Guardianship Assistance Program (GAP) .....	45
Post-Appointment Issues .....	47
The Elder Mediation Program .....	47
Fee Petitions .....	47
Termination of Appointment .....	49
<b>FORMER ADULT CONSERVATORSHIPS (CON) .....</b>	<b>51</b>
Former Law Conservatorship Case Flow .....	52
Mandatory Filings .....	53
Summary Hearings .....	53
Processing of Pleadings .....	53
<b>FOREIGN INTERVENTION PROCEEDINGS (FOI) .....</b>	<b>55</b>
When to Open .....	55
How to Open .....	55
Foreign Intervention Proceedings Case Flow .....	56
<b>GUARDIANSHIPS OF MINOR'S ESTATES (GDN) .....</b>	<b>57</b>
When to Open .....	57
How to Open .....	57
Guardianships of Minor's Estates Case Flow .....	58
Forms .....	59
Where to File .....	59

The Court Order .....	59
Performance Measures .....	60
Schedule of Mandatory Filings .....	60
Summary Hearings .....	60
Processing of Pleadings Subsequent to Appointment of Fiduciary .....	61
Termination of Appointment .....	62
<b>CASES INVOLVING TRUSTS .....</b>	<b>63</b>
<b>TRUSTS (TRP) .....</b>	<b>63</b>
When to Open .....	63
Trusts Case Flow .....	65
Where to File .....	66
The Court Order .....	66
Mandatory Filings .....	67
Summary Hearings .....	67
Processing of Pleadings Subsequent to Appointment of Trustee .....	67
Case Closure .....	67
<b>NOTICE OF REVOCABLE TRUST (NRT) .....</b>	<b>68</b>
When to Open .....	68
How to Open .....	68
Notice of Revocable Trust Case Flow .....	69
Where to File .....	70
Duties .....	70
Claims .....	70
Case Closure .....	70
<b>MAJOR LITIGATION .....</b>	<b>71</b>
When to Open .....	71
How to Open .....	71
In Forma Pauperis .....	72
Major Litigation Case Flow .....	72
Forms .....	73
Monitoring .....	73
Processing of Subsequent Pleadings .....	73
Exhibits .....	73
Settlement Agreements .....	74
Performance Measures .....	74
<b>APPENDIX .....</b>	<b>75</b>
Court Cases Online .....	75
Staggered Calendar .....	75

# Cases Involving the Deceased

Five distinct case types involve the estate of a deceased person:

1. [Large Estate Proceedings \(ADM\)](#)
2. [Small Estate Proceedings \(SEB\)](#)
3. [Foreign Estate Proceedings \(FEP\)](#)
4. [Wills \(WIL\)](#)
5. [Disclaimers \(DIS\)](#)

These cases generally account for roughly two-thirds of the Probate Division's active, open caseload. Each case type is addressed separately below.

# LARGE ESTATE PROCEEDINGS (ADM)

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## When to Open

A large estate (ADM) case is opened when the **decedent**<sup>1</sup> owned real estate in the District of Columbia or other **assets**<sup>2</sup> of any value; to obtain medical records for any reason; or to pursue potential litigation.

The decedent must have been domiciled in the District of Columbia at the time of death.<sup>3</sup> If the estate is being opened to collect and transfer assets, the assets must have been owned in the decedent's name only (that is, the assets must not have joint owners or designated **beneficiaries**<sup>4</sup>).

**Letters of administration**<sup>5</sup> are issued to the **personal representative**,<sup>6</sup> whose **administration of the estate**<sup>7</sup> may be **supervised**<sup>8</sup> by the court or, if the decedent died on or after July 1, 1995, **unsupervised**.<sup>9</sup>

Large estates are governed by D.C. Code, sec. 20-101 *et seq.*

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<sup>1</sup> The person who died is the "decedent."

<sup>2</sup> "Assets" are items that the decedent owned, including but not limited to money, real property, personal items, and debts owed to the decedent.

<sup>3</sup> However, the court may take jurisdiction over the estate of a non-domiciliary following the rationale of *Montgomery v. National Savings and Trust Co.*, 123 U.S. App. 53-55, in which the decedent left two wills—an Italian will to cover property in her place of domicile and an American will to dispose of property in America. In *Montgomery*, the court determined that special compelling circumstances were shown in that D.C. was the only place in the United States, if not the world, where probate was possible.

<sup>4</sup> A "beneficiary" includes a person named in a contract to receive a gift, such as the beneficiary of a life insurance contract.

<sup>5</sup> "Letters of administration" is a document issued by the Probate Division after the personal representative has been appointed that gives the personal representative the authority to act on behalf of the estate.

<sup>6</sup> A "personal representative" is a person appointed by a Judge of the Probate Division of the D.C. Superior Court to settle the affairs of someone who has died.

<sup>7</sup> "Administration of the estate" is the procedure established by the laws in the District of Columbia for identifying the decedent's assets, paying the decedent's debts, and distributing the remaining assets to the beneficiaries.

<sup>8</sup> "Supervision" means that the personal representative is required to file inventories and accounts with the court. The law requires that the court supervise the administration of all estates for decedents who died before July 1, 1995.

<sup>9</sup> In an "unsupervised" administration, inventories and accounts must be prepared by the personal representative, but they are not filed with the court. The law allows unsupervised administrations for cases in which the decedent died on or after July 1, 1995, unless a specific request for supervision is made.



## How to Open

One of the following petitions may be filed to open a large estate:

### 1. [Petition for Abbreviated Probate](#)

This petition is filed by a person having priority to serve as personal representative pursuant to D.C. Code, sec. 20-303.<sup>10</sup> Sometimes a person of lower priority may file for abbreviated probate in accordance with *In re James Kirkpatrick*, 1996 ADM 1638, by having as co-petitioner a person with highest priority to serve and filing **renunciations**<sup>11</sup> by all other “**interested persons**”<sup>12</sup> having higher priority.

If a person died with a will,<sup>13</sup> the original of the will must be filed. Wills have no legal effect until admitted to probate. D.C. Code, sec. 20-302(a).

Abbreviated probate requires publication of the [Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs](#)<sup>14</sup> once a week for three consecutive weeks in two newspapers<sup>15</sup> of general circulation in the District of Columbia, one of which must be a legal newspaper. D.C. Code, sec. 20-704(a). The only legal newspaper known to the Probate Division is the Washington Law Reporter; the petitioner must research and identify the second newspaper to be used. The Probate Division will transmit the Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs to those newspapers via email after the personal representative is appointed. Proof of transmission by way of the sent email is imaged in the case docket. The newspapers bill the personal representative directly.

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<sup>10</sup> In testate cases (*i.e.*, where a decedent died with a will), the person nominated in the will to serve as personal representative has priority to file a petition for probate and serve as personal representative. If there is no will, the person who is the decedent’s next of kin has priority to file a petition for probate to open the decedent’s estate and serve as personal representative.

<sup>11</sup> Any person who has highest priority to serve and is choosing not to do so may sign a renunciation. The renunciation form is available on the Probate Division website. The renunciation is different from the consent (also available on website) in that the consent lacks the language that indicates that the person knows that he/she has higher priority to serve and is still choosing not to do so.

<sup>12</sup> “Interested persons” are defined in D.C. Code, sec. 20-101(d)(1) to include a personal representative nominated in a will; the court-appointed personal representative; a legatee; an heir; and a creditor of the decedent.

<sup>13</sup> A decedent died “testate” if the decedent’s will is admitted to probate by the court. “Intestate” means the decedent died without a will.

<sup>14</sup> This publication serves as notice of the personal representative’s appointment and establishes the deadline for filing a claim against the decedent’s estate or an objection to the proceedings, such as a lawsuit to contest the validity of the will or to establish heirship.

<sup>15</sup> The court does not maintain a list of newspapers available for publication, and there is no application for newspapers to complete to be eligible to publish probate notices—D.C. Code, sec. 20-704(a) merely requires that a newspaper be of general circulation in the District of Columbia.

The Petition for Probate, Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs, will, and Certificate of Filing Will will be processed upon payment of the filing fee.<sup>16</sup> The fee varies depending on the value of the estate assets. SCR-PD 425.

2. [Petition for Standard Probate](#)

A standard probate petition is filed by a person who is not in highest priority to serve or by a **creditor**<sup>17</sup> or when the will is irregular on its face (e.g., the will is torn, contains cross-outs or handwritten editorials, or is a photocopy). Standard probate requires two publications. First, the [Notice of Standard Probate](#), which is published before appointment of a personal representative so that interested persons have an opportunity to object to the appointment or to the relief requested, such as admission of a copy of a will. Second, the Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs, which is published after the personal representative's appointment. SCR-PD 403(a) sets forth the filing requirements to complete the standard probate process.

The Office of the Register of Wills monitors standard probate petitions through the use of alerts to ensure that they move forward to the appointment of a fiduciary. Each case is reviewed 60 days from filing, and if not completed a notice is issued to petitioners to complete standard probate within 14 days, and thereafter a recommendation to dismiss the case is submitted to the court if appropriate. This system ultimately assists in the timely disposition of these cases.

3. [Petition for Appointment of Special Administrator to Open Safe Deposit Box](#)

The court may appoint a special administrator for the sole purpose of opening a safe deposit box to retrieve a will pursuant to SCR-PD 7.1.

4. [Petition for Appointment of Special Administrator to Safeguard Assets until the Appointment of a Personal Representative](#)

The court may appoint a special administrator when necessary to protect assets prior to the appointment of a personal representative or a successor personal representative. D.C. Code, sec. 20-531(a). The

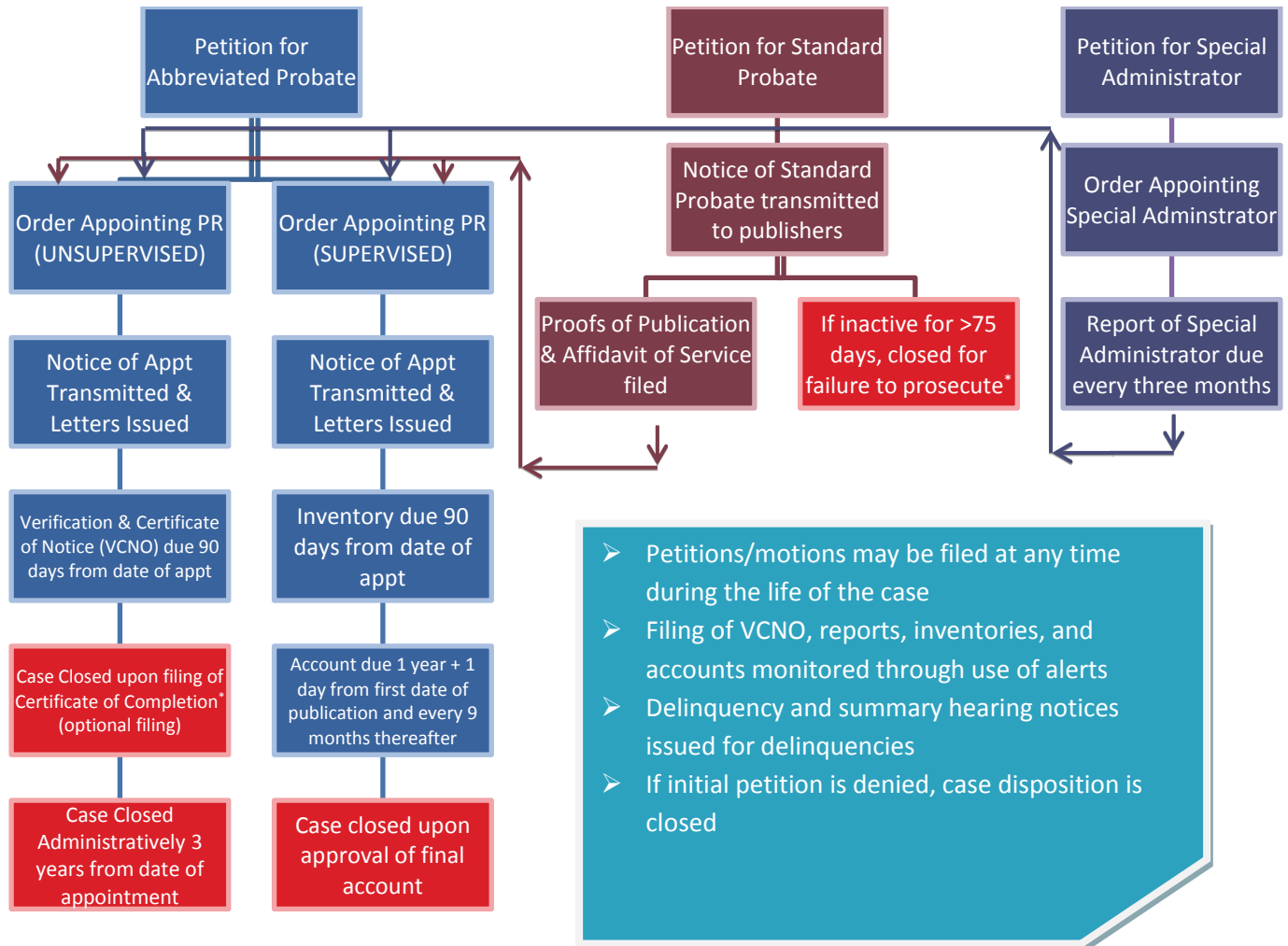
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<sup>16</sup> A petitioner may seek waiver of the filing fee by filing with Judge-In-Chambers an Application to Proceed without Prepayment of Costs, Fees, or Security (In Forma Pauperis) pursuant to SCR-Civil 54-II. The [Application to Proceed without Prepayment of Costs, Fees, or Security \(In Forma Pauperis\)](#) is available on the Probate Division's website.

<sup>17</sup> A "creditor" is a person or organization owed money by the decedent. Creditors file petitions for standard probate, usually seeking the appointment of a disinterested member of the bar as personal representative. The creditor must guarantee payment of court costs and publication costs, attorney's fees, and, if the creditor is a bank, the creditor must file a board resolution and trustee praecipe.

appointment of a special administrator is intended to be a temporary protective measure.

## Large Estates Case Flow



## Forms

The forms to open a large estate differ depending upon the date of death of the decedent. Two sets of forms are available: those for [deaths on July 1, 1995, to the present](#) and those for [deaths on and after January 1, 1981, through June 30, 1995](#). No forms are available for dates of death before January 1, 1981. Because those older cases may be complicated,<sup>18</sup> the policy of the Office of the Register of Wills is to recommend consultation with an experienced probate attorney to prepare the proper paperwork.

## Assistance to Pro Se Parties

Probate Division staff cannot provide legal advice and, with the exception of small estate petitions, cannot assist in the completion of petitions. However, unrepresented persons may meet with an experienced volunteer attorney free of charge at the Probate Resource Center every Tuesday afternoon from 12:30 to 4:30 in Room 319 in the Probate Division. The volunteer attorneys provide guidance regarding the probate process, assist in the preparation of the petition for probate and related documents, inventories and accounts, and counsel customers regarding how to distribute assets to the estate's beneficiaries. The Probate Resource Center does not assist parties in preparing pleadings other than the standard forms used for probate administration (*i.e.*, no motions, complaints, etc.).

## Where to File

Petitions to open large estates are filed at the Probate Division's Legal Branch, where an Assistant Deputy Register of Wills will review the petition to ensure that all of the necessary documents have been submitted and that the filings comply with minimum legal requirements. After the petition is accepted for filing, the petition, including a draft order and the recommendation of the Office of the Register of Wills regarding the disposition of the petition, are transmitted to a judge. The Legal Branch's time standard is to submit the petition to court within 6 business days of filing.

## The Court Order

An order signed by a judge is needed to admit the will to probate (if there is a will), appoint the fiduciary (*i.e.*, the personal representative or special administrator), determine whether the administration of the estate is to be supervised or unsupervised, approve or waive bond, and order payment of the allowances provided for by law, among other things.

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<sup>18</sup> *E.g.*, in pre-1981 cases, the court did not have jurisdiction over real estate. Rather, title passed by operation of law to heirs unless realty had to be sold to pay the decedent's debts. D.C. Code, sec. 20-109.

### 1. Appointment of Fiduciary

The court-appointed fiduciary must file an [acceptance of appointment, consent to the jurisdiction of the court, a non-resident power of attorney](#) (if applicable) that designates the Register of Wills for purposes of service of process, and a [bond](#),<sup>19</sup> if needed. D.C. Code, secs. 20-303(b) and 20-501. Letters of administration cannot be issued to certain persons described in D.C. Code, sec. 20-303(b), such as felons and illegal aliens.

### 2. Admission of Will/Codicil

Issues that may determine whether the will or a codicil to a will is admitted or denied admission to probate include:

- a. Execution—see D.C. Code, sec. 18-103.
- b. Attestation—*In re Estate of Sarah Ellen Henneghan*, 11-PR-360 (June 14, 2012) (2010 ADM 623).
- c. Copy or lost will—*Webb v. Lohnes*, 101 F.2d 242, 245 (1938), and *Clark v. Turner, et al.*, 87 U.S. App. D.C. 54, 183 F.2d 141 (1950).
- d. Additions, deletion, interlineations—may be explained by affidavit of witness and/or scrivener’s affidavit.
- e. Will contest—must be addressed by complaint (filed in LIT case type). D.C. Code, sec. 20-305 and SCR-PD 107/407.
- f. International wills—require apostille and official translation to English by embassy official and memorandum.

### 3. Supervision of Estate Administration

The administration of an estate may or may not be supervised. This decision depends on a number of facts such as the law at the time of decedent’s death, whether the fiduciary is a personal representative or a special administrator, whether the bonding company requires supervision, or the amount of time between the decedent’s death and the opening of the estate:

#### a. Personal Representative: Supervised Administration

Supervision is required when the decedent’s date of death pre-dates July 1, 1995, or when the date of death is from July 1, 1995 to present and the court issues an order requiring supervision.

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<sup>19</sup> Bond will protect the interest of estate beneficiaries—if the personal representative misappropriates or otherwise mishandles estate assets, the bonding company will repay the estate the amount lost or the amount of the bond, whichever is less. The amount of the bond purchased by the person who wishes to serve as personal representative does not include the share of anyone who has waived bond, so if the personal representative misappropriates or otherwise mishandles estates assets, anyone who waived bond will not receive a share of the bond payment.

### Filing requirements

Supervised personal representatives must file with the court inventories and accounts, which are subject to audit.

- i. Inventories are due for filing within 3 months of appointment. Proof of publication of the Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs must be filed with the inventory.
  - ii. The first account is due 1 year plus 1 day from the date of first publication of the Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs.
  - iii. Subsequent accounts are due every 9 months after the due date of the first account.
  - iv. Specific forms are required for the [inventory](#) and [accounts](#). SCR-PD 109 and 409 & 114 and 414. Both are available on the Probate Division website.
  - v. Supervised personal representatives may file a waiver of filing inventory and accounts, which will convert the administration of the estate from supervised to unsupervised. SCR-PD 415. The waiver must be accompanied by (1) proof of publication of the Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs, and (2) the personal representative's verification and certificate required by SCR-PD 403(b)(4).
- b. Personal Representative: Unsupervised Administration  
Estates of decedents who died from July 1, 1995, to the present are not supervised unless ordered otherwise. D.C. Code, sec. 20-312(a).

### Filing requirements

Unsupervised personal representatives must inventory assets and account to interested persons, but they are not required to file the inventory and accounts with the court. Instead, they must file a [Verification and Certificate of Notice](#) within 90 days of appointment, accompanied by proofs of publication of the Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs.

The Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs must be published once a week for three consecutive weeks concurrently in two newspapers of general

circulation in the District of Columbia. D.C. Code, sec. 20-704(a). This publication serves as notice of the personal representative's appointment and establishes the deadline for filing a claim against the decedent's estate or an objection to the proceedings, such as to contest the validity of the will or to establish heirship.

The personal representative should check the Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs following the first date of publication to make sure that the notice is correct and, if corrections are needed, request republication<sup>20</sup> as soon as possible to meet the 90-day statutory standard.

- c. Appointment of Special Administrator to Safeguard Assets  
This type of special administrator must file an inventory, but is not required to file an account until a personal representative is appointed in the case. Until then, the special administrator must file a report every 3 months explaining the status of the assets and reasons why a personal representative has not yet been appointed. The filing of the special administrator's inventory, report, and final account is monitored by the use of alerts in the court's case management system.
- d. Summary Hearings  
Failure to file an inventory, account, the Verification and Certificate of Notice, or special administrator report is an irregularity that is brought to the attention of the court at summary hearing after notice to the fiduciary pursuant to SCR-PD 121 and 421.

Summary hearings for failure to file inventory, Verification and Certificate of Notice, and special administrator report are held on Mondays and Fridays. Summary hearings for failure to file accounts are held on Wednesdays. The policy of the Office of the Register of Wills is to recommend removal of non-compliant fiduciaries pursuant to SCR-PD 421 ("the Court shall set a summary hearing, direct notice to the person who has not remedied the irregularity and, at the hearing, remove the person and appoint a successor, unless for good cause shown, failure to correct the irregularity or default is deemed excusable").

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<sup>20</sup> To request republication, the personal representative should file at the Probate Clerks' Office a praecipe indicating why republication is needed and attaching the corrected notice to be republished.

#### 4. Bond

The court order should address whether bond is required and, if so, in what amount, or waive bond.

If there is no will or the will does not waive bond, the law of the District of Columbia requires that any person who wishes to serve as personal representative either obtain a signed, written waiver of bond from each interested person or buy a bond from a bonding company. The bond amount should include the total value of assets plus one year's income, generally calculated at 6% and rounded to the nearest \$500.

The powers that the personal representative has over an asset may be restricted by the court in the order if, for example, the personal representative cannot supply bond for the entire value of the estate. Prior court approval will be needed thereafter before the personal representative can transact any business with respect to that asset.

#### 5. Allowances

The court order should address allowances.

If the decedent's date of death is from January 1, 1981, to April 26, 2001, decedent's spouse and minor children are entitled to the **family allowance**. D.C. Code, sec. 19-101 (1981 Ed., 1987 repl. vol.).

If the date of death is from April 27, 2001 to present, the decedent's spouse/domestic partner, minor children, dependent children and adult children may be entitled to the **family, homestead and/or exempt personal property allowances**. D.C. Code, sec. 19-101.01 through 19-101.05 (2001 Ed., 2007 pocket parts). The following should be noted:

- a. *In re Brenda Jay*, 2006 ADM 1387, provides for payment of the homestead and exempt property allowances and a family allowance not to exceed \$15,000 to the decedent's spouse even though there are adult children of the decedent who are not the children of the surviving spouse. When a minor child of the decedent lives with someone other than the decedent's surviving spouse, D.C. Code, sec. 19-101.04, provides that the family allowance may be made partially to the guardian or person having care, custody and control of the child and partially to the spouse "as their needs may appear."



- b. The estate of a post-deceased spouse is entitled to the homestead and exempt property allowances.
- c. If the decedent was not domiciled in the District of Columbia at time of death, the law of the domicile will govern allowances. D.C. Code, sec. 19-101.01.

## **Schedule of Mandatory Filings**

A copy of the signed order will be mailed to the personal representative and his or her lawyer with letters of administration and a Schedule of Mandatory Filings, which provides the deadlines by which certain documents must be filed, such as the inventory and accounts (if the personal representative is supervised) or the Verification and Certificate of Notice (if the personal representative is unsupervised). The schedule was created to assist the fiduciary, particularly non-lawyer fiduciaries.

## **Duties**

Once a person is appointed personal representative by the court, he or she must collect the decedent's assets, pay or resolve any claims or bills and the expenses of the estate proceeding, keep the interested persons informed of the progress of the estate administration, file the decedent's final tax returns, prepare an inventory and accounts, and distribute the assets to the persons entitled to receive them.

Administering an estate can be complicated. To assist the *pro se* fiduciary, the Probate Division created the following brochures, which are posted on the division's website:

- [After Death - A Guide to Probate in the District of Columbia](#)
- [Filing for the Administration of a Decedent's Estate \(ADM\) in the District of Columbia](#)
- [Inventory and Accounting Guide](#)
- [When Someone Dies/Personal Affairs Record Book](#)
- [Accounting and Inventory](#) (video)
- [Record Keeping and Filing Duties](#) (video)

## **Processing of Pleadings Subsequent to Appointment of Fiduciary**

Various motions and petitions may be filed during the administration of a decedent's estate. The time standard for the Legal Branch and the Auditing Branch to process these filings for submission to court is generally 30 days from filing. This time period includes the response period as prescribed by

SCR-Civil Rule 12-I(e) plus a short period of time for the preparation of the recommendation on disposition and one or more proposed orders for the court's consideration.

Petitions for compensation are submitted to court and accounts are audited by the Auditing Branch 45 days from date of filing.

Special attention is recommended for the following pleadings:

1. [Request for Extension of Personal Representative's Appointment.](#)  
The appointment of an unsupervised personal representative will terminate 3 years from the date of appointment. If the administration of the estate cannot be completed before that time, the personal representative may request a 12-month extension of appointment pursuant to SCR-PD 429 without prior notice to interested persons.
2. [Re-opening of estate.](#)  
Petitions to re-open an estate are filed when a case was closed by the filing of a Certificate of Completion in an unsupervised estate, when a final account was approved in a supervised estate, or when the appointment of a successor personal representative is sought.
3. [Fee petitions.](#)  
Fee petitions are required for estates of decedents who died before July 1, 1995. The rate of compensation is set by SCR-PD 124 generally at 4.5% to 8% of the assets and income of the estate for the combined fee of the personal representative and the attorney for the personal representative.

Fee petitions are not required for estates of decedents who died from July 1, 1995 to the present. Compensation must be "reasonable." Judicial review of the reasonableness of compensation claimed or paid may be requested by an interested person through the filing of an objection or a petition.

## **Termination of Appointment**

1. The appointment of an **unsupervised personal representative** terminates by either the filing of a [Certificate of Completion](#) or, if none is filed, 3 years after the date of the personal representative's appointment. D.C. Code, sec. 20-1301(b)(c).

2. In a **supervised estate**, the approval of the final account will close the case. The personal representative must petition to terminate his or her appointment. D.C. Code, sec. 20-1301(a).
3. The appointment of a **special administrator appointed to open a safe deposit to retrieve the will** generally terminates 30 days after the appointment or earlier, if a will is located in the safe deposit box and filed with the court.
4. The appointment of a **special administrator appointed to marshal and protect assets** terminates upon approval of the special administrator's final account.

### **Performance Measures**

The court's time-to-disposition standard calls for the closure of large and small estate proceedings as follows:

- 30% within 395 days from filing
- 75% within 1125 days from filing
- 98% within 1490 days from filing.

## SMALL ESTATE PROCEEDINGS (SEB)

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### When to Open

A small estate (SEB) case may be opened for a person domiciled in the District of Columbia who died after April 26, 2001, with assets having a total value of \$40,000.00 or less<sup>21</sup> in his or her sole name and/or real estate only in another jurisdiction. A personal representative will be appointed by the court to marshal assets, pay claims, and make distribution. Letters of administration are not issued in small estate cases. Instead, a final order is issued by the court that specifically identifies the decedent's assets, authorizes the release of the assets to the personal representative, and directs how distribution, including payment of claims, if any, is to be made. Small estate proceedings generally take no more than 150 days from the date of filing of the petition to the issuance of the final order.

Small estates are governed by D.C. Code, secs. 20-351 through 20-357.

### How to Open

A [petition for administration of small estate](#) may be filed by a person having priority to serve as personal representative pursuant to D.C. Code, sec. 20-303.<sup>22</sup> Sometimes a person of lower priority may file for abbreviated probate in accordance with *In re James Kirkpatrick*, 1996 ADM 1638, by having as co-petitioner a person with highest priority to serve and filing renunciations<sup>23</sup> by all other "interested persons"<sup>24</sup> having higher priority.

Standard probate is needed when the petitioner does not have the highest priority to serve or is a creditor or when the will is irregular on its face. Standard probate requires publication of the [Notice of Standard Probate](#).

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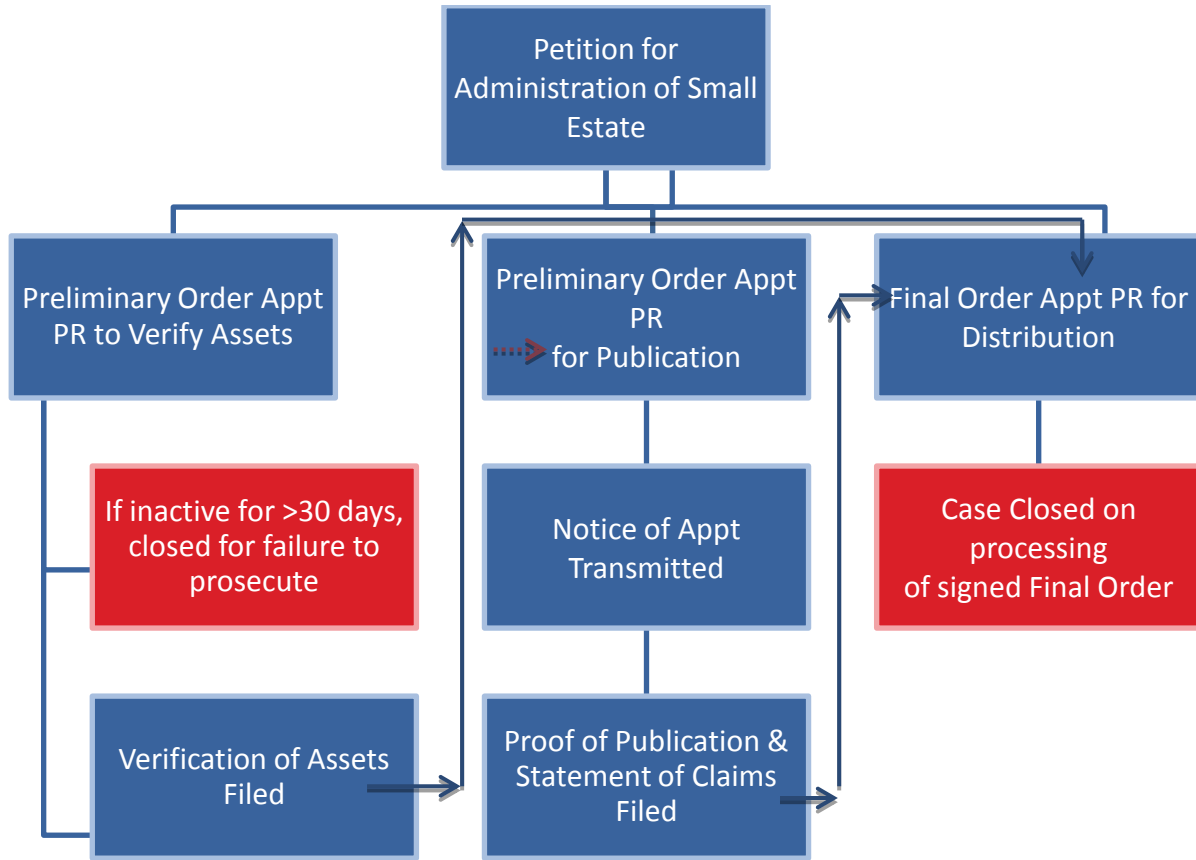
<sup>21</sup> If the person died between July 1, 1995, and April 26, 2001, the value of the estate must be \$15,000.00 or less to qualify as a small estate. If the person died between January 1, 1981, and June 30, 1995, the value of the estate must be \$10,000 or less.

<sup>22</sup> In testate cases (*i.e.*, where a decedent dies with a will), the person nominated in the will to serve as personal representative has priority to file a petition for probate and serve as personal representative. If there is no will, the person who is the decedent's next of kin has priority to file a petition for probate to open the decedent's estate and serve as personal representative.

<sup>23</sup> Any person who has highest priority to serve and is choosing not to do so may sign a renunciation. The renunciation form is available on the Probate Division website. The renunciation is different from the consent (also available on website) in that the consent lacks the language that indicates that the person knows that he/she has higher priority to serve and is still choosing not to do so.

<sup>24</sup> "Interested persons" are defined in D.C. Code, sec. 20-101(d)(1) to include a personal representative nominated in a will; the court-appointed personal representative; a legatee; an heir; and a creditor of the decedent.

## Small Estate Case Flow



- Petitions/motions may be filed at any time during the life of the case
- Filing of verification of assets monitored through use of alerts

## Forms

The [petition for administration of small estate](#) is available on the Probate Division's website, as well as a [list of items](#) the filer will need to bring at the time of filing, such as the death certificate, the funeral bill (with receipts), and proof of assets and debts. The filing fee depends on the value of the estate. SCR-PD 425.

## Assistance to Pro Se Parties

Because small estate cases may be complicated and are designed to open and close quickly, small estate specialists are available in the Legal Branch of the Probate Division to assist with the preparation of the petition.

## Where to File

Petitions to open small estates are filed at the Probate Division's Legal Branch, where a small estate specialist will review the petition to ensure that all of the necessary documents have been submitted and that the filings comply with minimum legal requirements. After the petition is accepted for filing, the petition, including a draft order and the recommendation regarding the disposition of the petition, are transmitted to a judge. The Legal Branch's time standard is to submit the petition to court within 15 days of filing.

## The Court Order

One of three court orders may issue in response to a petition to open a small estate:

1. Preliminary Order for Verification of Assets

If the petitioner does not have access to the decedent's safe deposit box or any or all of the information needed to confirm the decedent's ownership of certain assets or the value of those assets, the court may appoint a special administrator with authority to receive that information. The special administrator must file a [Verification of Assets](#) (and copies of the bank statement or other evidence of value) by the deadline specified by the court, usually 30 days. Failure to file the verification may result in the dismissal of the small estate petition and closure of the case.

2. Preliminary Order for Publication

The facts of the case may call for the appointment of a personal representative and the publication of the [Notice of Appointment, Notice to](#)

[Creditors and Notice to Unknown Heirs](#)<sup>25</sup>. This decision depends on who survived the decedent and the value of the estate:

- a. If decedent is survived by spouse or minor children, publication is not required because there will be no assets remaining after reimbursement of court costs and funeral expenses and payment of attorney's fees (if any) and the homestead, family, and exempt property allowances. This is because the maximum value of a small estate (\$40,000.00) is equal to the sum of these three allowances.
- b. If decedent is survived by adult children only:
  - i. Publication is not required if assets are valued at or under \$11,550.00 because there should be no assets remaining after reimbursement of court costs and funeral expenses and payment of attorney's fees (if any) and the exempt property allowance.
  - ii. Publication is required if assets are valued in excess of \$11,550.00.
- c. If the decedent is not survived by spouse or children:
  - i. Publication is not required if the assets are valued at or under \$1,500.00, because there should be no assets remaining after reimbursement of court costs and funeral expenses, and payment of attorney's fees (if any).
  - ii. Publication is required if the assets exceed \$1,500.00.
- d. Publication costs must be submitted to the small estate specialist at the time of filing. The Office of the Register of Wills will arrange for the transmission of the Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs and forward the payment of publication costs to the newspapers.

When publication of the Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs is necessary, the court will issue an order appointing a personal representative and requiring publication.

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<sup>25</sup> D.C. Code, sec. 20-704 requires personal representatives to mail by registered or certified mail to the heirs, legatees, and creditors of the decedent a copy of the notice. However, to ensure that mailing occurs, the policy of the Office of the Register of Wills is for the Legal Branch to mail the notice on their behalf. The proofs of publication of the notice are mailed directly to the small estate specialist who, as a courtesy, collects payment of publication costs from the petitioner at the time of filing.

### 3. Final Order

The final order provides authority to the personal representative to collect specific assets and to transfer or distribute them to specific persons.

If a person died with a will, the original of the will should be filed. However, the will will be admitted to probate only if assets remain after reimbursement of funeral expenses and payment of any allowances in accordance with D.C. Code, sec. 20-353(a)(4).

### **Performance Measures**

The court's time-to-disposition standard calls for the closure of large and small estate proceedings as follows:

- 30% within 395 days from filing
- 75% within 1125 days from filing
- 98% within 1490 days from filing.



## FOREIGN ESTATE PROCEEDING (FEP)

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### When to Open

A foreign estate (FEP) case may be opened for persons who died after December 31, 1980, domiciled outside of the District of Columbia but owning assets in the District of Columbia at time of death. The personal representative appointed by the court in the jurisdiction of domicile must open a foreign estate proceeding in the District of Columbia before that person will have authority to collect and distribute any of the assets located in the District of Columbia. Because the primary estate is not being opened in the District of Columbia, a personal representative is not appointed in D.C. and letters of administration are not issued.

Foreign estates are governed by D.C. Code, secs. 20-341 through 20-344.

### How to Open

The foreign personal representative must file the following documents:

1. If the estate has been opened in the United States, recent<sup>26</sup> copies of the documents filed in the other jurisdiction, including the petition, the will (if any), the order of appointment, and letters of administration, authenticated pursuant to 28 U.S. Code, sec. 1738. Such authentication is commonly referred to as a "triple-sealed" or "exemplified" copy. (Certified copies are not acceptable.)

If the estate has been opened in another country, the same documents are required and must be authenticated in accordance with the provisions of SCR-Civil Rule 44(a)(2), which requires that a certificate known as an apostille be affixed or attached to the document. For countries belonging to the *Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents*, foreign documents certified by an apostille are entitled to recognition without further authentication.

2. [Appointment of Agent to Accept Service of Process](#) form with the original signature of each personal representative and an original signature of the agent located in the District of Columbia. This document must be filed even if one or all of the personal representatives live or work in the District of Columbia and is willing to act as agent.
3. [Notice of Appointment of Foreign Personal Representative and Notice to Creditors](#) with the original signature of each personal representative.

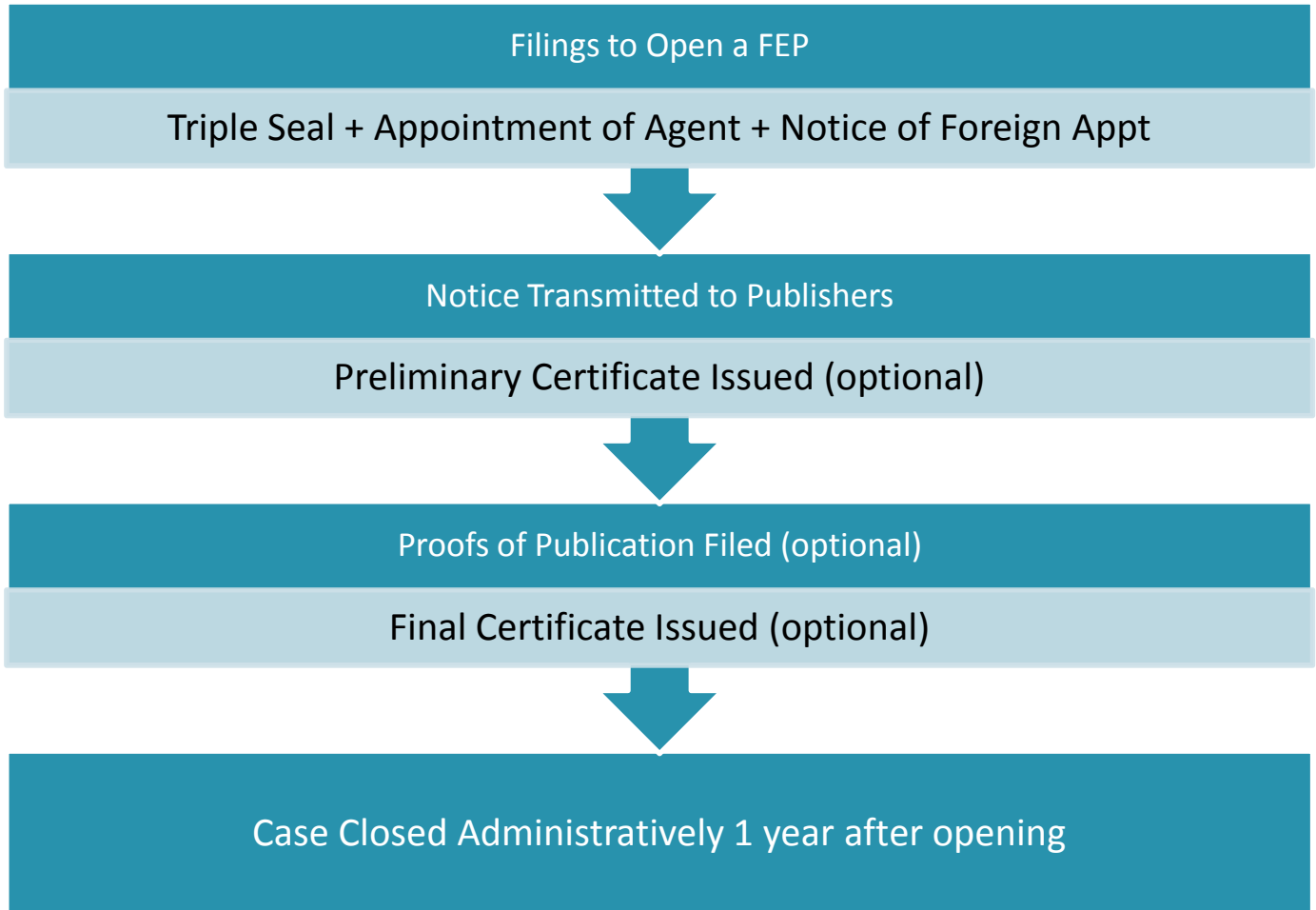
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<sup>26</sup> Dated within 60 days of filing with the Probate Division.

The notice will be published once a week for three consecutive weeks in two newspapers of general circulation in the District of Columbia, one of which must be a legal newspaper. D.C. Code, sec. 20-343(a). The only legal newspaper known to the Probate Division is the Washington Law Reporter; the petitioner must research and identify the second newspaper to be used. The Probate Division will transmit the Notice of Appointment of Foreign Personal Representative and Notice to Creditors to those newspapers via email. Proof of transmission by way of the sent email is imaged in the case docket. The newspapers bill the personal representative directly.

The foreign estate case will be opened upon filing of these items and payment of the \$25.00 filing fee.

## Foreign Estate Proceeding Case Flow



➤ Petitions/motions and claims may be filed at any time during the life of the case

## Forms

The [Appointment of Agent to Accept Service of Process](#) and the [Notice of Appointment of Foreign Personal Representative and Notice to Creditors](#) are available on the division's website.

## Where to File

Documents to open foreign estate cases are filed at the Probate Division's Legal Branch.

If the documents are accepted for filing and the filing fee is paid, the Probate Division will transmit the Notice of Appointment of Foreign Personal Representative and Notice to Creditors to the two publications chosen by the filer. The filer can request a Preliminary Certificate, which costs \$1.00. The Preliminary Certificate verifies that the authenticated papers have been filed and a foreign estate has been opened.

If no claims<sup>27</sup> are filed, the Probate Division will issue a Final Certificate (also known as a "Certificate of No Claims") after the six-month period set forth in the Notice of Appointment of Foreign Personal Representative and Notice to Creditors and the filing of the original proofs of publication with the Probate Division upon request and the payment of a \$10.00 fee. D.C. assets ordinarily cannot be removed or transferred until after the six-month notice period has expired, the proofs of publication have been filed, and a Final Certificate has been obtained unless bond has been posted. D.C. Code, sec. 20-343 sets forth special requirements for transferring assets before the six-month period has expired.

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<sup>27</sup> D.C. Code, sec. 20-343(d) establishes the right of creditors to file claims in a foreign proceeding. Where no claim has been filed in the foreign proceeding, the following Court of Appeals' decisions suggest that the court can entertain such claims: *Estate of Francisco Coll Monge*, 02-PR-456, decided February 5, 2004 (found that 106 persons who filed claims in an estate proceeding in Puerto Rico had the same status with regard to distribution of the proceeds of an asset in D.C. as a person who filed and perfected her claim in the foreign estate proceeding in D.C.); and *Richard v. McGreevy*, 136 DWLR 170 at pp. 1917-1919 (D.C. 9/2/08)(found that a creditor or claimant may file suit in D.C. against a foreign personal representative if the foreign personal representative has actual knowledge of a claim barred in another jurisdiction that does not rise to the level of a "final judgment" under the Full Faith and Credit Clause of the United States Constitution).

## WILLS (WIL)

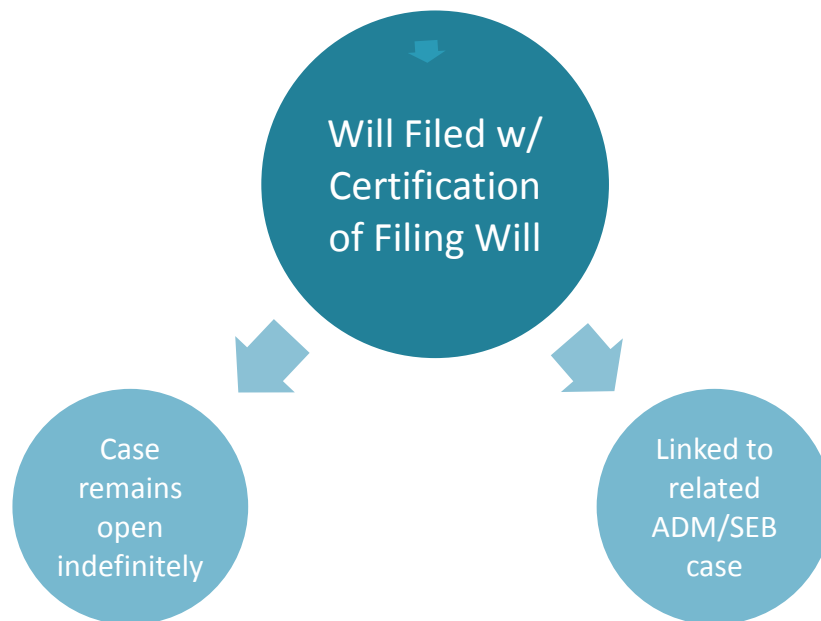
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### How, When and Where to Open

A will (WIL) case is opened when a will is filed with the Probate Division's Probate Clerk's Office after the death of the testator.<sup>28</sup> The will should be original and executed in accordance with the law of the District of Columbia, including Title 18 of the District of Columbia Code. A copy of the will may be filed where the original is not available. The will should be filed within 90 days after the death of the testator with a [Certificate of Filing Will](#). An [Affidavit of Witness](#) may be filed to explain any irregularity contained in the will. The will, the Certificate of Filing Will, and the Affidavit of Witness are filed in a WIL case jacket, assigned a WIL case number, and linked to the applicable decedent's estate case type.

Wills have no legal effect until admitted to probate by a court order. D.C. Code, sec. 20-302(a).

### Will Case Flow



➤ If misfiled, filer may seek Court order to transfer will to another jurisdiction.

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<sup>28</sup> "Testator" is a person who died having created a will prior to death.

## DISCLAIMERS (DIS)

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### When to Open

D.C. Code, sec. 19-1502 defines a disclaimer as the refusal to accept an interest in or power over property. The effect of a disclaimer is to extinguish the interest in a property as if it had never been granted and to allow the interest to pass to an alternate beneficiary. The law regarding disclaimers may be found in Title 19 of the D.C. Code, Chapter 15.

Disclaimer (DIS) cases remain open indefinitely.

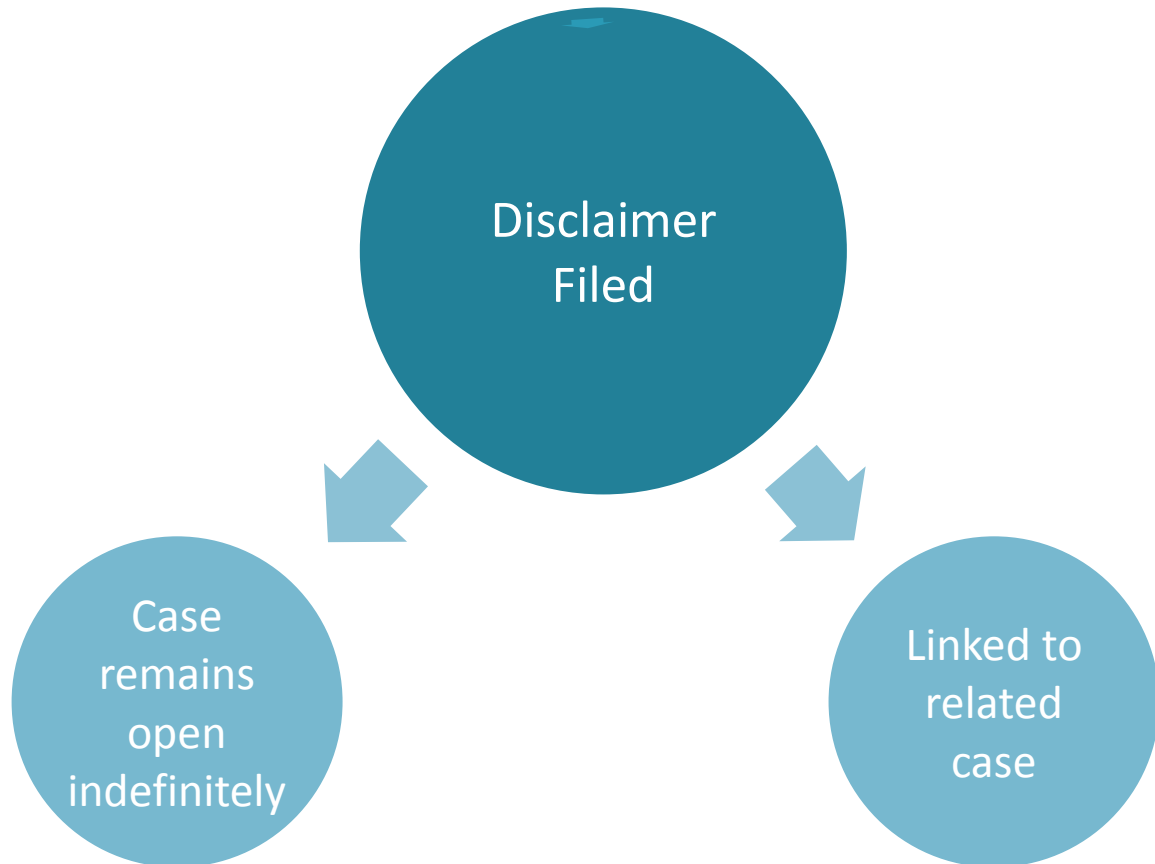
### How to Open

The filing of a disclaimer in the Probate Division opens a DIS case. There is no disclaimer form and there are many types of interests that may be disclaimed. The filer does not have to wait until a decedent's estate is opened in order to file a disclaimer.

The disclaimer must:

1. Be in a writing or other record;
2. Declare the disclaimer;
3. Describe the interest or power disclaimed;
4. Be signed by the person making the disclaimer;
5. Be delivered or filed in the manner provided by D.C. Code, sec. 19-1512;
6. Include the telephone number and street address of the person who is disclaiming; and
7. Be filed with a [Certificate of Filing Disclaimer](#), which is available on the Probate Division's website.

## Disclaimer Case Flow



### Where to File

The disclaimer and Certificate of Filing Disclaimer are reviewed by the Probate Division's Legal Branch, where an Assistant Deputy Register of Wills will ensure that they comply with minimum legal requirements. Once accepted for filing, the Probate Clerk's Office will perform a search to determine whether an estate case has been filed and, if so, will link the DIS case to the estate case and enter a copy of the disclaimer into the docket in the estate case.

# Cases Involving the Incapacitated

Five distinct case types involve the incapacitated:

1. [Intervention Proceedings \(INT\)](#)
2. [Intervention/Developmental Disability \(IDD\)](#)
3. [Former Adult Conservatorships \(CON\)](#)
4. [Foreign Intervention Proceedings \(FOI\)](#)
5. [Guardianships of Minor's Estates \(GDN\)](#)

These cases generally account for roughly one-third of the Probate Division's active, open caseload. Each case type is addressed separately below.



## INTERVENTION PROCEEDINGS<sup>29</sup> (INT and IDD)

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### When to Open

An intervention (INT) case is opened for a person 18 years of age or older who lives in the District of Columbia, is alleged to be incapacitated and in need of the assistance of a **guardian**<sup>30</sup> or a **conservator**<sup>31</sup> or both. Family members, friends, hospitals, and other persons interested in the welfare of the allegedly incapacitated person may file the petition for general proceeding.

Intervention/Developmental Disability (IDD) cases are opened when petitions for the appointment of a health care guardian are filed by the District of Columbia Department of Disability Services (DDS) and others for DDS consumers who are believed to be incapacitated and in need of a guardian for health care decisions only. Conservators are not usually appointed in IDD cases.

### How to Open

One of the following petitions may be filed to open an INT/IDD case:

#### 1. Petition for Temporary Guardian

A petition for appointment of temporary guardian may be filed when an allegedly incapacitated adult is experiencing a life-threatening situation or a situation involving emergency medical care. The incapacity of the subject must be certified by two professionals, one of whom must have examined the subject within one day preceding the certification in accordance with D.C. Code, sec. 21-2204.

There are three kinds of temporary guardians:

- an emergency 21-day guardian
- a temporary 90-day health care guardian for as long as 180 days, and
- a provisional guardian for as long as six months.

D.C. Code, sec. 21-2046 and SCR-PD 341.

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<sup>29</sup> As of March 31, 2014, approximately 2,909 intervention proceedings are pending before the Probate Division. It is noted that the number of new case filings has grown significantly in recent years.

<sup>30</sup> A guardian is responsible for making health care, quality of life, placement (housing), and legal decisions for the ward. The guardian is required to visit the ward monthly and to file a detailed report of the ward's status every six months.

<sup>31</sup> A conservator manages the income or assets of the ward for the support, care, and welfare of the ward so that they will not be wasted or dissipated. The conservator is required to file an account annually, which is subject to a comprehensive audit.

The petition for temporary guardianship is reviewed by the Probate Division's Legal Branch to ensure that all of the necessary documents have been submitted and that the filings comply with minimum legal requirements. If accepted for filing, the petition for an emergency 21-day guardian or a temporary 90-day health care guardian is docketed and scanned at the Probate Clerk's Office and the petitioner is then directed to the Office of Judge-in-Chambers, 500 Indiana Ave., NW, Room 4220, for an expedited hearing. Petitions for provisional guardians are heard as soon as possible by the assigned Probate Division case judge.

Forms:

The [Petition for Appointment of Temporary Guardian and Order Appointing Temporary Guardian](#) are posted on the Probate Division's website.

2. Petition for General Proceeding

The petitioner must file a petition for a general proceeding to appoint a guardian and/or conservator. The petitioner is encouraged to provide medical evidence of incapacity by attaching medical records or examiner reports<sup>32</sup> to the petition for general proceeding. The *Notice of Initial Hearing* should be filed with the petition for general proceeding and draft orders appointing counsel and if appropriate, an **examiner**,<sup>33</sup> a **guardian ad litem**,<sup>34</sup> and/or a **visitor**.<sup>35</sup>

Forms:

The forms needed to open an intervention proceeding are listed and posted on the Probate Division's website. They include:

- [Petition for a General Proceeding](#)
- [Order Appointing Counsel, Examiner, Visitor and/or Guardian ad litem](#)
- [Order Appointing Counsel \(subject outside the metropolitan area\)](#)
- [Notice of Initial Hearing for Subject](#)

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<sup>32</sup> Sensitive information and documents such as medical records are placed in the public record unless sealed by court order. The petitioner may request protection in the petition for general proceeding or in a motion to seal. A form motion to seal has been created and placed on the court's website as a courtesy to the public.

<sup>33</sup> An examiner is defined in D.C. Code, sec. 21-2011(7) as an "individual qualified by training or experience in the diagnosis, care, or treatment of the causes and conditions giving rise to the alleged incapacity, such as a gerontologist, psychiatrist, or qualified mental retardation professional."

<sup>34</sup> A guardian *ad litem* helps the subject determine the subject's interests in regard to the petition for a general proceeding. If the subject is unconscious or otherwise wholly incapable of determining his or her interests even with assistance, the guardian *ad litem* makes that determination.

<sup>35</sup> A visitor is an officer, employee, or special appointee of the court who has no personal interest in the proceeding and who serves as an independent investigator, reports to the court on the subject's current situation and living conditions, and provides an opinion regarding the circumstances surrounding the subject. D.C. Code, sec. 21-2011(7).

- [Notice of Initial Hearing for Parties](#)
- [Personal Identification Information \(Form 26\)](#)<sup>36</sup>
- [Financial Account Information \(Form 27\)](#)<sup>37</sup>

There is no filing fee for a petition requesting the appointment of a guardian. There is a filing fee of \$45.00 if a conservator or protective order is requested.<sup>38</sup>

When the petition for a general proceeding is filed, it is reviewed by the Probate Division’s Legal Branch to ensure that all of the necessary documents have been submitted and that the filings comply with minimum legal requirements. After the petition is accepted for filing, the filer will go to the Probate Clerk’s Office to obtain a hearing date, which is generally set within 30 to 45 days. The petition then is transmitted by the Legal Branch to a judge for appointment of counsel for the subject and, if necessary, the appointment of examiner, visitor and/or guardian *ad litem*. The Legal Branch’s time standard is to submit the petition to court within 6 business days of filing.

### 3. Petition for Temporary Relief

In situations involving financial abuse, the petitioner may request temporary relief in the petition for general proceeding “to preserve and apply the property of the individual to be protected as may be required for support of the individual or dependents of the individual” in accordance with D.C. Code, secs. 21-2044(d) and 21-2055(b)(1). Details that support the allegation of financial abuse should be provided so that the judge may determine if an earlier hearing is warranted. If ordered, a hearing on temporary relief will be scheduled between the time of filing and the hearing already scheduled regarding the petition for general proceeding.

#### Forms:

The [Petition for General Proceeding](#) and [Order Regarding Temporary Relief Request](#) are posted on the Probate Division’s website.

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<sup>36</sup> Required by Administrative Order 04-14 (June 23, 2004).

<sup>37</sup> SCR-PD 5.1(1)(c).

<sup>38</sup> A petitioner may seek waiver of the \$45.00 filing fee by filing an Application to Proceed without Prepayment of Costs, Fees, or Security (In Forma Pauperis) pursuant to SCR-Civil 54-II. The [Application to Proceed without Prepayment of Costs, Fees, or Security \(In Forma Pauperis\)](#) is available on the Probate Division’s website. The petitioner should bring the Application and the petition requesting appointment of a conservator or a protective order to an Assistant Deputy Register of Wills in the Legal Branch for review. The petitioner will then be directed to the Office of Judge-in-Chambers, 500 Indiana Ave., NW, Room 4220, for an expedited hearing.

#### 4. Petition Regarding a Missing, Disappeared, or Detained Person

Though rarely filed, a petition to appoint a conservator or for a protective order may be filed for a “missing person,” defined as a person detained by a foreign power or by someone other than a foreign power or for a person who has disappeared. D.C. Code, sec. 21-2051(b) and SCR-PD 350(a). The petition may be filed by any person interested in the estate, affairs, or welfare of the missing person. SCR-PD 350(b).

##### Forms:

The following forms are posted on the Probate Division’s website:

- [Petition Regarding a Missing, Disappeared, or Detained Person](#)
- [Order Setting a Hearing and Directing Publication of Notice of Hearing on Petition Regarding a Disappeared, Missing, or Detained Person](#)
- [Notice of Hearing on Petition for Appointment of a Conservator or Entry of a Protective Order](#)
- [Personal Identification Information \(Form 26\)](#)
- [Financial Account Information \(Form 27\)](#)

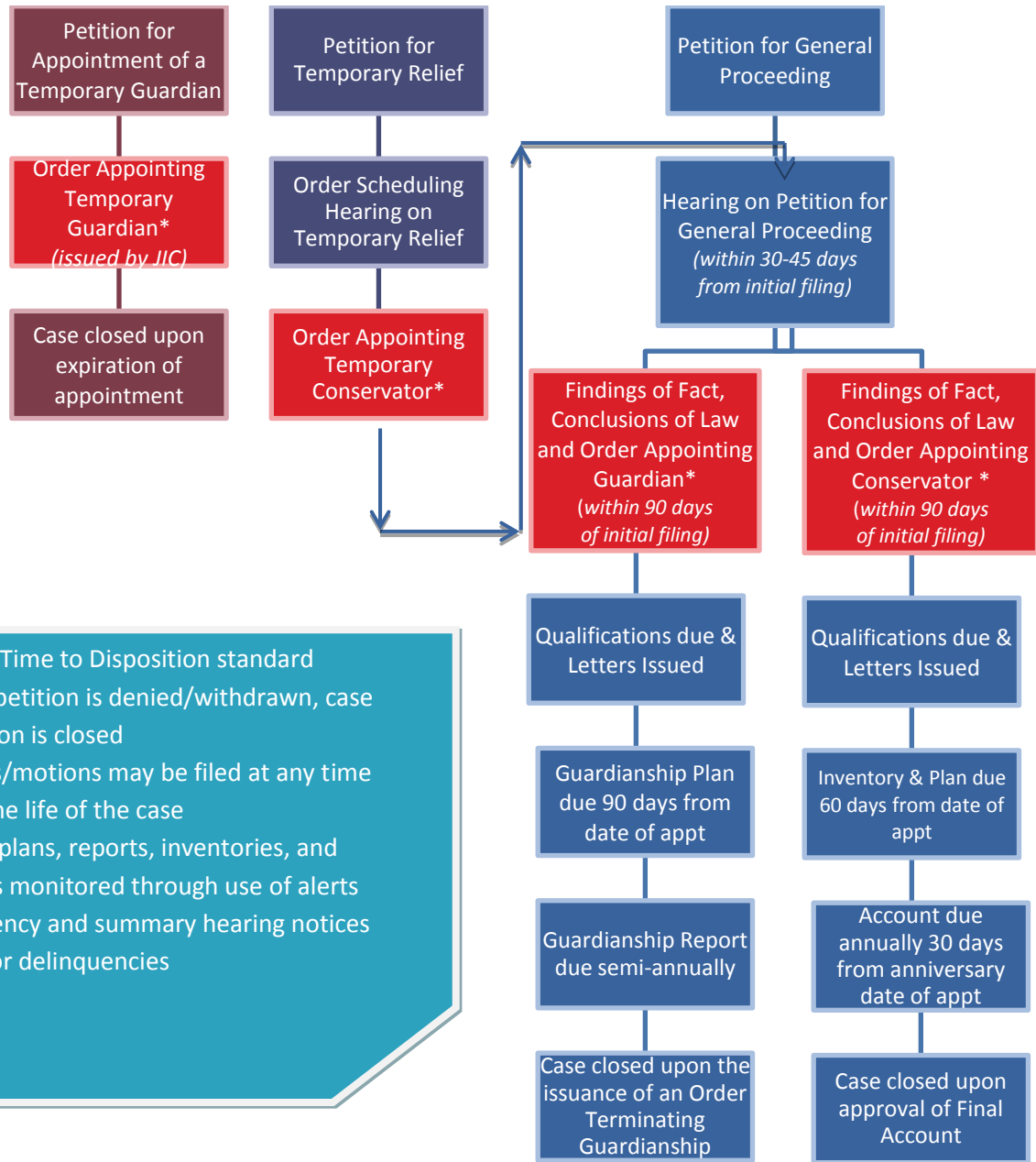
### **Performance Measures**

The court’s time-to-disposition standard calls for the resolution of the petition for general proceeding filed in an INT/IDD case by the withdrawal of the petition, the appointment of a fiduciary, or the denial of the petition and the dismissal of the case as follows:

- 75% within 60 days from filing
- 98% within 90 days from filing.

For cases that are set for trial, the court’s goal is to hold the trial on the first date that a trial is scheduled, and to grant trial continuances only upon a showing of good cause. In so doing, the court seeks to establish credible trial dates, to encourage proper preparation by all parties, to help to assure effective use of court resources, and to further the interests of litigants and the public in the timely and just resolution of all cases.

## Intervention Proceedings Case Flow



- \*90-day Time to Disposition standard
- If initial petition is denied/withdrawn, case disposition is closed
- Petitions/motions may be filed at any time during the life of the case
- Filing of plans, reports, inventories, and accounts monitored through use of alerts
- Delinquency and summary hearing notices issued for delinquencies

## Assistance to Pro Se Parties

Probate Division staff cannot provide legal advice and cannot assist in the completion of petitions. However, unrepresented persons may make an appointment to meet with a volunteer attorney free of charge at the Probate Resource Center every Wednesday afternoon in Room 301 in the Probate Division. Experienced volunteer lawyers assist in the preparation of petitions for general proceeding to open a case and petitions post-appointment to raise issues in pending cases. To request an appointment, contact the Probate Clerk's Office at 202-879-9460 or the Information Desk clerk at 202-879-9476. Persons seeking assistance from the Probate Resource Center are limited to two appointments.

## Where to File

Petitions for general proceeding, temporary guardianship, temporary relief, and petitions regarding a missing, disappeared, or detained person are filed at the Probate Division's Legal Branch, where an Assistant Deputy Register of Wills will review the petition to ensure that all of the necessary documents have been submitted and that the filings comply with minimum legal requirements.

## Pre-hearing Orders

### 1. Order appointing counsel

The subject of an intervention proceeding is entitled to counsel. D.C. Code, secs. 21-2041(d) and 21-2054(a). Accordingly, every petition to open an intervention proceeding that is submitted to court is accompanied by an order appointing counsel. Usually, counsel is appointed from the [Fiduciary Panel](#), which is a list of attorneys available for appointment to serve as fiduciaries, counsel, guardian *ad litem*, or visitors in the Probate Division. The court-appointed counsel is expected to file a praecipe or notice entering his or her appearance.

The subject of the proceeding may choose to retain counsel. Retained counsel must file a praecipe or notice entering his or her appearance that should state whether counsel was retained subsequent to the appointment of counsel by the court. It must be served on all persons entitled to notice, court-appointed counsel, and any court-appointed examiner, visitor, and/or guardian *ad litem*. Unless an objection is filed to retained counsel's notice of appearance within 10 days of filing, his or her appearance is effective in 10 days and the appearance of court-appointed counsel is terminated. SCR-PD 305(b).

The duties and responsibilities of counsel are outlined in D.C. Code, sec. 21-2033(b), SCR-PD 305 and 321(d), and [Probate Practice Standard #3](#).

2. Order appointing examiner

An examiner is an “individual qualified by training or experience in the diagnosis, care, or treatment of the causes and conditions giving rise to the alleged incapacity, such as a gerontologist, psychiatrist, or qualified mental retardation professional.” D.C. Code, sec. 21-2011(7).

The petitioner may ask for the appointment of an examiner. The court maintains an [Examiners List](#) from which an appointment of examiner may be made.

3. Order appointing visitor

A visitor is an officer, employee, or special appointee of the court who has no personal interest in the proceeding and who serves as an independent investigator, reports to the court on the subject’s current situation and living conditions, and provides an opinion regarding the circumstances surrounding the subject. D.C. Code, sec. 21-2011(7). The duties and responsibilities of a visitor are outlined in D.C. Code, sec. 21-2033(c) and SCR-PD 327, and [Probate Practice Standard #5](#).

The court maintains a [Visitors List](#) from which an appointment of visitor may be made.

4. Order appointing guardian *ad litem*

A guardian *ad litem* helps the subject determine the subject’s interests with regard to the petition for a general proceeding. If the subject is unconscious or otherwise wholly incapable of determining his or her interests even with assistance, the guardian *ad litem* makes that determination. The need for such an appointment depends upon the circumstances of the case. The duties and responsibilities of a guardian *ad litem* are outlined in D.C. Code, sec. 21-2033(a) and SCR-PD 306, and [Probate Practice Standard #4](#). Usually, guardians *ad litem* are appointed from the Fiduciary Panel.

5. Order regarding temporary relief

In situations involving financial abuse, the petitioner may request temporary relief in the petition for general proceeding “to preserve and apply the property of the individual to be protected as may be required for support of the individual or dependents of the individual.” D.C. Code, secs. 21-2044(d) and 21-2055(b)(1). Details that support the allegation of financial abuse should be provided so that the judge may determine if

a hearing is warranted. The hearing on temporary relief, if ordered, is usually scheduled within 10 days.

#### 6. Discovery

An order authorizing discovery may also be issued pursuant to a petition to conduct discovery. SCR-PD 312.

### **The Initial Hearing**

The hearing on the petition for general proceeding (“initial hearing”) is generally scheduled for a date that is between 30 to 45 days from the date of filing.<sup>39</sup> This time period allows for personal service of the Notice of Initial Hearing on the subject of the intervention proceeding within 14 days of the hearing. SCR-PD 311(c). The subject may not waive notice. SCR-PD 311(d). Sometimes a request to schedule the initial hearing within 20 days may be accommodated if the filer assures timely due process.

Issues at the initial hearing include:

#### 1. Jurisdiction

The subject of the proceeding must be 18 years or older, and the District of Columbia must be:

- a. The subject’s “home state” as defined in guardian D.C. Code, sec. 21-2402.01(a)(2)<sup>40</sup>, or
- b. A significant connection state as defined in D.C. Code, sec. 21-2402(a)(3), or
- c. Neither, but the home state and all significant connection states decline to exercise jurisdiction and jurisdiction in D.C. is more appropriate and consistent with Title 11 and the Constitution, or
- d. Special jurisdiction exists in accordance with D.C. Code, sec. 21-2402.04, to:

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<sup>39</sup> The court’s time-to-disposition standard calls for the resolution of the petition for general proceeding filed in an INT/IDD case by the withdrawal of the petition, the appointment of a fiduciary, or the denial of the petition and the dismissal of the case, as follows:

- 75% within 60 days from filing
- 98% within 90 days from filing

<sup>40</sup> Section 21-2402.01(a)(2) defines “home state” as “(A) The state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for a protective order of the appointment of a guardian; or (B) If none, the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months prior to the filing of the petition.”



- i. Issue a protective order regarding real or tangible personal property located in D.C., or
- ii. Appoint a guardian or conservator for whom a provisional order to transfer a proceeding from another state has been issued.

## 2. Service of Process

The subject of the proceeding must have been *personally* served with the notice of initial hearing and petition by an adult other than the petitioner at least 14 days before the hearing. D.C. Code, sec. 21-2031; SCR-PD 311(c)(3).

- a. The subject may not waive notice, though others may do so in writing. D.C. Code, secs. 21-2032 and 21-2042; SCR-PD 311(d).
- b. Proof of service of the notice (by affidavit) must be filed at court no later than the time set for the hearing. SCR-PD 311(c)(6).

## 3. Presence of Subject at Hearing

The subject of the proceeding must be present at the initial hearing unless good cause is shown for his or her absence. D.C. Code, secs. 21-2041(h) and 21-2054(e).

## 4. Incapacity

Petitioner must prove by clear and convincing evidence that the subject is incapacitated within the meaning of D.C. Code, sec. 21-2011(11),<sup>41</sup> (15),<sup>42</sup> and (16).<sup>43</sup> D.C. Code, sec. 21-2003.

## 5. Appointment of Guardian

If incapacity is proven, the court may appoint a guardian if there appears to be no less restrictive alternative to the appointment of a guardian and if the appointment is necessary as a means of providing continuing care

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<sup>42</sup> “‘Incapacitated individual’ means an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to manage all or some of his or her financial resources or to meet all or some essential requirements for his or her physical health, safety, habilitation, or therapeutic needs without court-ordered assistance or the appointment of a guardian or conservator.”

<sup>42</sup> “‘Manage financial resources’ means those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits and income.”

<sup>43</sup> “‘Meet essential requirements for physical health or safety’ means those actions necessary to provide health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness is more likely than not to occur.”

and supervision to the incapacitated individual. D.C. Code, sec. 21-2044(a) and (b).

- a. D.C. Code, sec. 21-2043 outlines the persons who have priority to be appointed as guardian.
- b. D.C. Code, sec. 21-2043(d) allows the court to pass over any person with priority to serve as guardian if doing so serves the best interest of the ward.<sup>44</sup>
- c. The powers of the guardian may be limited; those limitations must appear on the guardian's letters of appointment. D.C. Code, sec. 21-2044(c).
- d. The guardian must visit the ward at least once a month, as is required by D.C. Code, sec. 21-2043(e)(2), unless this requirement is altered by the court.
- e. The guardian must file an acceptance of appointment and consent to jurisdiction before letters of appointment will issue. D.C. Code, sec. 21-2045. Failure to do so will result in the setting of a summary hearing at which time the guardian may be replaced.

## 6. Appointment of Conservator

If incapacity is proven, the court may appoint a conservator if there appear to be no less restrictive alternative to the appointment of a conservator and if the court determines:

- a. The protected individual<sup>45</sup> has property that will be wasted or dissipated unless property management is provided, or
- b. Money is needed for the support, care, and welfare of the protected individual or the protected individual's dependents.  
D.C. Code, secs. 21-2051(b) and 21-2055(a)
- c. As an alternative to the appointment of a conservator, the court may authorize a protective arrangement, such as creation of a trust or the sale or transfer of property, or other transaction affecting property or business affairs. D.C. Code, sec. 21-2056(a) and (b). A special conservator may be appointed to facilitate these matters. D.C. Code, sec. 21-2056(c).

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<sup>44</sup> A "ward" is a person for whom a guardian has been appointed.

<sup>45</sup> A "protected individual" is a person for whom a conservator has been appointed.

- d. D.C. Code, sec. 21-2057 outlines the persons who have priority to be appointed as conservator.
- e. D.C. Code, sec. 21-2057(b) allows the court to pass over any person with priority to serve as conservator if doing so serves the best interest of the ward.
- f. The conservator must file an acceptance of appointment and consent to the jurisdiction of the court and should file bond before letters of conservatorship will issue. D.C. Code, secs. 21-2058 and 21-2059. Failure to do so will result in the setting of a summary hearing at which time the conservator may be replaced.
- g. In calculating bond, the face amount should be the aggregate capital value of the property of the estate (do not deduct for loans or mortgages) plus 1 year's estimated income minus the value of securities deposited under arrangements requiring a court order for removal and minus the value of any land that the fiduciary cannot sell, transfer or encumber without prior court approval (such as the protected individual's home). Six percent is added and the total is rounded to the nearest \$500. D.C. Code, sec. 21-2058; SCR-PD 332.

## 7. Mediation

Any disputes concerning the appointment of a particular individual as guardian and/or conservator, or the powers of the guardian and/or conservator, or other issue affecting the personal and financial affairs of the ward/protected individual may be referred to the [Elder Mediation Program](#). The court usually appoints a limited guardian to address the ward's needs while the permanent appointment is pending.

## 8. Parties and Participants

The issuance of the [Findings of Fact, Conclusions of Law and Order](#) disposes the petition for general proceeding and terminates the appointment of counsel, guardian *ad litem*, examiner and visitor, unless ordered otherwise.<sup>46</sup> The petitioner's status as a party will also end upon appointment of a guardian and/or conservator, unless ordered otherwise in the Findings of Fact, Conclusions of Law and Order. SCR-PD 303(e).

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<sup>46</sup> SCR-PD 305 (counsel); 306 (guardian *ad litem*); 326(c) (examiner); 327 (visitor).

## Exhibits

Beginning in October 2013, exhibits that are entered into evidence in the courtroom by a Probate Division judge and that may be viewed comprehensively in an electronic format are scanned into the court's case management system. The original of the scanned exhibit is returned to the presenting party who is to maintain it as it was when it was presented in the courtroom while the case is pending and through exhaustion of any appeals or appeal time periods. In accordance with [Administrative Order 13-15](#), the presenting party is to make available the original exhibit for inspection by other parties or the court.

The original of any exhibit, such as x-ray film or blueprints that may not be viewed comprehensively in an electronic format is maintained by the court while the case is pending and through the exhaustion of any appeals or appeal time periods.

## Schedule of Mandatory Filings

A Schedule of Mandatory Filings is mailed to the guardian and conservator and any counsel for the guardian and conservator with the letters of appointment and a copy of the Findings of Fact, Conclusions of Law and Order. The schedule provides the deadlines by which certain documents need to be filed, such as:

### 1. Required Filings for Guardian

- [Guardianship plan](#) is due no later than 90 days from the date of the guardian's appointment in INT cases only. A guardianship plan is not required in IDD cases.
- [Guardianship report](#) is due every six months from the date of appointment.

### 2. Required Filings for Conservator

- [Conservatorship plan](#) and [inventory](#) is due within 60 days of appointment.
- [Conservator's report](#) and annual [account](#) is due within 30 days of the anniversary of the conservator's appointment.

## "Getting Started-Inventory" Seminar

The Probate Division's Auditing Branch hosts a seminar in which auditors provide best practices and instructions on how to prepare an inventory, including tips on establishing estate accounts and maintaining records so

as to be prepared for the annual account. The seminar is offered once a month; available dates can be found on the Probate Division's website.

3. Required Filings for Special Conservator: Report (plus account if bond was required to be filed) is due within 30 days after completion of task(s) for which the special conservator was appointed or the action provided for in the order for a protective arrangement and not later than six months after the order of appointment.
4. Required Filings for Temporary Guardians: None.
5. A [change of address praecipe](#) is to be filed within 10 days of the date of the move if the ward, guardian, or conservator moves.

### **Summary Hearing**

Failure to file any of the required filings by a guardian, conservator, or special conservator is a default that is brought to the attention of the court at summary hearing after notice to the fiduciary pursuant to SCR-PD 309. The policy of the Office of the Register of Wills is to recommend removal of non-compliant fiduciaries pursuant to SCR-PD 309(a) ("If the irregularity or default is not remedied, the Register of Wills shall report it to the Court, which after notice to the person and a hearing, may either remove the fiduciary and appoint a successor pursuant to D.C. Code, sec. 21-2049(c) and/or sec. 21-2061 or excuse the irregularity or default or take other appropriate action").

- Summary hearings for the failure to file an acceptance and consent, bond, guardianship plan, guardianship report and inventory are held on Mondays and Fridays.
- Summary hearings for failure to file an account or to respond to audit requirements are held on Wednesdays.

### **The Guardianship Assistance Program (GAP)**

The Probate Division has a unique program called the Guardianship Assistance Program (GAP), which provides assistance to guardians in the following ways:

- GAP provides education and assistance via phone calls, in person visits, and emails to guardians, wards, family members, service providers, and callers seeking basic information about the guardianship process.

- GAP schedules appointments for the Probate Resource Center to assist *pro se* filers with completion of the initial petition for guardianship and petitions post appointment.
- GAP hosts a monthly Guardianship Orientation Seminar to assist new and experienced guardians with understanding their role and the expectations of the court. The guardians are provided with guidance regarding how to complete guardianship plans and guardianship reports, a Frequently Asked Questions sheet, general information and forms packet, a schedule of mandatory filings, a tips/hints sheet for completing the guardianship report, a brochure on abuse and neglect, and a brochure on the Elder Mediation program.
- GAP holds an annual conference in March. The Guardianship Conference allows guardians to receive more in-depth training about national practice standards and to ask questions of experts in the field. Guardians are also able to network with other guardians and potentially create a support network during the Information Fair held immediately after the conference, featuring private and public service agencies.
- GAP conducts approximately 150 in-depth reviews of intervention cases each year. Student/staff visitor reports provide an opportunity for the guardian to receive feedback about their care of the ward. If concerns arise from the visit, the report reflects the visitor's recommendations. Recommendations include but are not limited to attendance at the Guardianship Orientation Seminar, request for status hearings, creation of pre-need burial plans, creation of advance directives, review of jurisdiction, and recommendations to increase visitation, terminate guardianship or refer the case to mediation.

## Post-Appointment Issues

The ward, guardian, conservator and any person interested in the welfare of a ward may file a [petition post-appointment](#) to bring to the court's attention any issue concerning the guardianship and conservatorship, such as:

- Increasing/decreasing powers;
- Increasing/decreasing conservator's bond;
- Establishment of a special needs trust;
- Rules to show cause for recovery of possession of property;
- Removal or resignation of guardian and/or conservator and the appointment of a successor;
- Termination of appointment.

The time standard to process petitions post-appointment for submission to court by the Legal Branch is six business days from filing. A hearing is usually scheduled and counsel for the ward is appointed from the Fiduciary Panel. SCR-PD 322. The court may refer the matter to the [Elder Mediation Program](#).

## The Elder Mediation Program

Available only for pending INT/IDD cases, the Elder Mediation Program provides families and others concerned about the welfare of a ward an opportunity to discuss in a confidential setting any issue that may arise during the course of a guardianship or conservatorship. Court-appointed counsel will represent the interest of the ward at mediation.

The mediator will assist the mediation participants in reaching consensus and developing a proposed plan, which may include the division of property or responsibilities, the powers of the guardian, and payment arrangements. The mediator will file with the court a Probate Mediation Report that outlines these recommendations and any remaining issues. Those issues, as well as the proposed plan created by the parties, may be addressed at the status hearing set by the court.

An order of reference to mediation may be issued by the court *sua sponte* or pursuant to the recommendation of the Guardianship Assistance Program or as a result of the filing of a [Petition for Referral to Mediation](#).

## Fee Petitions

Visitors, examiners, counsel, guardians, conservators, special conservators, and guardians *ad litem* are entitled to "reasonable" compensation for services rendered in an INT/IDD case. Prior court approval is required before any fees may be paid from the ward's assets or the Guardianship

Fund. Fee petitions must contain details required by SCR-PD 308 and Administrative Orders 04-06 and 13-15.<sup>47</sup>

The Guardianship Fund is available in an INT/IDD cases when the ward has no assets or if the ward's estate will be depleted by payouts. D.C. Code, sec. 21-2060(a-1) describes situations where the ward's estate is presumed to be depleted.

Hourly rates for fee requests payable from estate assets are not fixed by rule, administrative order or statutory provisions. Hourly rates for Guardianship Fund fee requests are fixed by the D.C. Courts' Joint Committee on Judicial Administration at up to:

- \$90 for lawyers serving as counsel, visitors, guardians, conservators, and guardians *ad litem*;
- \$80 for non-lawyer visitors, guardians, conservators, and guardians *ad litem*;
- \$100 for medical doctors serving as examiners;

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<sup>47</sup> Rule 308 requires that fee petitions be verified (sworn to) and state:

1. The character and summary of services rendered;
2. The amount of time spent—the time expended should be calculated at tenth of an hour increments;
3. The basis of any hourly rate(s) of compensation;
4. The size of the estate administered;
5. The benefits that accrued to the estate or the subject of the proceeding as a result of the services;
6. The nature, extent and cost of services performed by others that are fiduciary obligations, such as accounting and tax preparation services;
7. The amount and source of compensation previously allowed to all persons.

If the fee petition requests payment from the Guardianship Fund, additional details are needed, including:

8. The nature and extent of the subject's assets, including contingent assets and noting which assets are liquid;
9. The nature and extent of the subject's income;
10. The character and extent of the subject's debts;
11. Whether the subject owns a residence and, if so, whether the subject's dependents live there or whether the subject or his/her dependents expect to return to the residence;
12. Whether there is a burial fund or whether funeral/burial expenses have been prepaid; and
13. Description of the subject's expenditures.

Attorneys have an additional filing requirement under Administrator Orders 04-06 and 13-15:

- To certify that the attorney (as fiduciary) or the attorney's client (as fiduciary) is current in filing mandatory reports (guardianship plans/reports, verifications of notice, accounts and subsequent requirements); and
- To certify for guardianships cases that the location/wellbeing of the ward has been confirmed or that diligent efforts have been made to locate the ward.



- \$75 for all other health care professionals such as psychologists serving as examiners.

The time frame for filing a fee petition depends on the role of the petitioner.

- Conservators should submit fee requests either with the annual account or anytime before the approval of that annual account. When a conservator has filed a final account, the fee petition is due no later than 30 days after the filing of the final account.
- Guardians may file fee petitions annually no later than 30 days from anniversary date of the guardian's appointment. When the guardianship is terminated, the guardian's fee petition is due no later than 60 days after termination of the guardianship.
- Other court-appointees should file their fee requests within 90 days after the conclusion of the hearing on the appointment of a conservator and/or guardian.
- If a fee petition is filed untimely, the petition should be accompanied by a *Motion for Leave to Late File*.

## **Termination of Appointment**

### 1. Death of the Ward (D.C. Code, sec. 21-2048)

When a ward dies, a [Notice of Death](#) should be filed by the fiduciary. SCR-PD 328(d) and 334(b)(1).

The guardian should file a final guardianship report or an affidavit in lieu of final guardianship report, depending on whether the guardian administered assets, within 60 days of the date of death. SCR-PD 328. The court will issue an order terminating guardianship upon receipt of the final guardianship report or affidavit in lieu of the final report.

The conservator should file a [petition for termination of conservatorship](#), a conservator's report, and the final account within 60 days of the ward's death. SCR-PD 334(b). Upon hearing and approval of the final account, the court will issue an order of termination. Receipts evidencing transfer of assets are customarily required. The conservatorship closes when the receipts are filed.

## 2. Ward regains capacity (D.C. Code, sec. 21-2049(b))

The guardian should file a [petition post appointment to terminate guardianship](#) and a final guardianship report within 30 days of the order of termination. SCR-PD 328.

The conservator should file a petition for termination of conservatorship. After notice and a hearing, the court may issue a preliminary order of termination which will require the conservator to file a final account within 60 days. Approval of that final account will result in a final order of termination. Receipts evidencing transfer of assets are customarily required. SCR-PD 334(c). The conservatorship closes when the receipts are filed.

## 3. Other

- a. Exhaustion of assets (conservatorship only)
- b. Death, removal or resignation of guardian or conservator

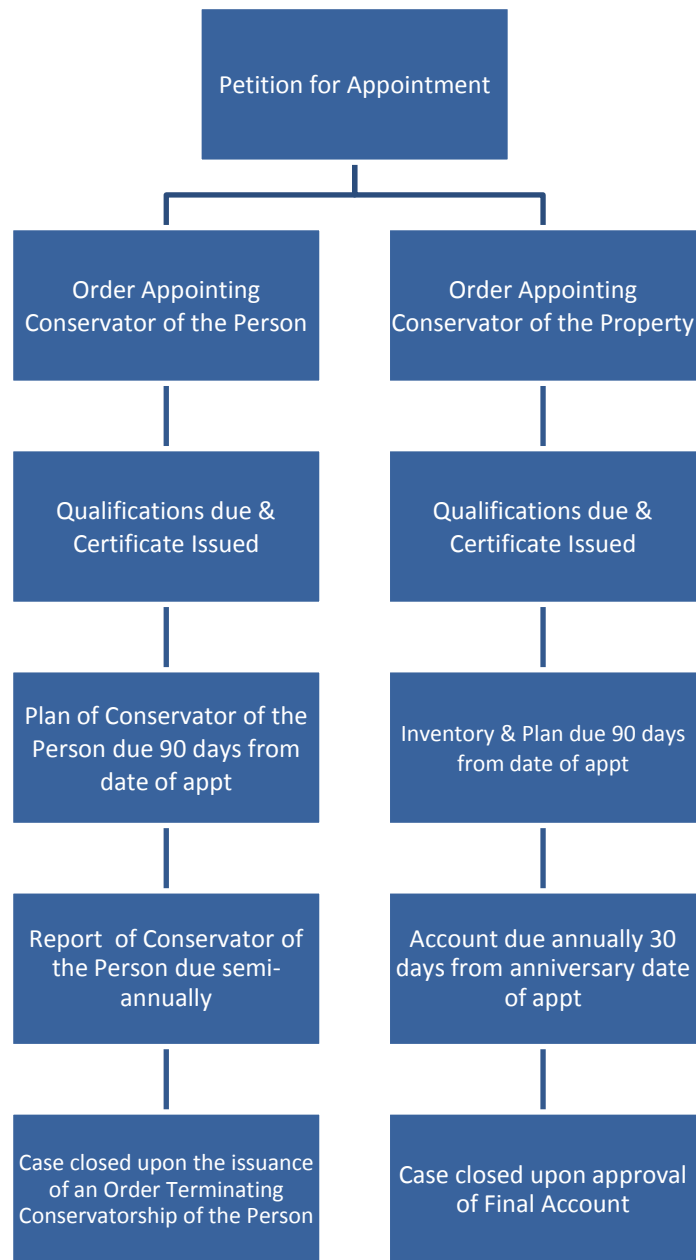
## **FORMER ADULT CONSERVATORSHIPS (CON)**

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The Former Adult Conservatorship (CON) case type is closed to new filings. These cases are adult conservatorships established before the effective date of the *Guardianship Protective Proceedings and Durable Power of Attorney Revision Amendment Act of 1989*. Since the act, guardianships and conservatorships of incapacitated adults are opened as intervention proceedings (INT/IDD). Usually, in CON cases, only a conservator of the property of a disabled adult was appointed, although sometimes a conservator of the person was also appointed. Less than 30 cases remain open.

The old law conservatorship statute may be found at D.C. Code, secs. 21-1501 *et seq.* (1973 edition).

## Former Law Conservatorship Case Flow



- Petitions/motions may be filed at any time during the life of the case
- Filing of plans, reports, inventories and accounts monitored through use of alerts
- Delinquency and summary hearing notices issued for delinquencies

## **Mandatory Filings**

1. Required Filings for Conservator of the Person
  - [Plan of Conservator of the Person](#)—due 90 days from date of appointment
  - [Report of Conservator of Person](#)—due every six months from date of appointment
2. Required Filings for Conservator of the Property
  - [Inventory](#)—due 90 days from date of appointment
  - [Account](#)—due annually not later than 30 days after the anniversary of the date of appointment

## **Summary Hearings**

Failure to file any of the required filings by the conservator of the person or the conservator of the property is a default that is brought to the attention of the court at summary hearing after notice pursuant to SCR-PD 207(b).

Summary hearings for failure to file the report/plan of the conservator of the person or the inventory of the conservator of the property are held on Mondays and Fridays. Summary hearings for failure to file accounts are held on Wednesdays. The policy of the Office of the Register of Wills is to recommend removal of non-compliant fiduciaries pursuant to SCR-PD 207(c) (“If the irregularity or default is not remedied, the Register of Wills shall report it to the Court, which after notice to the person and a hearing, shall either remove the fiduciary and appoint a successor or excuse the irregularity or default or take other appropriate action”).

## **Processing of Pleadings**

Various motions and petitions may be filed during the administration of a CON case. The time standard to process these filings by the Legal Branch and the Auditing Branch for submission to court is generally 30 days from filing, allowing for the passing of the response period as prescribed by SCR-Civil Rule 12-I(e) plus a short period of time for the preparation of the recommendation on disposition and one or more proposed orders for the court’s consideration.

Special attention is needed for the following pleadings:

1. Petition to Expend Funds. Court approval is required before expenditures are made. SCR-PD 223(a).

## 2. Compensation/Fees

Compensation to a conservator for **ordinary services**<sup>48</sup> is set at no more than 5% of the amount disbursed from the estate in the particular accounting period and must be claimed in the annual account. SCR-PD 225(a) and (b).

A petition for compensation for **extraordinary services** rendered by a conservator may be filed at the time of filing the annual account or at any time for good cause<sup>49</sup> shown. SCR-PD 225(c) sets forth the issues to be addressed in the petition.

When a **final account** is filed, SCR-PD 225(d) permits the conservator to request a turnover commission (generally not to exceed 5% of the net assets to be turned over to a successor conservator) and a commission for ordinary services (not to exceed 5% of the disbursements made in that accounting period). *But see* exceptions at SCR-PD 225(d)(1) and (2) and comments to Rule 225.

**Attorney's Fees:** A petition for attorney's fees may be filed with the annual account or at any time for good cause shown; a statement of services must accompany the fee petition. SCR-PD 225(e).

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<sup>48</sup> "Ordinary services" is described in Rule 225(a) as services "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."

<sup>49</sup> "Good cause" means "upon a showing of extreme hardship, tax considerations, or other significant factors." Comment to SCR-PD 225.

## FOREIGN INTERVENTION PROCEEDINGS (FOI)

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### When to Open

A Foreign Intervention (FOI) case is opened when a guardian or conservator of an incapacitated adult who has been appointed by another jurisdiction needs authority to transact business or make health care decisions in the District of Columbia and (1) a guardian or conservator has not been appointed in the District of Columbia and (2) a petition for a protective proceeding is not pending in the District of Columbia.

After the documents required by D.C. Code, secs. 21-2077, 21-2404.01, and/or 21-2404.02 and SCR-PD 361 are filed and an FOI case is opened, the foreign guardian or conservator can exercise all powers authorized in the order of appointment from the other state. The court does not appoint the foreign guardian or conservator but simply gives full faith and credit to the appointment of the guardian or conservator by another court.

After filing, upon request and applicable payment, the Probate Division will issue a Certificate of Compliance, which indicates that the foreign guardian or conservator has filed all items that must be filed before the foreign guardian or conservator can act as such in the District of Columbia. Upon request and payment, the Probate Division will issue a Certificate of Absence of Pending Proceeding, which indicates that no protective proceeding is pending in the District of Columbia.

### How to Open

The following documents must be filed to open a foreign intervention proceeding:

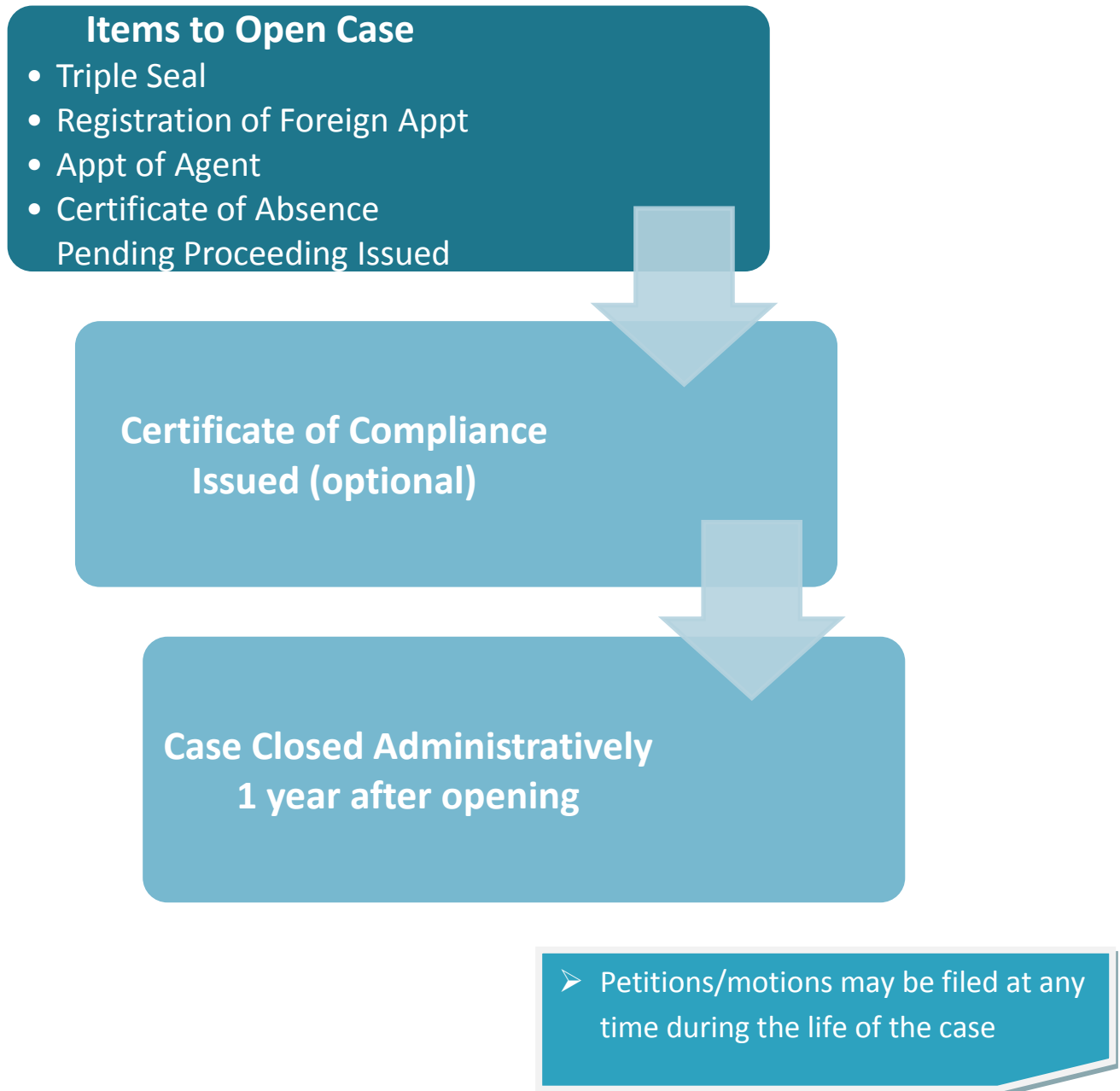
1. Recent,<sup>50</sup> exemplified or triple sealed, copies of the foreign guardian's or conservator's:
  - Order of appointment;
  - Letters of office; and
  - Bond.
2. [Registration of Foreign Guardianship and/or Conservatorship](#) form.
3. [Appointment of Agent to Accept Service of Process](#) form signed by the guardian and conservator and by an agent. The agent must have a District of Columbia residence or business address.

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<sup>50</sup> Dated within 60 days of filing with the Probate Division.

4. A fee of \$5.00 to register a foreign conservatorship. The fee may be paid in cash, by credit card, or by check or money order payable to "Register of Wills." There is no fee to register a foreign guardianship.

### Foreign Intervention Proceedings Case Flow





## GUARDIANSHIPS OF MINOR'S ESTATES (GDN)

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### When to Open

Guardianships of minor's estates (GDN) cases are opened for children under the age of 18 who live in the District of Columbia and who are entitled to receive assets.<sup>51</sup> A guardian of a minor's estate is responsible for managing and safeguarding the minor's property until the minor becomes 18 and is different from a guardian/custodian appointed by the Family Court to manage a minor's personal affairs (*e.g.*, placement, education, health care). Guardianships of minor's estates cases are governed by D.C. Code, sec. 21-101 *et seq.*

### How to Open

The following items must be filed in order to establish a guardianship for the assets of a minor:

1. A [Petition for Appointment as Guardian of Estate of a Minor](#) with proposed order.
2. [Bond](#).<sup>52</sup>
3. [Consents from the minor's parents](#) (if they do not both sign the petition for appointment).<sup>53</sup>
4. A [nomination of appointment of guardian](#) signed by the minor if the minor is age 14 or older. SCR-PD 221.

There is no filing fee to open the estate.

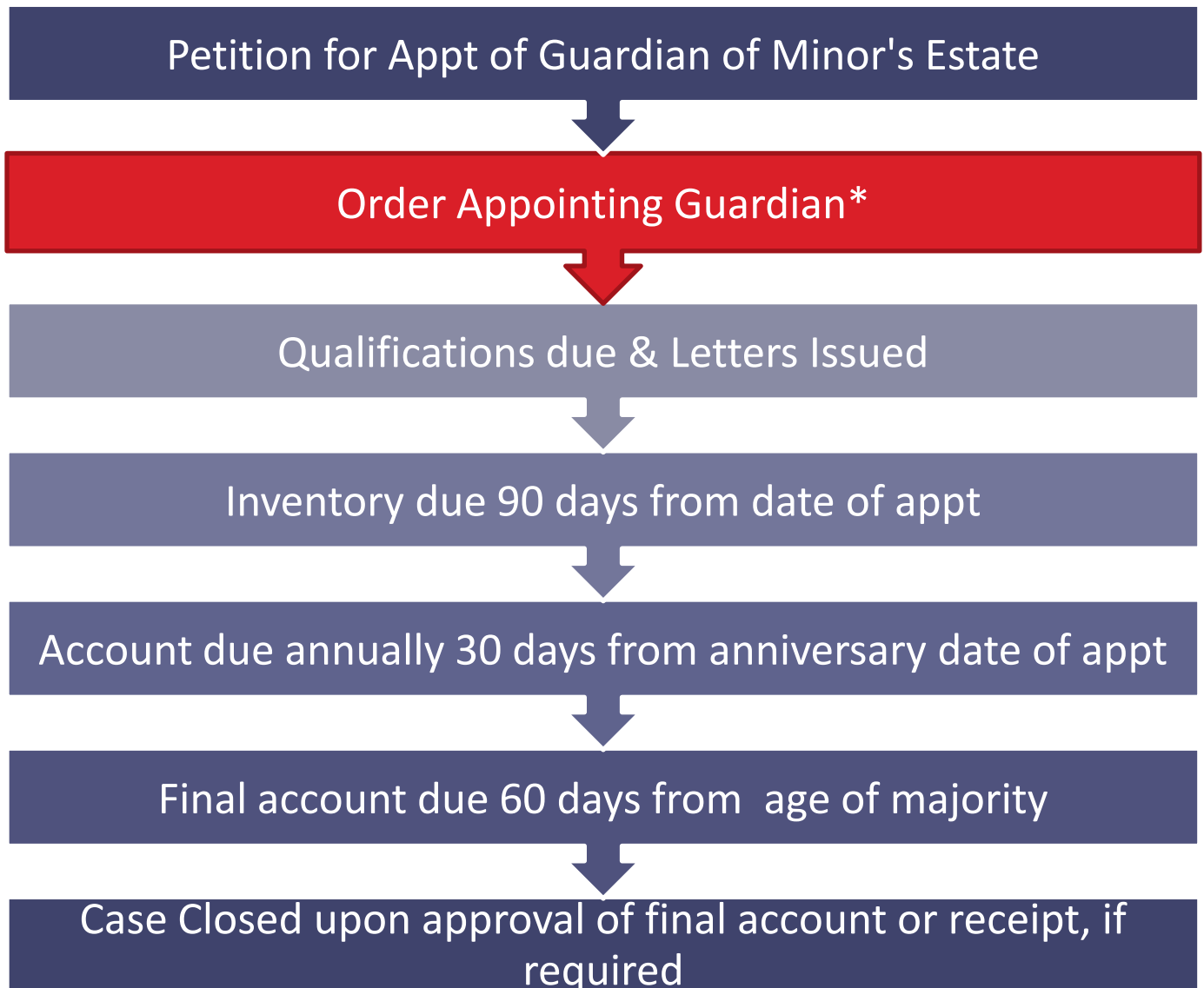
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<sup>51</sup> D.C. Code, sec. 21-120(b) requires a guardianship to be opened on behalf of a minor if settlement of a civil action exceeds \$3,000.00.

<sup>52</sup> A bond will protect the interest of the minor—if the guardian misappropriates or otherwise mishandles estate assets, the bonding company will repay the estate the amount lost or the amount of the bond, whichever is less.

<sup>53</sup> Notice to parents may be waived pursuant to SCR-PD 221(c), if an affidavit of diligent efforts to locate the parent is provided with the petition. If a parent is unknown, the court usually requires a copy of the minor's birth certificate reflecting that the parent is not identified.

## Guardianships of Minor's Estates Case Flow



- \*90-day Time to Disposition standard
- If initial petition is denied/withdrawn, case disposition is closed
- Petitions/motions may be filed at any time during the life of the case
- Filing of inventories and accounts monitored through use of alerts
- Delinquency and summary hearing notices issued for delinquencies

## Forms

The petition and all other forms needed to open a guardianship of a minor's estate are available on the division's website.

## Where to File

The petitioner, proposed guardian, the minor, and counsel of record, if any, must appear before an Assistant Deputy Register of Wills at the Legal Branch of the Probate Division. The proposed guardian will be [admonished](#) to maintain assets in the District of Columbia in accordance with the requirements of SCR-PD 202(e) and to seek permission of the court before making expenditures from estate assets. The Assistant Deputy Register of Wills will review the petition to ensure that all of the necessary documents have been submitted and that the filings comply with minimum legal requirements.

After the petition is accepted for filing, the petition and any attachments, including a draft order and the recommendation of the Office of the Register of Wills regarding the disposition of the petition are transmitted to a judge. The Legal Branch's time standard is to submit same to court within six business days of filing.

## The Court Order

An order signed by a judge is needed to appoint the guardian, approve bond, and admonish the guardian against receiving assets in excess of bond, among other things.

### 1. Appointment of Fiduciary

The court-appointed fiduciary must file an [acceptance of appointment, consent to the jurisdiction of the court, a non-resident power of attorney](#) (if applicable) that designates the Register of Wills for purposes of service of process, and a [bond](#), if needed. The fiduciary cannot serve as guardian for more than 5 minors, unless the guardian is a trust company or the minors are members of the same family. D.C. Code, sec. 21-103(b).

If a trust company is appointed, the policy of the Office of the Register is to request the filing of a [Trust Officer praecipe](#), where the name and contact information for the trust officer is provided, and the trust officer's alternate in the event that the trust officer cannot be reached. This covers situations in which the trust officer changes employment, moves or is otherwise not responsive to the court.

## 2. Bond

The court-appointed guardian of the minor's estate must file [bond](#) in the amount specified by the court. D.C. Code, sec. 21-115. A bond will protect the interest of the minor—if the guardian misappropriates or otherwise mishandles estate assets, the bonding company will repay the estate the amount lost or the amount of the bond, whichever is less.

The bond amount should be sufficient to protect the value of the minor's assets. The bond amount should include the total value of assets plus one year's income, generally calculated at 6% and rounded to the nearest \$500.

If the proposed guardian cannot obtain bond, the court usually appoints a disinterested member of the Bar from the Fiduciary Panel as guardian of the minor's estate.

## **Performance Measures**

The court's time-to-disposition standard calls for the resolution of the petition for the appointment of a guardian of a minor's estate by the withdrawal of the petition, the appointment of a guardian, or the denial of the petition and the dismissal of the case as follows:

- 75% within 60 days from filing
- 98% within 90 days from filing.

## **Schedule of Mandatory Filings**

A copy of the signed order will be mailed to the court-appointed guardian and his or her attorney with letters of guardianship and a Schedule of Mandatory Filings that provides the deadlines by which certain documents must be filed. The schedule was created to assist the fiduciary, particularly non-lawyer fiduciaries.

- [Inventories](#) are due within 90 days from the date of the guardian's appointment. SCR-PD 204.
- [Accounts](#) are due within 30 days from the anniversary date of appointment. SCR-PD 204. The final account is due within 60 days of the minor's reaching the age of majority.

## **Summary Hearings**

Failure to file an inventory and account is a default that is brought to the attention of the court at summary hearing after notice to the guardian pursuant to SCR-PD 207(b).

Summary hearings for failure to file the inventory are held on Mondays and Fridays. Summary hearings for failure to file accounts are held on Wednesdays. The policy of the Office of the Register of Wills is to recommend removal of non-compliant fiduciaries pursuant to SCR-PD 207(c) ("If the irregularity or default is not remedied, the Register of Wills shall report it to the Court, which after notice to the person and a hearing, shall either remove the fiduciary and appoint a successor or excuse the irregularity or default or take other appropriate action").

## **Processing of Pleadings Subsequent to Appointment of Fiduciary**

Various motions and petitions may be filed during the administration of the minor's estate. The time standard to process these filings by the Legal Branch and the Auditing Branch for submission to court is generally 30 days from filing, allowing for the passing of the response period as prescribed by SCR-Civil Rule 12-I(e) plus a short period of time for the preparation of the recommendation on disposition and one or more proposed orders for the court's consideration.

Special attention is needed for the following pleadings:

1. **Petition to Expend Funds.** Court approval is required before expenditures are made from the minor's estate except for bond premiums, court costs, and income tax on the estate assets. SCR-PD 222(a).

Because parents are responsible for the care, maintenance, and support of children, a petition to expend funds should be accompanied by a financial statement of each parent and an explanation why the parents are unable to make the expenditures is required when the guardian is seeking to use the minor's funds.

Petitions for ongoing authority to make monthly or annual expenditures may be filed for certain expenditures, such as school tuition, monthly allowance, birthday and Christmas gifts, so that the guardian does not have to file the same type of petition repeatedly.

2. **Petition to Invest Funds.** Court approval is required before the minor's funds may be invested. SCR-PD 222(c). The reasonable, prudent investor standard applies pursuant to SCR-PD 5(a)(1) and (2).

Petitions to invest should be accompanied by brochure or prospectus explaining the investment plan or program.

### 3. Compensation/Fees

- a. Compensation to a guardian of a minor's estate for **ordinary services**<sup>54</sup> is set at no more than 5% of the amount disbursed from the estate and must be claimed in the annual account. SCR-PD 225(a) and (b).

A petition for compensation for **extraordinary services** rendered may be filed at the time of filing the annual account or at any time for good cause<sup>55</sup> shown. SCR-PD 225(c) sets forth the issues to be addressed in the petition.

When a **final account** is filed, Rule 225(d) permits the guardian to request a turnover commission (generally not to exceed 5% of the net assets to be turned over to the former minor or the successor guardian if the minor has not yet reached the age of 18), and a commission for ordinary services (not to exceed 5% of the disbursements made in that accounting period). *But see* exceptions at SCR-PD 225(d)(1) and (2) and comments to Rule 225.

- b. **Attorney's Fees:** A petition for fees may be filed with the annual account or at any time for good cause shown; a statement of services must accompany the fee petition. SCR-PD 225(e).

### **Termination of Appointment**

A final account is due within 60 days after the minor reaches the age of majority. SCR-PD 204(a)(5). The appointment of a guardian of the minor's estate will terminate upon filing of the [receipt](#) for the approved final account or upon approval of the final account, if the receipt has been pre-filed.

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<sup>54</sup> "Ordinary services" is described in Rule 225(a) as services "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."

<sup>55</sup> "Good cause" means "upon a showing of extreme hardship, tax considerations, or other significant factors." Comment to SCR-PD 225.

# Cases Involving Trusts

Trusts are created when property is held by one person or entity for the benefit of another or others. Two trust-related actions are filed in the Probate Division:

1. Trusts; and
2. Notice of Revocable Trust.

## TRUSTS (TRP)

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Trust proceedings are governed by D.C. Code, secs. 19-1301.01 *et seq.* SCR-PD 201 through 213 and SCR-Civil Rule 304 also apply.

### When to Open

One of the following pleadings may be filed to open a trust (TRP) case. Due to the complexity of trust interests, filers are encouraged to seek the assistance of a lawyer prior to filing.

1. Petition for Appointment of Successor, Substitute, or Additional Trustee

This petition is filed when the terms of the trust instrument do not provide a mechanism to add or replace a trustee and either a vacancy in the trusteeship has occurred (*e.g.*, because of death of the trustee or because a trustee needs to resign) or an additional trustee is desired. SCR-PD 202(c) requires notice to parties and all affected persons.<sup>56</sup> Written consents to the petition, if filed, will expedite the processing of the petition.

Forms for the petition and consent are not available on the court's website.

2. Petition to Establish Supplemental (or Special) Needs Trust

This petition is filed to obtain court approval to establish a trust that will preserve assets for a person under the age of 65 who is entitled to receive means-tested government benefits, such as Medicaid. The person who will be the trust beneficiary must be disabled as defined by federal

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<sup>56</sup> These are defined to be the serving trustee(s), the present income beneficiaries, and any then-living remaindermen who would receive trust assets if all income beneficiaries died on the date of the filing of the petition.

law (42 U.S.C. 1396p(d)(4)), and the trust must be irrevocable. When such petitions are filed, a copy of the proposed trust and an order establishing trust should be attached. These petitions are usually set for a hearing.

A form petition is not available on the court's website.

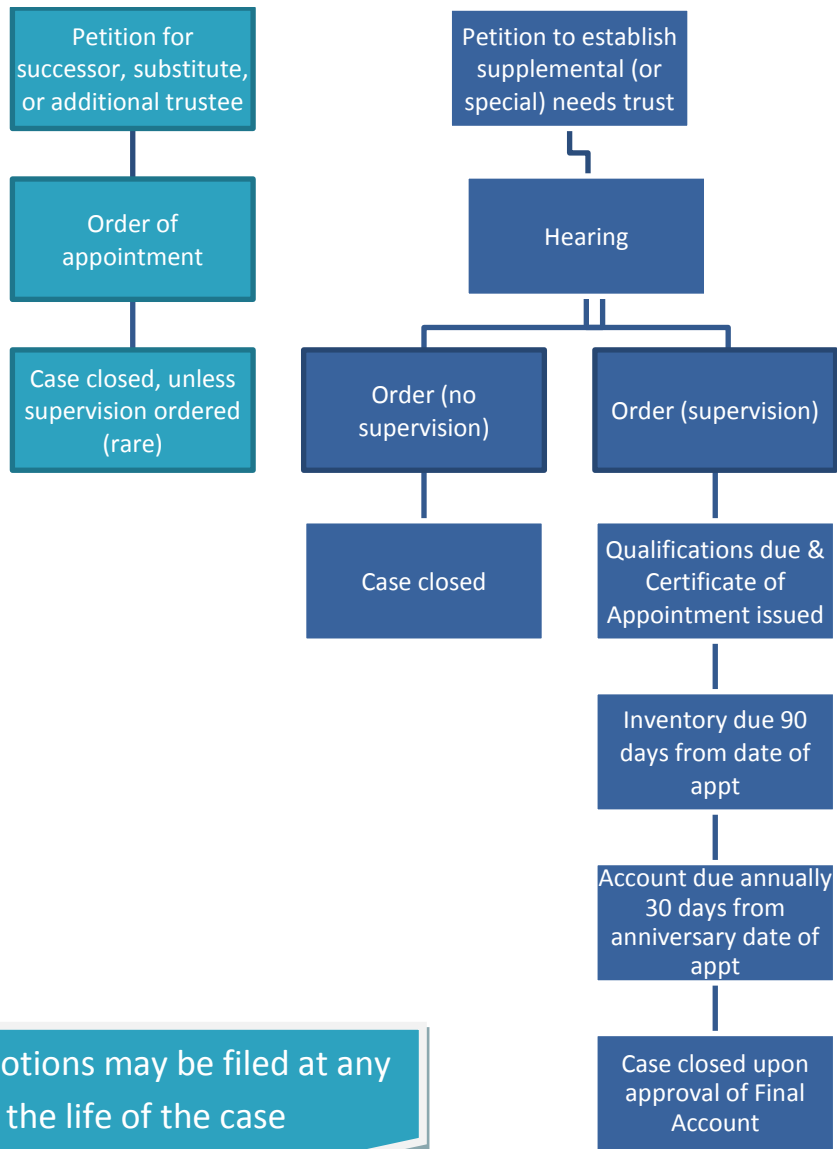
3. Complaint to Modify, Reform, Construe, or Terminate a Trust or to Remove a Trustee

Complaints are docketed in the Major Litigation (LIT) case type, but an underlying trust proceeding will be opened if one does not already exist and the two proceedings will be linked in the case tracking system.

A *pro se* complaint form is available on the court's website.



## Trusts Case Flow



➤ Petitions/motions may be filed at any time during the life of the case

## Where to File

An Assistant Deputy Register of Wills of the Probate Division's Legal Branch will review the pleading to ensure that it complies with minimum legal requirements.

After the petition is accepted for filing, the petition and any attachments, including a draft order and the recommendation of the Office of the Register of Wills regarding the disposition of the petition, are transmitted to a judge. The Legal Branch's time standard is to submit same to court within six business days of filing. Complaints will follow the track established by the Major Litigation (LIT) case type.

## The Court Order

An order signed by a judge is needed to remove/replace a trustee, to establish a supplemental needs trust, to terminate a trust, or to modify/construe the terms of a trust. In those cases requiring the appointment of a trustee, the court will decide whether the estate should be supervised or unsupervised and, if supervised, whether bond is needed and in what amount and the deadlines for filing inventory and accounts.

### 1. Appointment of Trustee

The supervised trustee must file an [acceptance of appointment, consent to the jurisdiction of the court, and a non-resident power of attorney \(if applicable\)](#) that designates the Register of Wills for purposes of service of process.

If a trust company is appointed, the policy of the Office of the Register of Wills requires the filing of a [Trust Officer Praecipe](#), containing the name and contact information for the trust officer and the trust officer's alternate in the event that the trust officer cannot be reached.

### 2. Bond

The supervised trustee must file bond in the amount specified by the court. A bond protects the interest of the trust beneficiary—if the trustee misappropriates or otherwise mishandles trust assets, the bonding company will repay the trust the amount lost or the amount of the bond, whichever is less.

The bond amount should include the total value of assets plus one year's income, generally calculated at 6% and rounded to the nearest \$500.

A copy of the signed order will be mailed to the trustee and his or her attorney. Counsel will also receive the Certificate of Appointment (if the trustee is supervised).

### **Mandatory Filings**

A supervised trustee is required to file an [inventory](#) within 90 days from the date of appointment and [accounts](#) within 30 days from the anniversary date of appointment, all of which are subject to audit. SCR-PD 204.

### **Summary Hearings**

Failure to file an inventory or account is a default that is brought to the attention of the court at summary hearing after notice to the supervised trustee, pursuant to SCR-PD 207(b).

Summary hearings for failure to file an inventory are held on Mondays and Fridays. Summary hearings for failure to file accounts are held on Wednesdays. The policy of the Office of the Register of Wills is to recommend removal of non-compliant fiduciaries pursuant to SCR-PD 207(c) ("If the irregularity or default is not remedied, the Register of Wills shall report it to the Court, which after notice to the person and a hearing, shall either remove the fiduciary and appoint a successor or excuse the irregularity or default or take other appropriate action").

### **Processing of Pleadings Subsequent to Appointment of Trustee**

Various motions and petitions may be filed during the administration of the trust. The time standard for processing these filings by the Legal Branch and the Auditing Branch and submission to court is generally 30 days from filing, allowing for the passing of the response period as prescribed by SCR-Civil Rule 12-I(e) plus a short period of time for the preparation of the recommendation on disposition and one or more proposed orders for the court's consideration.

### **Case Closure**

Unsupervised trust proceedings are closed upon issuance of the order ruling on the petition that opened the trust case. Supervised trust proceedings close upon approval of the supervised trustee's final account (and the filing of any applicable receipts).

## **NOTICE OF REVOCABLE TRUST (NRT)**

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These proceedings are governed by D.C. Code, secs. 19-1301 *et seq.* (specifically, secs. 19-1305.05(d) and 19-1306.04(a)(3)) and SCR-PD 202, 208, 212 and 213.

### **When to Open**

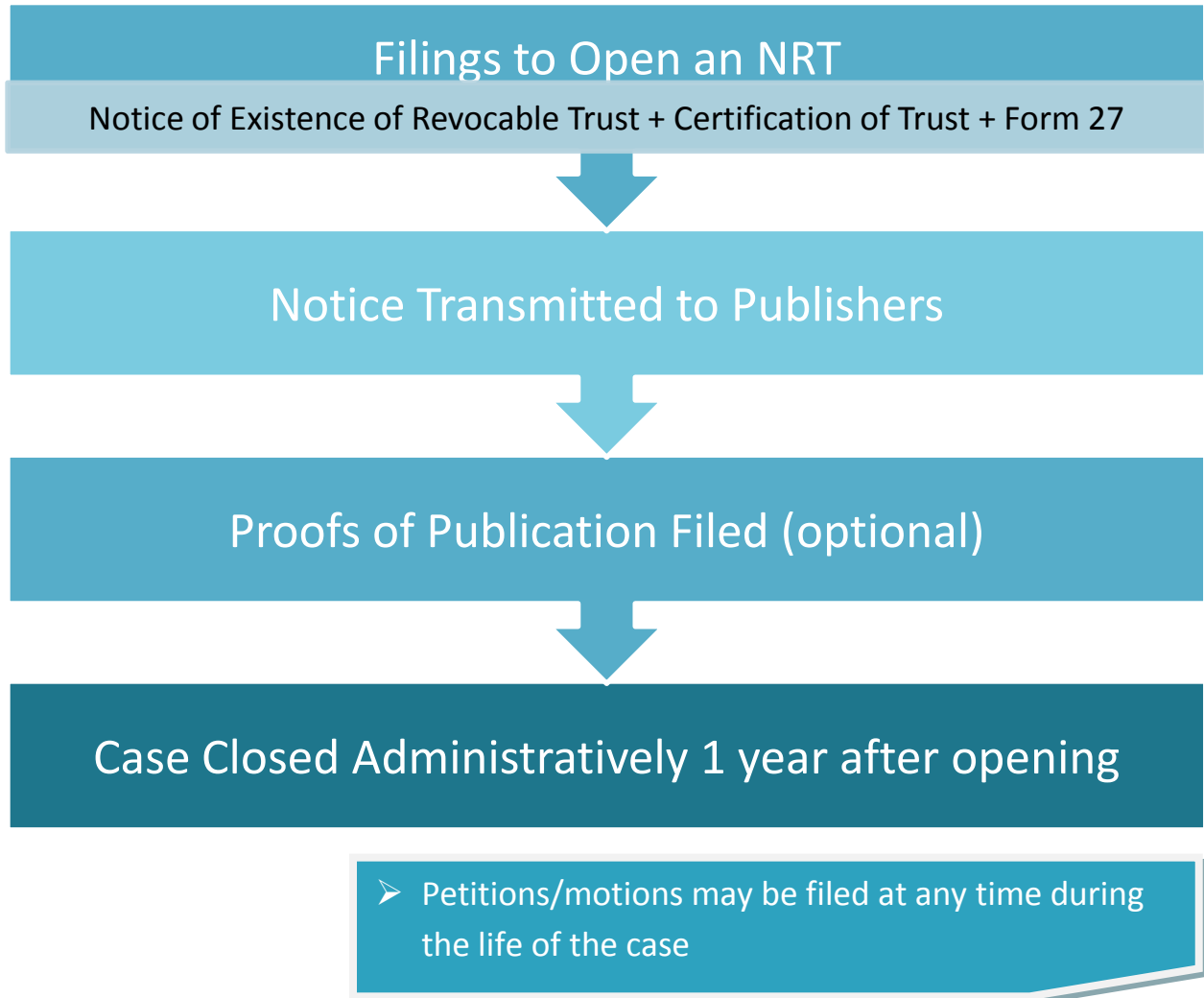
A trustee of a revocable trust may open a Notice of Revocable Trust (NRT) case in order to notify interested persons and creditors that a deceased person had established a trust prior to death that became irrevocable upon death.

### **How to Open**

Documents required to open an NRT case are available on the Probate Division's website:

1. [Notice of Existence of Revocable Trust](#);
2. [Certification of Trust](#); and
3. [Financial Account Information for Trusts Only \(Form 27-T\)](#).

## Notice of Revocable Trust Case Flow



## Where to File

The documents are reviewed by the Probate Division's Legal Branch, where an Assistant Deputy Register of Wills will ensure that they comply with minimum legal requirements. Once accepted for filing, the Probate Clerk's Office will arrange for publication of the Notice of Existence of Revocable Trust in the two publications chosen by the filer. The newspapers bill the trustee directly.

## Duties

The trustee must mail a copy of the notice within 15 days of the first date of publication to all qualified trust beneficiaries, heirs of the decedent, and creditors whose identities are known or could be reasonably ascertained. The trustee may file the proofs of publication and the [Verification and Certificate of Notice of Existence of Revocable Trust](#) within 90 days of the first date of publication as evidence of mailing but is not required to do so.

## Claims

The trust is subject to claims of the deceased settlor's creditors, costs of administration of the settlor's estate, the expenses of the deceased settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the deceased settlor's residuary probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

Creditors and other interested persons have six months from the first date of publication of the Notice of Existence of Revocable Trust to file any claims against the trust. The trustee may respond to a claim by filing a [Notice of Action Taken on Claim](#). The claimant may file a petition for payment from the trust if the trustee takes no action on a claim, allows a claim but fails to pay it within a reasonable time, or disallows a claim.

An action to contest the validity of the trust must be commenced by the earliest of (1) one year from the date of death of the deceased settlor or (2) six months from the date of first publication of the Notice of Existence of Revocable Trust or (3) 90 days after the trustee sends a person with a potential cause of action a copy of the trust instrument and a notice informing the person of the trust's existence, the trustee's name and address, and the time allowed for commencing a proceeding.

## Case Closure

NRT cases close administratively within one year after opening.

# Major Litigation

## When to Open

Major Litigation (LIT) cases are opened when complaints related to a Probate matter are filed. All complaints are considered to arise from an underlying Probate Division case, such as a decedent's estate (ADM or SEB), an intervention proceeding (INT, IDD, or FOI), a foreign estate (FEP), a trust proceeding (TRP), or a proceeding in which notice has been given that a decedent had a revocable trust (NRT).

Complaints are usually filed to:

- Challenge the validity of a will;
- Establish a person as an heir of a decedent;
- Modify, construe or reform the terms of a trust;
- Terminate a trust;
- Declare a person dead;
- Remove a fiduciary;
- Pay a claim.

## How to Open

A [complaint](#) must be prepared in accordance with the Superior Court, Civil Division Rules<sup>57</sup> and verified (sworn to), pursuant to SCR-PD 107, 208 and 407. The caption of the verified complaint must list each plaintiff and each defendant by name and address. A summons is submitted by the filer for each defendant. The caption of each [summons](#) must contain the name and address of the defendant to whom it is addressed.

Verified complaints are reviewed by the Probate Division's Legal Branch, where an Assistant Deputy Register of Wills will review the complaint and summons to ensure that they comply with minimum legal requirements. Once accepted for filing, the Probate Clerk's Office will issue the summons and the Initial Order & Notice of Proposed Schedule of Events ("Initial Order") to the plaintiff for service on each defendant named in the verified complaint.

There is a \$120.00 fee to file a complaint.

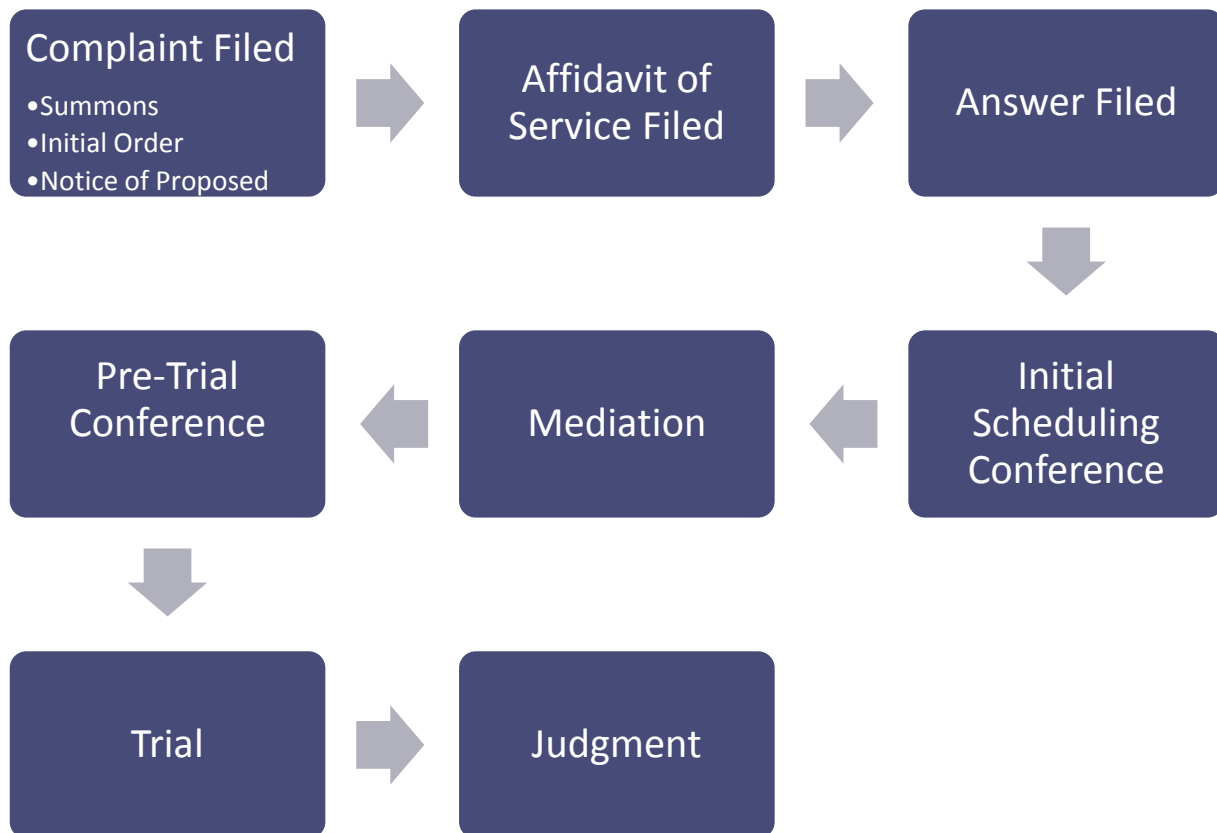
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<sup>57</sup> SCR-PD 1(f) makes the Civil Division Rules applicable in the Probate Division, except where inconsistent with the Probate Division Rules.

## In Forma Pauperis

Plaintiffs may file with Judge-In-Chambers an *Application to Proceed without Prepayment of Costs, Fees, or Security (In Forma Pauperis)*, pursuant to SCR-Civil 54-II to waive the complaint's filing fee of \$120.00. If granted, the Probate Division is responsible for serving the complaint, summons and Initial Order for the plaintiff and any subsequent motion or pleading filed by the plaintiff, unless the plaintiff waives such service.

## Major Litigation Case Flow



- Motions may be filed at any time during the life of the case
- Filing of affidavit of service and answer monitored through use of alerts
- Notices of default and notices of dismissal issued for delinquencies



## **Forms**

The [verified complaint](#), [summons](#), [Application to Proceed Without Prepayment of Costs, Fees, or Security \(In Forma Pauperis\)](#), [affidavits of service](#), [answer](#), [pro se motion](#), [subpoena](#) and many other documents needed by the parties for a LIT case are available on the Probate Division's website.

## **Monitoring**

The verified complaint, summons, and Initial Order must be served on the defendants and proof of service must be filed within 60 days from the filing date of the complaint. The defendant must file an [answer](#) to the complaint within 20 days of service.

The Probate Division issues notices of dismissal (when proof of service of the complaint is not filed) and notices of entry of default (when the defendant's answer to the complaint is not filed).

## **Processing of Subsequent Pleadings**

Various motions may be filed during a LIT case. The time standard to process these filings by the Legal Branch is 30 days from filing, allowing for the passing of the response period as prescribed by SCR-Civil Rule 12-I(e) plus a short period of time for the preparation of the transmittal noting relevant procedural issues regarding the filing.

## **Exhibits**

Beginning in October 2013, exhibits that are entered into evidence in the courtroom by a Probate Division judge and that may be viewed comprehensively in an electronic format are scanned into the court's case management system. The original of the scanned exhibit is returned to the presenting party who is to maintain it as it was when it was presented in the courtroom while the case is pending and through exhaustion of any appeals or appeal time periods. In accordance with [Administrative Order 13-15](#), the presenting party is to make available the original exhibit for inspection by other parties or the court.

The original of any exhibit, such as x-ray film or blueprints, that may not be viewed comprehensively in an electronic format is maintained by the court while the case is pending and through the exhaustion of any appeals or appeal time periods.

## **Settlement Agreements**

If the parties reach a settlement at mediation or any time, the policy of the Office of the Register of Wills is to request the filing of the settlement agreement plus the [Praecipe to Accompany Settlement Agreement](#) so that it is clear whether or not the case may be closed administratively or whether there are issues remaining. All settlement agreements are subject to judicial review.

## **Performance Measures**

The Probate Division's goal is to close the LIT case within 1 year of the filing of the complaint.

# Appendix

## Court Cases Online

The dockets of the following Probate Division cases are available for viewing through [Court Cases Online](#) on the court's website. The images of items entered on the docket are not viewable through this system.

1. Large Estates Proceedings (ADM)
2. Small Estates Proceedings (SEB)
3. Foreign Estate Proceedings (FEP)
4. Wills (WIL)
5. Disclaimers (DIS)
6. Major Litigation (LIT)

All cases involving the incapacitated were excluded from Court Cases Online to protect these vulnerable persons against the risk of identity theft and personal/financial exploitation.

## Staggered Calendar

The Probate Division follows a staggered calendar template that includes time allotments for recurring hearings. Status hearings, trials, hearings on Auditor-Master's Reports, and other miscellaneous matters are scheduled *outside* the template. The calendar is shared by four Probate judges.

Below is an outline of a typical week in the Probate Division calendar:

MONDAY	Courtroom #1	Courtroom #2	Courtroom #3	Courtroom #4
<b>AM</b>	Civil Tax <sup>i</sup> Hearings on Approval of Accounts	Civil Tax <sup>i</sup>		Summary Hearings for Failure to File Required Filings
<b>PM</b>				
TUESDAY	Courtroom #1	Courtroom #2	Courtroom #3	Courtroom #4
<b>AM</b>	Hearings on Petition for Guardian and/or Conservator			
<b>PM</b>				

<b>WEDNESDAY</b>	Courtroom #1	Courtroom #2	Courtroom #3	Courtroom #4
<b>AM</b>	Summary Hearings for Failure to File <ul style="list-style-type: none"> <li>• Accounts</li> <li>• Receipts</li> <li>• Requirements</li> </ul> Status Hearing on Interim Account Status Hearing on Why Estate Remains Open Hearing on Request for Extension of PR's Appointment		Hearings on Petition for Guardian and/or Conservator	
<b>PM</b>				
<b>THURSDAY</b>	Courtroom #1	Courtroom #2	Courtroom #3	Courtroom #4
<b>AM</b>	Hearings on Petition for Guardian and/or Conservator	Hearings on Petition for Guardian and/or Conservator		
<b>PM</b>				
<b>FRIDAY</b>	Courtroom #1	Courtroom #2	Courtroom #3	Courtroom #4
<b>AM</b>	Initial Scheduling Conferences	Initial Scheduling Conferences  Hearings on Approval of Accounts	Initial Scheduling Conferences  Hearings on Approval of Accounts	Summary Hearings for Failure to File Required Filings
<b>PM</b>				

<sup>i</sup> The Civil Tax calendar is heard on rotating Mondays been the presiding judge and deputy presiding judge.