

ESTATES TRUSTS AND PROBATE SECTION STEERING COMMITTEE
TRANSMITTAL OF COVER LETTER AND REPORT TO THE CHIEF JUDGE OF THE
SUPERIOR COURT AND THE PRESIDING AND ASSOCIATE PRESIDING JUDGES OF
THE PROBATE DIVISION OF THE SUPERIOR COURT

SUMMARY STATEMENT

The ET&P Steering Committee plans to submit the enclosed cover letter, report and attachments to the judges identified in the cover letter. The purpose is to support a request to increase the amount paid from the Court's guardianship fund to attorneys who are appointed by the Court to represent indigent individuals who are the subjects of guardianship proceedings. The requested increase is from \$80/hour to \$125/hour. There is no official court rule applicable to this issue.

The Steering Committee members are: Anne Meister and Morris Klein, co-chairs, Kimberly Kyle Edley, Katè M.H. Kilberg, Paul D. Pearlstein, Catherine Mary Rafferty, Andrea J. Sloan, Kimberly Martin Turner, and Edward G. Varrone. Anne Meister has recused herself from consideration of this matter.

Disclaimer: The views expressed herein represent only those of the authors of the report and the Steering Committee of the Estates, Trust and Probate Section and are not those of the D.C. Bar or its Board of Governors. In addition, Anne Meister, a member of the Steering Committee, recused herself from participating in this matter.

DRAFT

Hon. Rufus G. King III
Chief Judge
Superior Court of the District of Columbia
Room 3500
500 Indiana Ave, NW
Washington, DC 20001

Dear Judge King,

On behalf of the Steering Committee of the Estates, Trust and Probate Section of the District of Columbia Bar,¹ I am forwarding to you a report concerning the rate of compensation awarded to attorneys from the Guardianship Fund. The report was prepared by the Section's Guardianship Fund Rate Increase Initiative Committee.

The Steering Committee endorses the recommendations contained in the report and respectfully requests the Court's approval.

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On behalf of the Steering Committee,

Respectfully submitted,

Morris Klein,
co-chair

enclosures

cc:

Hon. A. Franklin Burgess, Jr., Presiding Judge, Probate Division
Rhonda Reid-Winston, Associate Presiding Judge, Probate Division

¹The Steering Committee members are: Anne Meister and Morris Klein, co-chairs, Kimberly Kyle Edley, Kate M.H. Kilberg, Paul D. Pearlstein, Catherine Mary Rafferty, Andrea J. Sloan, Kimberly Martin Turner, and Edward G. Varrone. Anne Meister has recused herself from participating in this matter.

December 11, 2007

MEMORANDUM

TO: ETP Section Steering Committee

FROM: Guardianship Fund Rate Increase Initiative Committee

Myrna L. Fawcett, chair
C. Hope Brown
Robert A. Gazzola
Frances Hom
Ray A. Johnson
Bonnie Jones-Moon
Gilles A. E. Stucker Jr
Steve Weinberg
Vickey Wright-Smith

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The Guardianship Fund Rate Increase Initiative Committee ("Committee") was asked to research the history and feasibility of an increase in the current hourly rate for work performed by attorneys seeking payment from the Guardianship Fund.(D.C. Code § 21-2060) in connection with Intervention Proceedings brought before the Probate Division of the Superior Court of the District of Columbia. Below are our comments:

Since the approval by the Superior Court of the Uniform Probate Act in 1988, the D.C. Code established that "[c]ompensation shall be paid from the estate of the ward or person or, if the estate of the ward or person will be depleted by payouts made under this subsection, from a fund established by the District. ...That money is established within the General Fund of the District of Columbia as a separate account to be known as the "Guardianship Fund" ("Fund") and to be administered by the court. There is authorized to be appropriated funds necessary for the administration of this section." (1981 Ed., § 21-2060; Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; July 25, 1987, D.C. Law 7-17, § 2(a), 34 DCR 3802.). At the time the fund was started in 1988, attorneys were compensated at \$65.00 per hour.

In 1993, the Superior Court changed the current hourly rate level to \$80.00 per hour for legal services provided in connection with Intervention Proceedings brought before the Probate Division of the Superior Court of the District of Columbia. [C.J. Hamilton 12/8/93 Memo]. The 1993 recommended rate change took effect on January 1, 1994 “for services performed after January 1, 1994, not just for appointments after January 1, 1994.” [C.J. Hamilton 1/24/94 Memo].

The Committee now recommends an hourly rate increase to \$125.00 per hour, with an updated adjustment every year. The Committee also recommends that the hourly rate increase take effect no later than January 1, 2008 for services performed after January 1, 2008.

In the preparation of this report, the Committee reviewed the *Laffey* Matrix 2003-2014 of hourly rates for attorneys of varying experience levels prepared by the Civil Division of the United States Attorney’s Office for the District of Columbia. The *Laffey* Matrix derives from the rates allowed by the District of Columbia in *Laffey v. Northwest Airlines, Inc.* 52 F. Supp. 354 (D.D.C. 1983), aff’d in part, rev’d in part on other grounds, 746 F.2d 4 (D.C. Cir. 1984), cert. denied, 472 U.S. 1021 (1985). The *Laffey* Matrix shows that the hourly rate range for attorneys with 1 to 20+ years of experience is \$180.00 to \$380.00 per hour, as of 2003. The *Laffey* Matrix rate for subsequent yearly periods factors the change in the cost of living for the Washington, DC area to the applicable rate for the prior year, rounding to the nearest multiple of \$5.00. The cost of living is measured by the Consumer Price Index for All Urban Consumers in the Washington metropolitan area, as posted by the Bureau of Labor Statistics each year. Generally, the updated *Laffey* Matrix is relied upon as evidence of the prevailing market rates for litigation counsel in the Washington, DC area.

While the current Guardianship Fund hourly rate does not reflect the hourly rates detailed in the *Laffey* Matrix, the *Laffey* Matrix serves as a guide in determining a reasonable rate increase for the Guardianship Fund rate based upon current market rates, market conditions, and the Guardianship Fund’s purpose.

The Committee also reviewed the Cost of Living Adjustments determining a reasonable rate increase for the Guardianship Fund rate based upon current

market rates, market conditions and the Guardianship Fund's purpose. Based on this COLA analysis, the attorneys should be paid approximately \$110.00 an hour. Attached to this Report is a list of the historical COLA rates.

Further, the Committee noted that the Superior Court raised the hourly rate from \$65.00 an hour to \$80.00 an hour five years after it inaugurated the Guardianship Fund. In extrapolating this increase to today, attorneys should be paid \$138.24 an hour from the Guardianship Fund.

The hourly rate for services performed by attorneys in intervention proceedings has not increased in nearly fourteen (14) years. In particular, the rate for subsequent yearly periods has not factored in a cost of living adjustment. Based on the type of work performed in intervention proceedings, attorneys who receive appointments from the fiduciary appointment list are expected to be on call 24 hours a day 7 days a week - particularly when serving as guardians. Further, attorneys appointed by the Court through the fiduciary appointment list serve a critical role in protecting many of the District's vulnerable citizens.

Notably, the Superior Court has imposed standards for participation in the Probate Division's fiduciary appointment list. These standards govern the practice by lawyers accepting appointments pursuant to the fiduciary appointment list of the Probate Division. [Administrative Order 06-19, effective 12/5/06]. Lawyers must be knowledgeable of substantive and procedural probate laws and have participated in required training programs to be eligible for participation on the fiduciary appointment list. The Superior Court has imposed these requirements to ensure that qualified attorneys are appointed in intervention proceedings.

The Committee believes that increasing the Guardianship rate to \$125.00 per hour is warranted and reasonable, and will enhance the Superior Court's ability to attract more qualified and experienced attorneys. Further, the Committee asks that the hourly rate be increased every year, with the increase based on a COLA analysis.