



Berkeley County Office of Fiduciary Supervisor/Probate  
Berkeley County Government Office Complex – The Dunn Building  
400 West Stephen Street, Suite 108  
Martinsburg, WV 25401  
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304-267-3001

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### **ASSIGNMENT OF A FIDUCIARY COMMISSIONER**

Whenever an Estate controversy arises, either interested parties, the Fiduciary Supervisor, or the County Council may refer the matter to a Fiduciary Commissioner (“Commissioner”).

A Commissioner is tasked to hear and consider all relevant evidence from all interested parties in an Estate controversy. After hearing said evidence, the Commissioner issues a Finding of fact and/or law to the County Council and said Council then hears the case based upon the Commissioner’s report *without taking any additional evidence*.<sup>1</sup> Should you find yourself immersed in an Estate controversy such as this, please seek the advice of legal counsel, as **our office is unable to provide you with strategic/legal guidance**.

Be further advised that while this process of handling an Estate controversy through the probate system is *simpler* than in Circuit Court, it can also be quite lengthy. Indeed, Estate controversies involving a Commissioner can elongate the probate process *indefinitely*.

### **REFERRAL COST/RATE SCHEDULE**

As a private attorney appointed to fulfill a governmental function, the Commissioner is allowed to charge a fee for his or her services. As such, assignment of a Commissioner begins a legal process that is not without cost. By Order of the Berkeley County Commission (now known as the County Council) on December 13, 2007, the Commissioner referral fee of **\$800.00** was approved. Said fee is payable to the Commissioner and collected by the Fiduciary Supervisor’s office. An additional fee of **\$150.00** payable to the Berkeley County Clerk/Fiduciary Fund is immediately collected for file reproduction, notice and mailing. Additionally, a Fiduciary Commissioner may, in their discretion require a bond/security be posted as a condition precedent to holding a hearing.

Typically, the Estate is assigned the referral cost as such is the case when the County Council or the Fiduciary Supervisor orders a Commissioner’s involvement. However, in certain cases, **the Fiduciary Supervisor also has the discretion to assess the referral fee to the party requesting the Commissioner assignment**. Be advised that a Fiduciary Commissioner may determine the referral fee and/or any other accrued cost be later charged against the estate.

### **REQUESTING A FIDUCIARY COMMISSIONER**

You must submit a request for assignment of a Commissioner to this office **IN WRITING**, clearly outlining the legal reason(s) for the request. You are then notified when a Fiduciary

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<sup>1</sup> For reference, please see W.Va. Codes § 44-3A-7; 44-3A-41; 44-3A-42(b), (c), & (d).

commissioner has been assigned at which time you will deliver a check in the amount of \$800.00 to this office payable to the Commissioner assigned.

Berkeley County maintains a roster of four (4) Fiduciary Commissioners – all of whom are attorneys – that are assigned estate conflicts in **rotation**. Should an assigned Commissioner determine he or she has a conflict of interest with the Estate, another Commissioner is assigned.

### **FIDUCIARY COMMISSIONER RATE SCHEDULE**

#### **NON-REFUNDABLE REFERRAL COSTS:**

**\$800.00**

Payable to the Fiduciary Commissioner and collected by the Fiduciary Supervisor for delivery to said Commissioner along with the Estate file. The non-refundable referral cost includes one (1) hour of hearing set-up; up to three (3) hours of hearing and (1) hour for preparation of the Commissioner's Report to the County Council. \*Does **not** include publication and filing costs nor the cost of a court reporter – if deemed required by the Commissioner.

**\$150.00**

Payable to the Berkeley County Clerk and applied to the Fiduciary Fund for file reproduction, notice, and mailing.

#### **ADDITIONAL COSTS THAT MAY ACCRUE:**

**\$160.00 hourly rate**

Hourly rate allowed if issue(s) exceeds five (5) hours of Fiduciary Commissioner's time.

**Court Reporter**

The cost of a court reporter is not included. A court reporter may be requested by an interested party otherwise the Fiduciary Commissioner will determine the need of a court reporter on a case-by-case basis.

#### **VIEW AND PROCESS INTERIM/ANNUAL ACCOUNTINGS:**

**\$125.00**

Charged by the Fiduciary Commissioner to view and process an annual/interim/final accounting. \*Does **not** include publication and filing costs for same.