

Rule 301. Compensation of Conservators and Guardians of Infants

(a) General Matters.

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

(2) *Compensation in Probate Matters.* Compensation of personal representatives and guardians ad litem and attorney fees in probate matters are governed by Probate Division Rules 122 and 124.

(3) *Discretion Reserved to Court.* Nothing contained in this Rule shall be construed to prevent the Court from requiring a statement of services or otherwise determining an appropriate commission in any particular case.

(4) *Court May Modify or Dispense With Notice.* The Court may modify the requirements of notice under this rule when the parties and persons whose interest may be affected are very numerous and may dispense therewith when it appears that the time, labor, and expense of complying will be disproportionate to the distributive shares of those having an interest in the matter.

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

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

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

(d) **Time and Method for Claiming Compensation for Ordinary Services.** A claim for commission for ordinary services may only be made in an annual account and, except as otherwise provided in these rules, no statement of services is required. The amount or percentage of commission claimed need only be reflected in the account itself.

(e) **Turnover Commission.** The turnover commission shall be the commission to be paid upon the fiduciary's death, resignation, or incapacity or upon the death of the ward, restoration to competency, or attainment of the age of majority.

(1) *On Fiduciary's Death, Resignation, or Incapacity.* If services by a conservator or guardian are terminated by the fiduciary's death, resignation, or incapacity, in addition to

a commission on disbursements actually made, the fiduciary may be entitled to a commission on the net assets distributed to the successor fiduciary. The fiduciary shall file a statement of services in support of the turnover commission. That statement shall indicate what has been done by the fiduciary, what remains to be done by the successor and such other information as would justify the commission claimed.

(2) *On the Death of the Ward, Restoration to Competency, or Attainment of Age of Majority.* If a conservatorship or guardianship terminates within three (3) years of its commencement because of the death of the ward or other legal reason, the fiduciary shall either file a statement of services in support of the turnover commission claimed in estates exceeding \$100,000 or, in such estates apply for a waiver of the requirement for a statement of services by filing a simple written request with the Court.

(f) Compensation to Fiduciary for Extraordinary Services. At the time of filing an annual account, a conservator or guardian may petition the Court for compensation for extraordinary services rendered. Extraordinary services shall be in addition to those services set forth in paragraph (b). The petition shall include the following:

(1) Statement of jurisdiction and controlling Court Rule;

(2) Statement of services rendered sufficiently complete on its face to establish that the requested payment is reasonable and, as appropriate, that the services are in fact extraordinary;

(3) The time devoted thereto, if records are available;

(4) Evidence of the necessity or purpose of the services;

(5) Results achieved, including the benefit to the estate or ward, if any;

(6) Statement of all prior allowances from the estate to the claimant or other fiduciary or counsel, to the extent known, and;

(7) The ability of the estate to meet future needs of the ward and to compensate fairly the fiduciary.

(g) Attorney Fees. At the time of the filing of an annual account, an attorney may petition for allowance of reasonable attorney's fees for preparing pleadings filed with the Court and for other necessary legal services rendered to the fiduciary in the administration of the estate. A petition for fees for legal services in connection with the qualification of the fiduciary may be submitted at any time, however. The petition for fees shall be accompanied by a statement of services which shall include those matters set forth in paragraph (f) above with respect to a petition for compensation for extraordinary services.

(h) Notice Required. Notice of the filing of a petition for compensation for extraordinary services by the fiduciary or for attorney's fees shall be given to the fiduciary (if appropriate) and to all other persons affected by the allowance of the requested compensation or fee. The consents of those entitled to notice may be filed with the Court within twenty (20) days of the date of mailing of said notice.

(i) Reference to Auditor-Master or Deputy. All petitions for attorney's fees (except those petitions requesting a fee for the appointment of a conservator or trustee) shall be referred to the Auditor-Master or Deputy Auditor-Master for appropriate recommendations.

COMMENT

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

With respect to turnover commissions as a result of the fiduciary's death, resignation or incapacity, pursuant to subparagraph (e)(1) of this rule, since ordinary commissions may not exceed five percent (5%) of disbursements and since the ward's funds will be disbursed again, the Court will be cautious and reserve a sufficient percentage commission to compensate fairly the successor fiduciary.

Although the amount of the commission for ordinary services will be considered in determining the appropriateness of compensation for extraordinary services under paragraph (f) of this rule, that amount alone will not be the determining factor.

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

Payments for attorney's fees under paragraph (g) are independent of the fiduciary's commission for ordinary and extraordinary services and are designed to compensate the attorney for legal services consistent with the value of the services rendered and the ability of the estate to pay. The fact that the fiduciary is an attorney will in no way preclude the fiduciary from petitioning under this rule for payment for legal services to himself or herself.