# D.C. Bar Pro Bono Center Probate Training - Webinar March 16, 2021

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#### Goals of Training

- Provide overview of the multiple services and tasks appropriately handled in the Probate Court.
- Introduce basic large estate administration practices and procedures for matters heard before the Probate Court.
  - Jurisdiction/law
  - Large versus Small Estates
  - Opening Probate of Decedent's Estates
  - Administration of Large Estates
  - Closing Probate of Decedent's Estates
- Introduce basic Intervention case practices and procedures for matters heard before the Probate Court.
  - Jurisdiction/law
  - Guardianship v. Conservatorship
  - Opening an Intervention proceeding
  - Closing an Intervention proceeding

#### Location

- Building A 515 5<sup>th</sup> Street NW, Third Floor
- Building Museum/F Street exit of the Judiciary Square Metro stop (Red Line)
  - The building to your left as you face the Building Museum
- Main entrance on 5<sup>th</sup> Street
- Handicap entrance on F Street
- Probate Clerk's Office located in room 314
- http://www.dccourts.gov/superior-court/probate-division

#### What is in Probate?

#### LARGE ESTATES >



Large Decedents' Estates (ADM) are opened for deceased persons who, at the time of death, lived in the District of Columbia and owned real property located in the District of Columbia and/or other assets of any value.

#### SMALL ESTATES PROCEEDINGS >



For people who died after April 26, 2001, and had assets with a total value of \$40,000.00 or less,\* a small estate proceeding may be opened to appoint a personal representative, pay claims, and make distribution of estate assets.

#### FOREIGN DECEDENT'S ESTATES >



Since the primary estate is not being opened in the District of Columbia, the estate is called a foreign estate proceeding (FEP), no personal representative is appointed in DC, and no letters of administration are issued.

#### FILING A WILL >



The Probate Division does not accept wills before death. The will should be filed within 90 days after the death of the deceased person with a Certificate of Filing Will.

#### GUARDIANSHIP AND/OR CONSERVATORSHIPS (INT/IDD)



Intervention proceedings are opened for adults 18 or older who live in the District of Columbia, are incapacitated, and need assistance with health care, quality of life, or placement decisions or the handling of finances or other

#### TRUSTS (TRP) >



In its simplest form, a trust is created when property is held by one person or entity for the benefit of another or others. A variety of trust-related actions are filed in the Probate Division.

#### GUARDIANSHIP OF MINORS' ESTATES (GDN)



Guardianship of Minor's Estates (GDN) are opened for children under the age of 18 who live in the District of Columbia and who are entitled to receive assets.

#### OTHER PROBATE CASE TYPES >



See cases related to Litigation, Notice of Revocable Trusts, Foreign Intervention, and Disclaimers.

#### Other Probate Matters

- Request Record Searches
- Foreign Intervention Proceeding (FOI)
- Disclaimers (DIS)
- Conservatorship Proceeding (CON)
- Major Litigation (LIT)
- Notice of Revocable Trust (NRT)

# Administration of Decedent's Estates

#### Jurisdiction/Law

- DC Code § 11-921 Civil jurisdiction
  - Decedent's who died <u>domiciled</u> in the District of Columbia
  - Special basis for jurisdiction must be proved
- There have been three major revisions to the laws governing the administration of estates. The date of the death determines the applicable statute and forms used to open the estate.
  - July 1, 1995-Present
  - 1981-June 30, 1994
  - Pre 1981

#### Petitions for Probate

- 1995 Two types of estate administration established
  - Supervised DC Code § 20-401
    - Inventories (DC Code § 20-711) and accounts (DC Code § 20-712) must be sent to interested persons and filed with the Court.
    - Schedule of filing deadlines provided by the court
  - Unsupervised DC Code § 20-406
    - Inventories and accounts must be sent to interested persons and may be filed with the Court (DC Code § 20-713.01).
    - Personal representative not subject to Court supervision.
    - Court approval is NOT required for payment to Personal Representatives or attorneys.

#### Do I have a large or small estate?

- Large estates are those with real property or with personal property that exceeds \$40,000
- However, not all property is considered
  - Insurance policies with beneficiaries
  - Payable on death accounts
  - Joint accounts
  - Joint tenancies
    - Default in DC is JTWROS

#### Abbreviated v. Standard

- This concerns how the estate is opened. Once the estate is opened and the personal representative is appointed, the estates are administered in the same way
- <u>Abbreviated Probate</u> Initiated when an interested person files a petition requesting the probate of a will or determination of intestacy, and requests appointment of a personal representative.
  - No prior notice of the petitioner's request for appointment of a personal representative is required
  - Petitioner must be either the personal representative nominated in the will or have priority
- <u>Standard Probate</u> A proceeding for the probate of a will or a determination of a decedent's intestacy when due execution of a will cannot be presumed and for the appointment of a personal representative when a petitioner does not have priority.
  - Creditors can file a Petition for Standard Probate
  - In standard probate there is an additional publication/notice period, affidavits are required to be submitted with the will and possibly a formal hearing on the will
- Abbreviated Probate is the preferred method due to time and cost considerations

## Who can be personal representative?

- The following is the order of priority for appointment of a personal representative:
  - the personal representative(s) nominated in the will,
  - the surviving spouse, domestic partner, or children of an intestate decedent or the surviving spouse or domestic partner of a testate decedent,
  - the residuary legatees,
  - the children of a testate decedent,
  - the grandchildren of the decedent,
  - the parents of the decedent,
  - the brothers and sisters of the decedent,
  - the next of kin of the decedent,
  - other relations of the decedent,
  - largest creditor who applies,
  - any other person.

## Who cannot be personal representative?

- The court will exclude a petitioner who:
  - filed a written renunciation,
  - is under the age of 18,
  - has a mental illness or is under conservatorship,
  - is a convicted felon,
  - is an alien who has not been lawfully admitted for permanent residence,
  - is a judge of any U.S. court or an employee of the Superior Court of the District of Columbia, the DC Court of Appeals or the DC Court System unless that person is a surviving spouse/domestic partner of the decedent, and
  - Is a non-resident of DC unless they file a power of attorney providing Register of Wills power to accept service of notices.

#### What should I do with the Will?

- Original wills are required to be filed with the Court
  - D.C. Code § 18-111. Withholding will
     Whoever, having possession of a testamentary instrument, willfully neglects, for the period
     of 90 days after the death of the testator becomes known to him, to deliver it to the Probate
     Court, or to the Register of Wills, or to an executor named in the instrument, shall be fined
     not more than \$500.
  - Wills must be filed within 90 days of the date of death
  - Filed in clerk's office Room 314
  - Accompanied by a certificate of filing will
  - D.C. Code § 18-112. Taking and carrying away, or destroying, mutilating, or secreting will Whoever, during the life or after the death of the testator, for a fraudulent purpose, takes and carries away, or destroys, mutilates, or secretes, a testamentary instrument, shall be imprisoned not more than five years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in [§ 22-3571.01]. Those in possession of an original will are subject to sanctions for not filing it, sanctions are imposed for intentionally failing to do so.

#### Forms Needed to File a Petition

- Petition for Probate
- Personal Identification Information (Form 26)
- Bond of Personal Representative /Waiver of Bond
- Abbreviated Probate Order
- Notice of Appointment, Notice to Creditors, and Notice to Unknown Heirs
- Optional Forms
  - Certificate of Filing Will
  - Renunciation
  - Consent to Appointment of Personal Representative

#### **Up Front Costs**

#### Bond

- Unless excused, each personal representative must pay bond
  - Bond protects the interested persons from the personal representative absconding with the assets of the estate
    - Based on value of the estate Pay \$1 per every \$1000
    - Can be difficult to get bonded depends on finances/credit
  - Can be waived in the decedent's will or by written waiver of interested persons (defined to include creditors)
  - No waiver permitted on behalf of a person who is not a competent adult except as provided in D.C. Code § 20-101(d)(2)(C).
  - Calculated as 100% of estate value plus 1 year of income value plus 10%

#### Court costs

- \$25 for all real property regardless of total value
- Sliding scale for personal property based on total value D.C. SCR-PD Rule 425
- Can be waived Application to Proceed without Prepayment of Costs

#### Publication – D.C. Code § 20-704

- Notice of Appointment, Notice to Creditors, Notice to Unknown Heirs must be published once a week for three successive weeks in two newspapers or periodicals of general circulation in the District
- Daily Washington Law Reporter is required
- Petitioner may choose second newspaper from among the many available
  - Commonly selected newspapers:
    - Afro American Newspaper
    - Washington Informer
    - Washington Jewish Weekly
    - Washington Post (cost prohibitive)
- Cost \$150-\$500 on average; this expense cannot be waived

## How does the publication process work?

- The Notice of Appointment, Notice to Creditors, Notice to Unknown Heirs is filed with the Petition for Probate in the initial filing
- The Notice is sent by the clerk's office to both selected newspapers
- The publications will each send a bill to the appointed personal representative
- Once the bill is paid, the publication will send Proof/Affidavit of Publication to the personal representative
- Personal Representative is responsible for filing Proof/Affidavit of Publication with the Court within 90 days of appointment
  - Proof/Affidavit of Publication must be filed in conjunction with the VCNO or Inventory
  - The Personal Representative will be summoned to a Summary Hearing before the Court if the Proof/Affidavit of Publication is not timely filed
  - Summary Hearing may result in removal and appointment of a successor Personal Representative
- If the bill is not paid, the Proof/Affidavit of Publication will not be sent

#### How/Where do I file the petition?

- Petitions for Probate must be reviewed by an Assistant Deputy Register of Wills (ADROW) who
  confirms death via the death certificate, reviews the Petition for legal sufficiency and ensures all
  supporting forms/documents are properly completed and annexed
  - ADROWs are located at the end of the hallway in Room 312
  - Petitioners will sign-in at the computer terminal and wait to be called for "interview"
  - ADROWs do not provide legal advice, assistance with forms or aid with administration
- Once the ADROW approves the Petition, they will direct the Petitioner to file the Petition for Probate in the Probate Clerk's Office, Room 314, where they will pay the filing fee. If the Petition includes an original Last Will & Testament, the ADROW will personally deliver that document to the Probate Clerk's Office.
  - After the Petition for Probate is filed, it is sent to the Judge for review and approval or denial.
  - If approved, the Judge issues an order appointing the Personal Representative, ruling on Bond and the amount and noting any limitations to the Personal Representative's powers and authority.
  - The order is mailed to the Personal Representative (or his counsel as appropriate) with Letters of Administration, a Schedule of Mandatory Filings, a Notice to Personal Representatives and the General Information Sheet. The Personal Representative is then expected to begin administering the decedent's estate.

#### Helpful Division Rules/Procedures

- Some ADROWs require that all submitted forms be typed
- All court staff require that the Notice of Appointment, Notice to Creditors, Notice to Unknown Heirs be typed
- The original Petition for Probate and all supporting forms/documents will be scanned and returned. The original Last Will & Testament will not be returned.
- The following payment types are accepted:
  - Cash (exact amounts, the Probate Clerk's Office is often unable to make change) and money orders
  - Checks (personal checks with signer's ID up to \$5,000; certified checks required for more than \$5,000)
  - Credit and debit cards (a 5% fee will be assessed)

### What Happens Next?

- Verification and Certificate of Notice (VCNO) unsupervised administration ONLY
  - Within 20 days of the first date of publication of the Notice of Appointment, Notice to Creditors, Notice to Unknown Heirs (Notice), the Personal Representative must send the Notice and the General Information Statement for Heirs, Legatees, and Creditors to all interested persons by US Certified Mail Return Receipt Requested with Delivery Restricted to the Addressee.
  - Within 90 days, the Personal Representative must file the VCNO certifying they sent the Notice and the General Information Statement to all the interested persons. The VCNO must be filed in conjunction with the Proof/Affidavit of Publication.
  - If the VCNO is not timely filed, a Summary Hearing will be scheduled that could result in removal of the personal representative.

#### Inventory

- Within 90 days, the Personal Representative must prepare an Inventory listing all known and discovered assets of the decedent's estate with their value as of the date of death.
- The personal representative must mail a complete copy of the Inventory to all interested persons. In supervised administration, the Personal Representative must also file the Inventory with the Court. The Inventory must be filed in conjunction with the Proof/Affidavit of Publication.
- The Court has made an Inventory form available on the website. The form is only required in supervised administration.
- Court appraisal of assets has been suspended indefinitely.

#### Claim Period/Paying Claims

- Publication of the Notice begins a six-month period during which creditors may file claims against the estate or interested persons may contest the appointment of the Personal Representative or the admission of a Last Will & Testament.
- Creditors must notify the Personal Representative of their claims and provide evidence thereof. Claims in excess of \$500 must be made in writing, filed with the Court and sent to the Personal Representative (or counsel therefor).
- The Personal Representative is tasked with communicating to creditors whether a claim is allowed or disallowed in whole or in part.
- D.C. Code § 20-906 provides the "Order of payment" for decedent's estates. The Personal Representative is encouraged to allow the statutory claims period to expire before paying claims and to follow the statutory order of payment as he may be liable to creditors up to the value of the estate for improperly made payments.

#### Accounts

- The Personal Representative is required to periodically account for the assets, debts and expenditures
  of the estate.
- If the estate has realized additional, liquid assets raising the value to a new bracket, additional Court costs are required and should be paid at the time of filing/submitting an Account.
- Accounts must be sent to all interested persons, including creditors with claims in excess of \$500.
- Supervised Estates
  - The first account must be filed with the Court no later than one year and one day after the date of first publication. If additional accounts are required, subsequent accounts are due every nine months from the date the last account was filed.
  - Court provides an Account form, on the website, that should be used.
- Unsupervised Estates
  - No set time period, but it is good practice to follow the same timeline as supervised estates to avoid disgruntled interested persons and running afoul of the Court.
  - No specific form or level of formality is required.
- Accounts must be filed/prepared until all assets have been distributed.

#### Closing the Estate

- In unsupervised administration, a Personal Representative may file a Certificate of Completion to notify the Court his duties are complete and close the estate. See D.C. Code § 20-1301(b)
- If no Certificate of Completion is filed, the appointment of a Personal Representative will terminate by operation of law 3 years from the date of appointment of the Personal Representative. See D.C. Code § 20-1301(c)
- The approval of the Final Account automatically closes the estate in supervised administration. *See* D.C. Code § 20-1301(a)

Intervention
Proceedings
a/k/a
Guardianships &
Conservatorships

#### **JURISDICTION**

- Intervention proceedings are for adults (18+ years) who are proven by clear and convincing evidence to be incapacitated and require the appointment of a guardian/conservator for assistance (and there is no other alternative available to guardianships – called "the least restrictive alternative")
- D.C. must be the person's "home state" i.e., the person is a D.C. resident or has been physically present in D.C. for at least 6 consecutive months (there are other ways for achieving jurisdiction the person has "significant connections" to D.C. or where there is an "emergency.") See D.C. Code § 21-2401.01, et seq.

## What is the difference between a Guardian and a Conservator?

- Guardian an individual appointed by the court to make medical and personal decisions for a person.
- Conservator an individual appointed by the court to manage the person's income and assets

## Statutory Provisions and Rules

- See D.C. Code § 21-2001, et seq.
- See SCR-PD 301, et seq.

I recommend doing a quick read-through of the provisions and rules.

### Who are the Players?

Subject - the person subject to the guardianship proceeding; becomes a Ward once a guardian or conservator is appointed

Petitioner – the person or entity commencing the proceedings with the Court

Counsel – appointed to zealously represent the Subject in the proceedings

Guardian ad litem ("GAL") – appointed by the court to assist the Subject to determine his or her interests in regard to the guardianship OR to make that determination if the Subject is unconscious or otherwise wholly incapable of determining his or her interest in the proceeding even with assistance

Examiner – person appointed to examine the Subject and write a report to the Court regarding incapacity

Visitor – person appointed to interview the Subject and investigate circumstances surrounding the Subject

## What is "Incapacity?"

 "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.

D.C. Code § 21-2011(11)

## There are Different Types of Guardianship

- Guardianships can be general (broad/permanent) or limited (limited in time and/or scope)
- The types you will be seeing are Temporary or Permanent

## Temporary Guardianships

- Used primarily where there is an emergency or need for a temporary guardian to make health care decisions.
- Emergency guardian for up to 21 days based on a life-threatening situation or situation involving emergency care when no other person appears to have authority to act under the circumstances
- Health care guardian for up to 90 days when there is no guardian, there are two certifications of incapacity under D.C. Code, sec. 21-2204, and no other person appears to have authority to act under the circumstances.

#### Temporary Guardianship Documents

- Personal Identification Information Form
- Petition for Appointment of a Temporary Guardian
- Two Certifications of Incapacity at least one must be from a psychiatrist or psychologist and the other from a second physician (both must have examined the person within one day of completing the Certification)
- As much medical documentation as possible records, letters, reports
- Proposed Order Appointing Counsel, Examiner, Visitor and/or Guardian ad Litem
- Proposed Order Appointing Temporary Guardian
- No Filing Fee

## How to File Temporary Guardianships

- Pre-COVID same procedures as for opening an Estate
- During COVID
  - For Emergency Guardianships email to <a href="mailto:ProbateEmergencyFilings@dcsc.gov">ProbateEmergencyFilings@dcsc.gov</a> and in the Re line, insert the name and "21-day Emergency Guardian"
  - For Health Care Guardianships email to <u>probatefilings@dcsc.gov</u> and in the Re line, insert the name and "90-day Health Care Guardian"
  - Tip the Clerks want all documents filed as one large document. You should compress the file when emailing
  - You can also mail the documents or drop them in the drop box at the Moultrie Courthouse, but it could take some time for processing

# Temporary Guardianships What Happens Next?

- For Temporary Guardianships in emergency matters, some Judges will rule on the pleadings; where a 90-day health care guardian is requested, a hearing will be scheduled within one week. All hearings are currently remote
- Counsel and/or a GAL will be appointed for the Subject. They will need to visit the Subject whether in-person or virtually
- In a request for a 90-day health care guardian, the Petitioner must have someone personally serve the Subject (the Petitioner cannot serve the Subject) and file an Affidavit of Personal Service form. The Petitioner must also serve all interested parties (all family members) if the interested person lives in D.C., it must be personal service (that can be sub-served) if the interested person does not live in D.C., the pleadings can be served via mail. Affidavits of Service must be filed
- The Subject must appear at the hearing
- At the hearing, the Petitioner has to prove the case by clear and convincing evidence that the person is incapacitated. For a health care guardian, must also prove that the incapacitated person cannot:
  - (A) Appreciate the nature and implications of a health-care decision;
  - (B) Make a choice regarding the alternatives presented; or
  - (C) Communicate that choice in an unambiguous manner.

D.C. Code § 21-2011(11A)

## Permanent Guardianships

Used to appoint a permanent guardian and/or conservator

### Permanent Guardianship Documents

- Personal Identification Information Form (if there is not an already existing case for the person)
- Petition for a General Proceeding
- Medical evidence of incapacity medical records, reports, letter from a physician
- Notice of Initial Hearing to Subject
- Notice of Hearing to Other Persons
- Proposed Order Appointing Counsel, Examiner, Visitor and/or Guardian ad Litem
- Proposed Findings of Fact, Conclusions of Law and Order;
- A Statement of Criminal History must be filed by any person who is seeking appointment as guardian.
- If a conservator is being requested, there is a filing fee of \$45.00 payable to "Register of Wills" (paid by check or money order payable to "Register of Wills," cash, or credit card (Visa, MasterCard, Discover, American Express). No filing fee for a guardian appointment.

#### How to File Permanent Guardianships

- Pre-COVID same procedures as for opening an Estate
- During COVID
  - Email to <u>probatefilings@dcsc.gov</u> and in the Re line, insert the name and "Petition for a General Proceeding"
  - Tip the Clerks want all documents filed as one large document. You should compress
    the file when emailing
  - You can also mail the documents or drop them in the drop box at the Moultrie Courthouse, but it could take some time for processing

# Permanent Guardianships What Happens Next?

- The Court will schedule the matter for a hearing within 4-6 weeks
- Counsel and/or a GAL will be appointed for the Subject. The Court may also appoint an Examiner and/or Visitor – they will need to visit the Subject, whether in-person or virtually
- The Petitioner must have someone personally serve the Subject (the Petitioner cannot serve the Subject) and file an Affidavit of Personal Service form. The Petitioner must also serve all interested parties (all family members) – if the interested person lives in D.C., it must be personal service (that can be sub-served)I if the interested person does not live in D.C., the pleadings can be served via mail. Affidavits of Service must be filed
- At the hearing, the Petitioner has to prove the case by clear and convincing evidence that the person is incapacitated. The Subject must appear at the hearing.

# Permanent Guardianships/Conservatorships – After the Hearing

- The person appointed as a Guardian of a Ward must have a Criminal History completed at MPD. The Guardian will also need his/her fingerprints taken and submitted to the FBI. The Criminal History Report needs to be filed within 60-days of appointment. The FBI Report is due within 180 days of appointment.
- The Guardian must file an Acceptance within 14 days of appointment
- The Guardian must file a Guardianship Plan within 90 days of appointment
- The Guardian must also file a Report of Guardian every six months from the anniversary date of appointment for as long as the guardianship is in existence.
- The Conservator must file an Acceptance within 14 days of appointment
- The Conservator will need to be bonded. The bond must be filed within 14 days
- The Conservator must record his/her Letters of Conservatorship in the D.C. Land Records
- The Conservator must file an Inventory and Conservator Plan within 90 days of appointment
- The Conservator must file an Account annually on or before the anniversary date of the appointment plus 30 days.

## Closing a Guardianship/Conservatorship

- Terminations of guardianships/conservatorships occur:
  - 1. When the Ward dies
  - 2. If the Ward regains capacity
- A guardian and conservator may also resign by petitioning the Court.
- Successor guardians/conservators will be appointed if the then-serving guardian/conservator resigns, is removed, dies, or becomes incapacitated.
- Upon termination of a guardianship due to the death of the Ward, the guardian must file a Notice of Death
  as soon as possible. In any event of termination, a Final Guardianship Report must be filed within 60 days of
  the terminating event.
- Upon termination of a conservatorship due to the death of a Ward, the conservator must file a Notice of Death (if not already filed by the guardian) as soon as possible. In any event of termination, the Final Account must be filed within 60 days of the terminating event.

#### **CONTACT US**



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