Guidelines for Court Approval of Attorney Fee Petitions

The Probate Courts of Dallas County have formulated the following standards to assist attorneys with drafting fee petitions in probate and guardianship cases. By understanding how the Court evaluates fee petitions, attorneys will be better able to comply with Court standards, reducing the need for consultations between attorneys and Court personnel regarding problems with specific petitions. These standards are not absolute rules; the Courts will make exceptions in particular circumstances as fairness and justice demand. In formulating and revising these standards, the Courts have considered not only the Texas Probate Code, the Texas Rules of Disciplinary Procedure, and applicable case law, but also comments from the Dallas County Bar Association's Probate and Estate Planning Section

I. Attorney's Fees

It is the Court's duty to ensure that estates of decedents and wards pay only for "reasonable and necessary" attorney's fees and expenses. See Probate Code § 242 (decedent's estates) and § 665C (guardianship estates). The factors to be considered in determining the reasonableness of attorney's fees are set forth in Rule 1.04 of the Texas Rules of Professional Conduct. These include the time and labor involved in the case, the difficulty or novelty of the work performed, the customary hourly rate of the attorney requesting the approval of fees, and the customary hourly rates of attorneys with similar education and skills performing similar services.

A. Court-Approved Fees for a Fiduciary's Attorney

Below is a table setting forth what the Courts believe are appropriate rates for court-appointed fiduciaries' attorney's fees. Attorneys should be aware, however, that a Court may depart from these rates in certain circumstances. For example, a particularly difficult probate or guardianship matter may require special expertise that should be compensated at a rate higher than the attorney's standard rate under these guidelines. Similarly, a Court will adjust an attorney's rate in situations in which the estate is so small that the requested fee would consume most of the estate. Moreover, a Court will reduce an attorney's fee when the time expended by the attorney on a particular matter far exceeds the amount normally expended by attorneys on similar matters or, in those rare instances, when it comes to the Court's attention that a lawyer is not performing up to the standards of those licensed for an equivalent length of time. Be advised that it is a particular lawyer's experience in probate and guardianship law that determines his or her rate, not the number of years that the lawyer has been licensed.

To assist the Court in determining a particular lawyer's rate, each attorney who is new to the practice of probate or guardianship law in a particular Court should submit his or her resume with the first fee application. Similarly, an attorney who believes that his or her experience before the Court qualifies for a rate increase should submit a letter to the Court detailing the reasons that such an increase is appropriate.

Years Practicing Probate and Guardianship Law	Court-Approved Rate
0-2 years	up to $150/hour
3-5 years	$150 - 200/hour
6-10 years	$200 - $250
11- 20 years	up to $350/hour
20 years +	up to $400/hour

In determining how lawyers will be paid within the practice categories above, the Court will consider the extent of the lawyer's experience in the area of law involved as well as Board Certification in Probate and Estate Planning. In the 11-20 and 20+ categories, the Court will pay the highest rate to those few lawyers whose experience and mastery of probate, estate planning, and guardianship law qualify them as experts in these areas. These attorneys in the 11-20 and 20+ categories in order to qualify for the highest rate must be board certified in Estate Planning and Probate or devote a minimum of fifty percent (50%) of their practice to Estate Planning and Probate and/or Guardianship.

The Court has the flexibility to compensate an attorney serving as a fiduciary at a higher rate than set forth herein if the fiduciary is performing services that he/she would otherwise hire and compensate an expert at a higher rate than those set forth in these guidelines.

Attorney fee petitions must be accompanied by an affidavit signed by the attorney seeking attorney fees. If the petition seeks attorney fees in excess of $1,000.00 but less than $2,500.00, the petition must also contain a supporting affidavit from another attorney who has examined the request for attorney fees. If the petition seeks attorney fees in excess of $2,500.00, it must contain two supporting affidavits from two other attorneys who have examined the request for attorney fees. Supporting affidavits cannot be signed by members of the petitioning attorney's law firm or of counsel to such firm .

For those attorneys seeking the maximum rate allowed by these guidelines, any supporting affidavits must be signed by attorneys who are board certified in Estate Planning and Probate or devote a minimum of fifty percent (50%) of their practice to Estate Planning and Probate and/or Guardianship.

B. Attorney Ad Litem and Guardian Ad Litem Fees

Formulating standards for the compensation of reasonable attorney's fees for an attorney ad litem or guardian ad litem is challenging, not only because of the variety of factors set forth in Rule 1.04 of the Texas Rules of Professional Conduct, but also because of certain factors over which the Court has limited control.

In the case of court-appointed counsel for indigent parties, for example, the Court must heed Dallas County budgetary considerations. Since an estate is unavailable or unable to pay fees, the Court approves fees under a budget approved and overseen by the Commissioners Court Thus, attorneys who accept Court appointments in probate and guardianship cases with an indigent party should not expect to be reimbursed at their regular hourly rates. Ordinarily, the Courts compensate attorneys ad litem involved in County-pay cases at an hourly rate of $100 - $150 depending on the experience of the ad litem and the complexity of the case. The hourly rate for guardians ad litem in indigent cases is similar to that paid to attorneys ad litem, although it is common for the total fees to be higher for guardians ad litem, especially when the guardian ad litem initiates the Court proceedings.

When an ad litem can be compensated from a solvent estate, the Court's award of reasonable attorney's fees usually begins with the Court determining if the representation provided by, and reasonably required of, the ad litem is "typical" or "normal." In a "typical" or "normal" case, the Courts ordinarily awards total fees of between $300 - $600 to an attorney ad litem. In determining whether representation is "typical" or "normal," the Court considers matters such as the type of case, the complexity or potential complexity of the case in terms of the number of parties and issues involved, and any unusual circumstances. These factors determine the extent to which the fee allowed should be more than, equal to, or less man the typical or normal fee. In general, attorneys ad litem and guardians ad litem should expect to receive a fee that is less than the fee of the applicant's attorney unless special factors are present

C. Fees when an Attorney is also the Fiduciary

In rare situations the Courts may appoint an attorney to serve as a fiduciary in a guardianship or administration. Such appointments may be made because there are no other persons willing or capable of serving as such in that case. In those situations in which the Courts appoint an attorney as a fiduciary in a guardianship or administration there are non-legal fiduciary tasks that will be performed by the attorney. The Courts recognize and acknowledge that attorneys appointed as fiduciaries are not appointed primarily for performance of non-legal tasks, but for their willingness and ability to serve as responsible fiduciaries in conjunction with their service as attorneys. The Courts recognize there is no prohibition against the attorney seeking to be paid dual compensation as both attorney and guardian or administrator, and the Courts may approve dual compensation. Nonetheless, in order to avoid the appearance of any impropriety the attorney seeking dual compensation should adhere to the following guidelines insofar as possible:

1. There should be disclosure of the attorney-fiduciary's intention to request dual compensation as soon as reasonably practicable after the time of appointment. If disclosure is not made near the time of appointment then it should be made upon motion and hearing, with notice to all parties who have appeared in the case.

2. The attorney-fiduciary should keep accurate time and expense records, segregating legal and non-legal time and expenses.

3. Under Texas law, an attorney-fiduciary may seek attorney's fees only for legal services. The Courts recognize that the "practice of law" embraces, in general, all advice to clients and all actions taken for them in matters connected with the law. The Courts rely upon those attorneys who accept appointments to serve as both attorney and guardian or administrator to fairly and accurately characterize their time and expenses as legal or non-legal, but the Courts are the final arbiters.

4. Should the attorney-fiduciary think that the statutory compensation formula as applied to a particular estate or guardianship would be unreasonably low *(see* T.P.C. §§ 241 and 665) considering the fiduciary services rendered, then the attorney-fiduciary may submit time records (normally submitted with an annual or final account) for those fiduciary services and request additional hourly compensation. The Courts will determine if additional compensation is warranted and may allow additional amounts as reasonable compensation

for those fiduciary services. If additional reasonable compensation is allowed, attorneys may expect that the total hourly rate for non-legal fiduciary services will be from $150 to $200 per hour depending upon factors including the actual nature of the non-legal tasks performed, the experience level of the attorney and the overall fiduciary responsibility accepted by the attorney.

11. Paralegal/Legal Assistant Charges

The Courts recognize that many attorneys rely on paralegals and legal assistants for gathering information and reviewing and preparing documents. A Court will reimburse an attorney for paralegal/legal assistant work at a rate between $55 and $125 depending upon the following factors:

certification as a paralegal by the NALA, or recognition as a PACE-Registered Paralegal, or successful completion of a legal assistant program, or possession of a post-secondary degree (B.A. degree or higher);

number of years of experience in the probate, estate planning, and guardianship field;

certification in Estate Planning and Probate Law from the Texas Board of Legal Specialization; and

number of continuing legal education courses in probate, guardianship, and estate planning attended in the past three years.

In order to evaluate these factors in determining the appropriate rate for each paralegal/legal assistant, the Courts suggest that attorneys submit to the Court the resumes of each paralegal/legal assistant for whose work they will seek reimbursement from the Court and a short statement of any relevant qualifications that do not appear on the resume. If an attorney believes that the billing rate for a paralegal or legal assistant should increase because of newly acquired credentials, the attorney should submit a letter to the Court detailing the reasons that such an increase is appropriate.

Attorneys should understand that the Courts do not pay for secretarial services at the paralegal rate even if such services are performed by paralegals. It is the Courts position that secretarial services are included in the attorney's overhead, for which an attorney is reimbursed at his or her hourly rate.

Attorneys seeking the highest rate for paralegal services should include the paralegal's qualifications as set forth above in the attorney's affidavit in support of his petition for attorney fees.

III. Billing

The Court understands that the cash-flow situations at law firms differ, leading some firms to bill more frequently than others. The Courts do not want to direct the timing of fee applications other than to suggest a preference that bills be submitted at least once a year. To facilitate the review of fee applications, the Courts do request that attorneys itemize each service billed by identifying me time spent on each service and the corresponding charge for each service.

IV. Guidelines for Specific Types of Charges

A. Travel

In determining how to reimburse attorneys for travel time, the Courts follow two general rules. First, travel time from an attorney's office to the courthouse to attend hearings is normally reimbursed at the attorney's approved rate. If, however, the attorney resides or has an office outside of Dallas County, the attorney's travel time to the courthouse from his home or office

will be reimbursed at half of the attorney's approved rate. That attorney will also be entitled to mileage reimbursement at the I.R.S. rate.

Second, the Courts expect that most clients will ordinarily visit their attorney's offices for consultations and document execution. Therefore, the Courts will reimburse attorney travel-time to visit clients only (1) if that client is a ward and the attorney is the Court-appointed guardian, guardian ad litem, or attorney ad litem or (2) if some emergency or other special circumstance requires the attorney to visit the client at home. Such special circumstances should be described hi the fee petition to be reviewed by the Court, If the Court approves the visit, the Court will reimburse attorneys at their full, approved rate or at the appropriate County-pay rate in indigence cases.

6. Legal Research

The Courts expect attorneys who practice in these Courts to be familiar with general probate and guardianship matters; therefore, the Courts will not reimburse attorneys for basic legal research in these areas. Thus, for example, an attorney will not be reimbursed for research into the application requirements for the probate of a will as muniment of title, an independent or dependent administration, a determination of heirship, or a guardianship. However, the Courts will reimburse attorneys for costs associated with necessary and reasonable legal research conducted to address novel legal questions or to respond to legal issues posed by the Court or opposing counsel.

The Courts consider the contract costs of computerized legal research (such as Westlaw and Lexis) to be part of an attorney's overhead, as are the costs of a hard-copy library. Consequently, the Courts do not reimburse for those costs.

C. Preparation of Fee Petitions

It is the general practice of attorneys to include in their overhead the cost of generating and reviewing billing invoices and of drafting and mailing the cover letters that accompany the invoices. Even though the Courts are cognizant that Court authority must be obtained for the approval of fee petitions in certain circumstances, the Courts believe that the estate of a decedent or ward should not be taxed with the attorney's billing costs. Therefore, the Courts, like the majority of statutory probate courts in the state, will not reimburse attorneys for the costs of preparing invoices and the fairly standardized fee applications and orders that accompany them.

D. Conversations with Court and Clerk Staff

Court staff is a vital source of information and assistance to the legal community. The Courts are proud of its accessibility to the lawyers and the public that have questions about uncontested matters— procedural and substantive—in probate and guardianship law. The Courts and staff attempt to answer these questions and to provide guidance where appropriate. Bearing in mind that the Courts require all personal representatives to have counsel, the Courts do not believe it appropriate for the Court to have discussions with personal representatives outside the presence of their counsel. Please do not suggest to a client that it is appropriate to call the Court for a consultation or an explanation of what is going on hi the estate being administered by that client. Again, the Courts and its staff have no problem discussing these matters with an attorney.

However, we do not think it is appropriate to charge an estate for the time the Court spent providing the personal representative's attorney with assistance. Nor will the Courts reimburse attorneys for time spent in discussions with the Court Auditor aimed at correcting deficiencies in the client's accountings. Of course, if a member of the Court staff requests an attorney to provide information not ordinarily contained in properly

drafted pleadings, the Court will reimburse the attorney for the time spent responding to that request. Or, if the fee petition reveals special circumstances requiring the attorney to seek guidance from the Court, the Court will award attorney's fees. For example, the Court will reimburse attorneys for communications with the Court regarding the need for corrective action when a guardian, administrator, or an attorney dies during an ongoing estate.

It continues to be the long-standing practice of the Courts not to reimburse attorneys from probate and guardianship estates for calls to the Clerk's office. The Courts urge adherence to the common practice of attaching to all applications a copy of the proposed order and a self-addressed, stamped envelope. This step, coupled with payment of the correct filing and posting fee, if required, will help ensure that attorneys receive conformed copies of all proposed orders and will reduce the necessity for calls to the Clerk's office to check on the status of a particular order

E. Copies and Faxes

From experience reviewing fee petitions and from consultation with commercial copying companies, the Courts recognize that attorneys pass through different costs to their clients and that significant variation exists in the price charged for copies, ranging from attorneys who include copies as overhead reimbursed as part of their hourly rate to those charging $.30 per page. Cognizant of the need for uniformity in reimbursements for copy costs and mindful of the rates for commercial copying in Dallas County, the Courts have determined that they will reimburse attorneys up to $.20 per page. Copies made by the Clerk's office will be reimbursed at the rate charged by the Clerk if the fee petition indicates this fact. In no case, however, will the Courts pay any copying costs not accompanied by a statement of the charge per page and the number of copies.

Fax charges have presented a unique problem for the Courts. Some attorneys charge for faxes, others do not. Of those that do charge, some attorneys charge a set fee based on the fact that a fax was sent, others charge on a per-page basis for faxes sent. Some attorneys charge a set fee based on the fact that a fax was received, others charge on a per-page basis for faxes received. Some attorneys charge only for long distance faxes, others charge for both long distance and local faxes. Commercial entities that fax documents set their fees based on external market factors and a profit motive not usually associated with the recovery of expenses in the practice of law. Faced with these myriad and frustrating variations in pricing, the Courts have determined that the best practice is to consider faxes as a part of attorney overhead and to include it as part of an attorney's hourly rate. Therefore, the Courts will not pay for facsimile transmissions. It will, however, pay the long-distance charges associated with long-distance faxes in the same manner it reimburses long-distance phone calls.

V. Costs Necessitated by Misfeasance or Malfeasance

The Courts do not believe that guardianship or probate estates should be charged with any attorney time or mileage for resolving problems or attending hearings necessitated by the misfeasance or the malfeasance of the client or attorney. For instance, if a personal representative sells property without Court approval and there are attendant costs associated with rectifying the situation, the Courts believe the personal representative should be personally responsible for any added, expense. Likewise, show-cause hearings fall within this exception, and the attorney or the client will be responsible for all costs associated with attendance at the hearing, including service and filing fees assessed by the Clerk.

VI. Court Action on Fee Applications

Fee requests should be filed as applications for payment of fees or for reimbursement of fees (if paid already by the representative) and not as claims against the estate. The Courts have found that a representative is likely to rubber stamp his or her attorney's fee request without exercising independent judgment, resulting in an inherent unfairness to the estate. If the representative chooses to disregard the Courts' policy and file the fee application as a claim, the Courts will—in every case—require a hearing under Probate Code § 312(c) and § 799(c).

The Courts always reserve the right to require hearings on fee applications.

These guidelines shall apply to all billing incurred on or after May 1, 2013.

Signed this 22nd day of April, 2013.

Honorable Brenda Hull Thompson
Judge Probate Court

Honorable Chris Wilmoth
Judge Probate Court No. 2

Honorable Michael E. Miller
Judge Probate Court No. 3