

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

**IN RE: ADDITION OF NEW RULE 132-A AND AMENDMENT TO
RULE 132 TO COURT OF CHANCERY RULES, SECTION XIII**

This 18th day of October, 2021, IT IS HEREBY ORDERED that the Court of Chancery Rules, Section XIII, are revised to add new Rule 132-A and amend Rule 132, effective December 1, 2021.

Rule 132-A is added as follows:

Rule 132-A. Fiduciary compensation for individual guardians.

This rule shall apply to compensation for individual guardians of the person and/or property in adult guardianships (referred to herein as a "guardian"). It shall not apply to fee-for-service guardians, the Office of Public Guardian, guardianships over the property of minors, or situations where compensation of the guardian has been established via an estate planning instrument.

As used in this rule the term "accounting period" means a period of six (6) months for the guardian's first accounting and of one (1) year for all subsequent accountings.

Subject to the provisions of any valid agreement determining compensation approved by the Court, and subject in any case to increase or decrease by the Court for cause appearing sufficient to the Court, a guardian shall be entitled to the following compensation for services:

- (a) Allowable compensation. – With Court approval, a guardian shall be entitled to compensation of \$250 for guardianship services for any six (6) month accounting period, and \$500 for guardianship services provided for any one (1) year accounting period, to be charged against guardianship income to the extent collectible. A guardian seeking compensation in excess of the allowable compensation amount for services provided for any one (1) accounting period may petition the Court who, in its discretion, will consider the amount and character of the guardianship property, the extent of the risk and responsibility of the guardian, the

character of the services rendered, the degree of difficulty in administering the guardianship, the skill and success of the administration, and any other relevant and material circumstances.

- (b) The charge and collection of compensation for one (1) or more accounting periods may from time to time be deferred, either at the guardian's request or at the Court's discretion; in such cases, the compensation approved by the Court shall be entered on the case docket, along with a notation of the accumulated amount of such compensation approved but not actually charged or collected.

- (c) Co-Guardians. -- The compensation to be allowed to each of two (2) or more co-guardians of the person or property for any accounting period shall be as the Court in its discretion may determine, considering the amount and character of the guardianship property, the extent of the risk and responsibility of each guardian, the character of the services rendered by each guardian, the degree of difficulty in administering the guardianship, the skill and success of the administration, and any other relevant and material circumstances. The compensation allowed each co-guardian, upon petition, may exceed the allowable compensation for a single guardian under subsection (a), at the discretion of the Court.

Rule 132 is amended to read as follows:

Rule 132. Fiduciary commissions.

As used in this rule the terms "trustee" or "trustees" mean testamentary trustees, trustees for mentally ill persons, trustees by appointment of the Court, and other trustees, and fiduciaries whose duties call for the care and management of property (referred to herein as the "trust estate" or the "trust"). This rule shall not apply to guardianships.

As used in this rule the term "commission period" means a period covering 1 month, 3 months, 6 months or a year.

Subject to the provisions of any valid agreement determining compensation, and subject in any case to increase or decrease by the Court for cause appearing sufficient to the Court a trustee shall be entitled to the following commissions for services:

- (a) Income commissions. -- A charge on gross income during each trust accounting year collected by the trustee calculated at the following rates:

6% on the first \$20,000 of income;
3.5% on the next \$10,000 of income;
3% on the next \$270,000 of income;
2% on all income over \$300,000.

(b) Periodic principal commissions. -- A charge on the principal or corpus of the trust estate, computable and payable at the times and in the manner hereinafter set forth at the following annual rates:

5/10 of 1% on the first \$100,000 of principal;
3/10 of 1% on the next \$100,000 of principal;
2/10 of 1% on the next \$500,000 of principal;
1/10 of 1% on all principal over \$700,000.

The principal commissions shall be computed for each commission period on the basis of the fair value of the trust estate, which shall be determined either (1) for any commission period less than annually by an appraisal made by the trustee and certified to the Court as of the last business day of the commission period selected; or (2) by the value theretofore determined as a part of a periodic review of trusts by the trustee, such review to be of a date not more than 12 months prior to the date of making such annual charge. Periodic reviews to be eligible for use for valuation purposes under clause (2) shall be made approximately at 12-month intervals and the date of such reviews shall not vary more than 60 days from 1 year to the next until the termination of the trust, as of which date a final valuation shall be made.

Principal received or withdrawn during any commission period shall be included in the total valuation of the trust estate, but, as to commission periods in excess of 3 months, its value shall be adjusted proportionately for each 3-month period in such commission period that preceded the date of its receipt or followed the date of its withdrawal.

A trustee shall, with respect to any particular trust, select 1 of the commission periods permitted by these Rules and shall adhere to the period selected in computing successive periodic principal commissions for that trust; provided that a trustee may thereafter change such commission period upon notice to the beneficiaries of the trust who are then entitled to receive distributions of income or principal, and to any cotrustees or trust advisors for the trust involved. In any periodic accounting which a trustee is required to file under Rule 114, such fair value so computed shall be certified to the Court in the form of written statements by the trustee, 1 for each commission period for which principal commissions are claimed. Each such certification shall contain a complete list of assets of the principal of the trust estate, the amount of the fair value of each asset, a statement showing which of the methods above referred to has been adopted as

a basis of the valuation and the date of such valuation.

The charge and collection of principal commissions for 1 or more commission periods may at any time from time to time be deferred; in such case, a notation shall be entered on the account submitted to the Court showing the accumulated amount of such principal commissions as computed but not actually charged.

A trustee may not compute or charge periodic principal commissions in which event the trustee shall, at the time of distribution or of termination of the trust or of transfer to a successor trustee, be allowed principal commissions computed under the provisions of paragraph (e) of this rule, or in lieu thereof the trustee may at such time or times apply to the Court for appropriate commissions on principal, which the Court in its discretion may allow and which need not be limited to the amounts of principal commissions at termination set forth by paragraph (e) of this rule.

Notwithstanding an earlier election not to compute or charge periodic principal commissions, a trustee may elect prospectively to compute, charge and collect such commissions at any time during the administration of the trust estate.

Periodic principal commissions may be collected less frequently than the commission period selected for their computation and charge.

(c) Additional charges in special cases. -- When the trust includes 1 or more mortgages, an additional commission shall be allowed at the annual rate of 1/4 of 1% of the total face value of all mortgages held in the trust as of the times of the valuation of the trust assets required by paragraph (b) of this rule or, if the trustee is not charging periodic principal commissions, of the total face value of such mortgages held in the trust on the last business day of each fiscal year of the trust.

When the trust includes real estate, the income commission specified in paragraph (a) of this rule shall apply to gross rents collected by an outside agent and paid to the trustee. If such rents are collected directly by the trustee, the trustee shall be allowed a commission of 8% of gross rentals received.

In the discretion of the Court, additional and special commissions may be allowed for unusual and extraordinary services.

(d) Decrease of commissions in certain cases. --

(1) Control in person other than trustee. -- If the direction and control of investments in any trust, the corpus of which exceeds \$300,000 in value, rest solely with a person other than the trustee, the principal commissions set forth in paragraph (b) of this rule shall be reduced by 15 percent so long as such condition exists.

(2) Large blocks of securities. -- In a trust with limited diversification and a fair value of \$1,000,000 or more, three fourths or more of the fair value of which is invested in not more than 2 blocks of stocks and/or bonds, the income commission set forth in paragraph (a) of this rule shall be reduced by 25 percent, so long as such condition exists.

(e) Principal commissions upon distribution or transfer. -- Upon partial or complete distribution of any trust or upon transfer of a successor trustee, the aggregate principal commissions allowable shall be calculated at the following rates:

- 5% of principal on the first \$50,000;
- 3.6% of principal on the next \$50,000;
- 2.3% of principal on the next \$900,000;
- 1% of principal on all over \$1,000,000.

Provided, however, that if at the time of distribution or transfer the trust shall have been administered by the trustee for a period less than 10 years, such principal commissions shall be reduced to the following percentages of the rates hereinabove specified:

- 30% if termination occurs within 3 years;
- 40% if termination occurs after 3 and before 4 years;
- 50% if termination occurs after 4 and before 5 years;
- 60% if termination occurs after 5 and before 6 years;
- 70% if termination occurs after 6 and before 7 years;
- 80% if termination occurs after 7 and before 8 years;
- 90% if termination occurs after 8 and before 9 years;
- 100% if termination occurs after 9 years.

There shall be deducted from such principal commissions the sum of all periodic principal commissions theretofore charged and collected by the trustee with respect to the trust estate or, in the case of a partial distribution, with respect to the distributable portion of the trust estate. If such sum exceeds the aggregate principal commission allowable under this paragraph, the trustee shall not be obligated to repay such excess but shall not ordinarily be allowed any additional principal commission upon termination of the trust.

Such aggregate principal commission shall be computed on the fair value of the trust estate at the time of partial or complete distribution or of transfer to a successor trustee. Such fair value shall be determined by an appraisal made by the trustee as of the date of partial or complete distribution or transfer. In any accounting which a trustee is required to file, such fair value so determined shall be certified to the Court in the form of written statements by the trustee filed with and as a part of the final account of the trustee, or in the case of partial distribution

or transfer, as a part of the next account of the trustee required under these rules. Each such certification shall contain a complete list of the assets of the principal of the trust estate, the amount of the fair value of each asset, the date of such valuation and a statement of the amounts previously allowed the trustee as periodic principle commissions under this rule. The time or date of partial or complete distribution or transfer shall mean the date of the event that caused the partial or complete termination or transfer of the trust: e.g., the date a beneficiary dies, the date a beneficiary comes of age, or the date on which a written instrument is delivered to the trustee or a Court order is entered authorizing or directing the transfer to a successor trustee.

(f) Apportionment of commissions. -- Except to the extent that the governing instrument or a Court order shall otherwise provide, principal commissions shall be paid out of principal and income commissions shall be paid out of income. Additional commissions on mortgages and real estate shall be charged to income.

(g) Perpetual trusts. -- If a trust is or becomes perpetual (e.g., a charitable trust), the trustee shall be entitled to the total commissions set forth under paragraphs (a) and (b) of this rule, which shall be charged entirely against income.

(h) Co-trustees. -- The compensation to be allowed to each of 2 or more trustees shall be as the Court in its discretion may determine, considering the amount and character of the trust property, the extent of the risk and responsibility of each trustee, the character of the services rendered by each trustee, the degree of difficulty in administering the trust, the skill and success of the administration, and any other relevant and material circumstances. The compensation allowed each trustee, upon petition of any of them, shall be computed in a manner consistent with the above schedule, but the amounts allowed in the aggregate may exceed the amounts allowed a single trustee at the rates set forth above for normal services.

(i) Certain payments income for commission purposes. For the purpose of determining commissions upon income allowable under this rule, income shall be deemed to include (without being limited to) periodic payments of insurance, annuities, pensions, Social Security and railroad retirement board benefits and the like, whether received from public, private or governmental sources; provided that payments shall have been received at substantially regular intervals over a period of at least 12 months during the continuance of the trust and provided further that the Court may in its discretion, when the circumstances are such that the allowance of such commissions upon such payments would work an undue hardship, enter an order modifying the extent to which the provisions of this paragraph shall be


applicable to the allowance of commissions on such payments.

(j) Trustee's fee for review of accountings of an executor or an administrator other than trustee. -- When a trustee receives property from an executor or administrator other than itself, a fee equal to the reasonable costs actually incurred by the trustee shall be charged against principal and allowed to the trustee as compensation for review of the actions, administration and accounting of the executor or administrator. In no event, however, shall this fee exceed the sum of \$1,000 without special allowance of the Court.

(k) Successor trustee's fees for review of accountings of former trustee. -- When a successor trustee receives property from a former trustee, a fee equal to the reasonable costs actually incurred by the successor trustee shall be charged against principal and allowed to the successor trustee as compensation for review of the actions, administration and accounting of the former trustee. In no event, however, shall this fee exceed the sum of \$1,000 without special allowance of the Court.

(l) Minimum commissions. -- A trustee shall be entitled to a minimum commission of \$500 for services in any 1 accounting year to be charged against income to the extent collectible as computed under paragraph (a) of this rule and the balance, if any, to be charged against principal.

FOR THE COURT:


Chancellor Kathleen St. J. McCormick