

Michigan Supreme Court
State Court Administrative Office
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Lansing, Michigan 48909
(517) 373-4835
John D. Ferry, Jr., State Court Administrator

Memorandum

To: Chief Probate and Circuit Judges; Presiding Family Division Judges;
Probate Court Administrators; Probate Registers

From: John D. Ferry, Jr.

Date: July 19, 2002

Re: State Court Administrative Office Memorandum 2002-08:
SCAO Guidelines for Review of Fiduciary Accounts

The attached, Guidelines for Review of Fiduciary Accounts, is being provided to you as a resource which may aid in overseeing the actions of court-appointed fiduciaries. Also attached is a two-page summary of the questions covered in the guidelines.

These guidelines were developed after review by and input from probate registers. Comments or questions concerning these guidelines should be directed to George Strander (email: stranderg@jud.state.mi.us ; phone: 517-373-4845).

GUIDELINES FOR REVIEW OF FIDUCIARY ACCOUNTS
STATE COURT ADMINISTRATIVE OFFICE

Instructions: Answer all questions in these guidelines for review of PC583 or PC584. Use all directions generated from your answers in consulting with the account's fiduciary.

I. GENERAL

A. Is the fiduciary seeking to have the account allowed?

G YES Ensure that one of the following is attached:

- waivers and consents from all interested persons
- an account notice (if your court allows this; use of such a notice should be restricted to smaller estates, such as ones with assets under \$15,000 excluding real estate)
- a petition for allowance of the account

If one of these is not attached, return account to fiduciary.

G NO

B. Did you receive an account notice with the account?

G YES Ensure that proofs of service are also attached. Review the proofs of service to determine that all proper persons were served and that complete and accurate notice of the account was provided.

If anything is amiss, return documents to fiduciary.

G NO

C. Are the account and any other papers filed original documents?

G YES

G NO Return relevant documents to fiduciary so that original documents may be filed.

D. Is the petition for allowance of the account set for hearing?

G YES Verify correct date and time for notice of hearing.

G NO

II. ACCOUNT PERIOD

A. Does the account period exceed 12 months?

G YES Return account to fiduciary so that multiple accounts may be prepared, unless the excess is not great and flexibility is warranted. [Possible situations warranting flexibility: (1) the account period exceeds 12 months by a few weeks; (2) it is the final account and the account period exceeds 12 months by up to a few months.]

G NO

B. Does the first day of the account period match the last day of the previous relevant document (i.e., if the first account, the day of the inventory;¹ if a subsequent account, the last day of the account period from the last account)?

G YES

G NO If the lack of matched dates results in a gap of time not accounted for either by the account or by the earlier document, return account to fiduciary for correction.

III. INCOME {See Column 1 on PC583 and Schedule A on PC584}

A. Is there some type of income, given the circumstances of the case, that you would expect for this case to be taking in but which is not recorded on the account?

G YES Contact fiduciary and make relevant inquiries.

G NO

TYPICAL ESTATE INCOME SOURCES			
DECEDENT'S ESTATE	CONSERVATOR FOR MINOR	CONSERVATOR FOR ADULT	DDI GUARDIAN OF ESTATE
Interest	Interest	Interest	Interest
Dividends	Dividends	Dividends	Dividends
Capital gains	Capital gains	Capital gains	Capital gains
Net gain from Sched. C (PC584)	Net gain from Sched. C (PC584)	Net gain from Sched. C (PC584)	Net gain from Sched. C (PC584)
Increase in value of real estate	Increase in value of real estate	Increase in value of real estate	Increase in value of real estate
Tax refunds	SSI (Disability)	SSI (Disability)	SSI (Disability)
Rent	SS death benefits	Social Security	Social Security
Ins. Policy refund	Death benefits from auto insur.	Wages	Wages
	Life insurance	Retirement pension	
		VA benefits	
		Rent	
		Tax refunds	

- B. Does the list of income add up to the total provided?
 G YES
 G NO Return account to fiduciary for correction.

IV. EXPENSES {See Column 2 on PC583 and Schedule B on PC584}

- A. Given the case, are the types of expenses listed appropriate and is the amount for each type of expense reasonable?
 G YES
 G NO Contact fiduciary and make relevant inquiries.

QUESTIONABLE TYPES OR AMOUNTS OF EXPENSES			
DECEDENT'S ESTATE	CONSERVATOR FOR MINOR	CONSERVATOR FOR ADULT	DDI GUARDIAN OF ESTATE
Personal loan	Personal loan	Personal loan	Personal loan
Inordinately low sales price for property.	Room and board for protected ind. furnished by conservator or relative of conservator. ²	Room and board for protected ind. furnished by conservator or relative of conservator. ²	Room and board for protected ind. furnished by conservator or relative of conservator. ²
	Withdrawal of assets in excess of the amount of SS received for the minor's support.	Expenditure of assets after date-of-death (e.g., to pay funeral expenses) without court approval.	Expenditure of assets after date-of-death (e.g., to pay funeral expenses) without court approval.
		Personal expenses are unusually high (say, over \$5000) and/or unitemized.	Personal expenses are unusually high (say, over \$5000) and/or unitemized.

- B. Does the list of expenses and other disbursements add up to the total provided?
 G YES
 G NO Return account to fiduciary for correction.

V. CALCULATION OF BALANCE ON HAND {Item 2 on PC583}

- A. Does the “Balance on hand from last account” amount match the relevant amount from the previous account/inventory?
G YES
G NO Return account to fiduciary for correction.
- B. Does the “Add Total Column 1” amount match what is provided on the first page for the total income and other receipts?
G YES
G NO Return account to fiduciary for correction.
- C. Do the amounts in the first two lines add up to what is provided on the “Subtotal” line?
G YES
G NO Return account to fiduciary for correction.
- D. Does the “Subtract Total Column 2” amount match what is provided on the first page for the total expenses and other disbursements?
G YES
G NO Return account to fiduciary for correction.
- E. Does the “Balance of assets on hand” amount equal the amount in the “Subtotal” line minus the amount in the “Subtract Total Column 2” line?
G YES
G NO Return account to fiduciary for correction.

VI. GAINS AND LOSSES ON DISPOSITION OF ASSETS {Schedule C on PC584}

- A. Is each entry on a disposition of an asset filled out completely?
G YES
G NO Return account to fiduciary for correction.
- B. For each disposition, are the amounts entered for “Value at time acquired by fiduciary” and for “Net sales price” reasonable?³
G YES
G NO Contact the fiduciary and make relevant inquiries.

VII. ITEMIZATION OF ASSETS ON HAND {Item 3 on PC583 and Schedule D on PC584}

- A. Are any of the values of assets itemized different from the values listed on the previous account/inventory?
G YES Ensure that there is adequate reason for the changes and that they are not being made simply to make the account balance.

If you have questions, contact the fiduciary and make relevant inquiries.

G NO

- B. Does the list of itemized assets add up to the total balance on hand provided?

G YES

G NO Return account to fiduciary for correction.

- C. Does the total balance on hand in the itemization equal the total balance of assets on hand provided above in the previous section?

G YES.

G NO Return account to fiduciary for correction.

VIII. INTERESTED PERSONS, TAXES, AND FILING WITH THE COURT

- A. Is complete and accurate information on changes to interested persons provided?⁴

G YES

G NO Return account to fiduciary for correction.

- B. Does the account show one and only one of the following: no tax is due, tax is due, tax was due but has been paid? [*Applicable only in decedents' estates.*]

G YES

G NO Return account to fiduciary for correction.

- C. If the account indicates that tax has been paid in full, is evidence of full payment from the Michigan Department of Treasury attached to the account? [*Applicable only in decedents' estates.*]

G YES or NOT APPLICABLE

G NO Consider returning the account to fiduciary for attachment of necessary evidence.⁵

- D. Has the fiduciary refrained from indicating that the account is not being filed with the court?
G YES
G NO Since the account is being filed with the court, for the sake of accuracy consider returning account to fiduciary for correction.

IX. FEES

- A. If fiduciary fees are being taken, is an adequate written description of the services performed attached?
G YES or NOT APPLICABLE.
G NO Return account to fiduciary so that adequate description can be attached, unless special circumstances exist which warrant flexibility. [One situation which may warrant flexibility is the following: (i) the only income the ward receives is from Social Security; (ii) the ward is on Medicaid (iii) the ward is placed in a nursing home facility; (iv) fiduciary fees per month match or fall below the maximum amount Medicaid will reimburse nursing homes for a fiduciary taking funds out of the protected individual's Social Security payment for "administrative purposes" – i.e., \$60.⁶]
- B. If fiduciary fees are being taken, is the amount of fees taken reasonable?⁷
G YES or NOT APPLICABLE.
G NO Contact fiduciary and make relevant inquiries.
- C. If attorney fees are being taken, is an adequate written description of the services performed attached?⁸
G YES or NOT APPLICABLE.
G NO Return account to fiduciary so that adequate description can be attached.

X. SIGNATURES

- A. Has the fiduciary (or each fiduciary, if there are co-fiduciaries) signed the account and included the date of signing and his or her address?
G YES
G NO Return account to fiduciary for completion.
- B. If there is an attorney, has the attorney signed the account and provided his or her address?
G YES or NOT APPLICABLE.
G NO Return account to fiduciary for completion.

NOTES

1. Courts should verify that the date of the inventory represents the date of the appointment. Otherwise, there is the potential of some fiduciary activity after appointment yet before the date of the inventory being unaccounted for.
2. Under MCL 700.5314(d)(ii), if a conservator has not been appointed to administer a legally incapacitated individual's estate, a guardian of the individual "shall not use money from the ward's estate for room and board that the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by court order made upon notice to at least 1 of the ward's next of kin, if notice is possible." It is suggested here that a court may wish to use a similar standard when examining the expenses of conservators for minors, conservators for adults, and guardians of the estate for the developmentally disabled.
3. The value of an asset at the time acquired by the fiduciary should be used in the calculation of gains and losses on the disposition of assets only if the fiduciary has not been depreciating or appreciating the value of the asset on past accounts. If depreciation or appreciation has been recorded on past accounts (as income, either in Column 1 of PC583 or Schedule A of PC584), the fiduciary should use the last value recorded for the asset when filling in "Value at time acquired by fiduciary." If gains and losses on the disposition of assets are not calculated in this way, the following type of problem can arise:
Parcel of land A is in the estate, and the fiduciary lists its value on the inventory at \$20,000. On subsequent accounts, the fiduciary reflects the appreciation of A's value to \$50,000 as income. When the fiduciary sells A for \$50,000, if a gain of \$30,000 is recorded on Schedule C of PC584, that \$30,000 will also need to be reflected on Schedule A, and thus the same income will be counted twice.
4. Consult recent proofs of service to help determine if there have been changes. If there is no proof of service for an interested person listed before, that may be because the person is now deceased.
5. The status of any estate tax must also be provided by the personal representative when closing the estate.
6. The funding stream for protected individuals living in a nursing home who are on Social Security and Medicaid is a bit complicated. Some explanation can be given via an example:

Imagine A lives in a nursing home, is on Medicaid, and Social Security provides A's only income. Imagine further that the nursing home costs \$2000 per month and that A receives \$1000 per month in Social Security. A has a guardian, G, and G takes \$60 out of each month's Social Security check as fiduciary fees before forwarding the balance to the nursing home.

Additionally, the nursing home is required by law to take \$60 out of the amount it receives each month to place in a trust fund for the incidental expenses of the protected individual. Medicaid pays the nursing home \$1120 each month: \$1000 to make up the difference between Social Security and the nursing home expense, \$60 to reimburse the nursing home for the money taken out by the fiduciary, and another \$60 to reimburse the nursing home for the money taken out to place in the protected individual's trust fund. If, by chance, the fiduciary were to take out more than \$60 in a month for fiduciary fees, the Medicaid payment to the nursing home would not increase.

7. In general, it makes sense to require fiduciaries to explain how they arrived at the fiduciary fees they list. For instance, if a specific hourly rate is charged, determine if the rate is based on some special expertise the fiduciary has or is compensation for time lost at work.
8. Many courts have attorney fee schedules which would likely apply to fees taken here.

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CHECKLIST SUMMARY

I. GENERAL

- A. Is the fiduciary seeking to have the account allowed?
- B. Did you receive an account notice with the account?
- C. Are the account and any other papers filed original documents?
- D. Is the petition for allowance of the account set for hearing?

II. ACCOUNT PERIOD

- A. Does the account period exceed 12 months?
- B. Does the first day of the account period match the last day of the previous relevant document?

III. INCOME

- A. Is there some type of income, given the circumstances of the case, that you would expect for this case to be taking in but which is not recorded on the account?
- B. Does the list of income add up to the total provided?

IV. EXPENSES

- A. Given the case, are the types and amounts of expenses listed appropriate and is the amount for each type of expense reasonable?
- B. Does the list of expenses and other disbursements add up to the total provided?

V. CALCULATION OF BALANCE ON HAND (PC 583)

- A. Does the "Balance on hand from last account" amount match the relevant amount from the previous account/inventory?
- B. Does the "Add Total Column 1" amount match what is provided on the first page for the total income and other receipts?
- C. Do the amounts in the first two lines add up to what is provided on the "Subtotal" line?
- D. Does the "Subtract Total Column 2" amount match what is provided on the first page for the total expenses and other disbursements?
- E. Does the "Balance of assets on hand" amount equal the amount in the "Subtotal" line minus the amount in the "Subtract Total Column 2" line?

VI. GAINS AND LOSSES ON DISPOSITION OF ASSETS (PC 584)

- A. Is each entry on a disposition of an asset filled out completely?
- B. For each disposition, are the amounts entered for “Value at time acquired by fiduciary” and for “Net sales price” reasonable?

VII. ITEMIZATION OF ASSETS ON HAND

- A. Are any of the values of assets itemized different from the values listed on the previous account/inventory?
- B. Does the list of itemized assets add up to the total balance on hand provided?
- C. Does the total balance on hand in the itemization equal the total balance of assets on hand provided above in the previous section?

VIII. INTERESTED PERSONS, TAXES, AND FILING WITH THE COURT

- A. Is complete and accurate information on changes to interested persons provided?
- B. Does the account show one and only one of the following: no tax is due, tax is due, tax was due but has been paid? [*Decedents’ estates*]
- C. If the account indicates that tax has been paid in full, is evidence of full payment from the Michigan Department of Treasury attached to the account? [*Decedents’ estates*]
- D. Has the fiduciary refrained from indicating that the account is not being filed with the court?

IX. FEES

- A. If fiduciary fees are being taken, is an adequate written description of the services performed attached?
- B. If fiduciary fees are being taken, is the amount of fees taken reasonable?
- C. If attorney fees are being taken, is an adequate written description of the services performed attached?

X. SIGNATURES

- A. Has the fiduciary (or each fiduciary, if there are co-fiduciaries) signed the account and included the date of signing and his or her address?
- B. If there is an attorney, has the attorney signed the account and provided his or her address?