

Probate Court
of
Galveston County, Texas

Standards for Court Approval of Attorney Fee Petitions

Effective March 13, 2014

The Probate Court of Galveston County is committed to maintaining and improving the image of the legal profession. Enforcing reasonable fees is one way the Galveston County Probate Court can accomplish this goal. Exercise good ethical and moral responsibility, common sense, and professionalism in your billing. These standards are not absolute rules; the Court will make exceptions in particular circumstances as fairness and justice demand. In formulating and revision these standards, the Court has given consideration to the Texas Estates Code, the Texas Rules of Disciplinary Procedure, and applicable case law.ⁱ

I. Attorney's Fees

It is the Courts' duty to ensure that estates of decedents and wards pay only for "reasonable and necessary" attorney's fees and expenses. See Estates Code §352.051 (decedent's estates) and §1155.054 (guardianship estates).ⁱⁱ

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.ⁱⁱⁱ This fee schedule does not apply to court appointed counsel for indigent parties (see paragraph 1.B.1 herein).

Years of Practicing Probate And Guardianship Law	Court Approved Rate
0 – 2 years	Up to \$165/hour
3 – 5 years	\$165 - \$195/hour
6 – 10 years	\$195 - \$250/hour
11 + years	\$250 - \$350/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+ category, 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.

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.

- 1. Court Appointed Counsel for Indigent Parties.** The Court must heed Galveston County budgetary considerations. If 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 because the Court's annual budget limits the amount it can pay for such services. Ordinarily, the Court compensates attorneys ad litem and guardians ad litem involved in county-pay cases at an hour rate of \$75. If an attorney is willing to perform the duties of an attorney ad litem pro bono, he or she should notify the Court of that willingness.
- 2. Court Appointed Counsel Involving A Solvent Estate.** The Courts award of reasonable attorney 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 Court ordinarily awards total fees of \$300 to \$750 to an attorney ad litem.^{iv}
- 3. Compensation Regarding a Deceased Ward.** In those rare instances wherein a proposed ward dies before a guardianship estate is established, but an ad litem appointment has been made, the Court normally would not expect a fee application to be made.

C. Fees when an Attorney is also the Fiduciary

In those rare situations in which a Court appoints an attorney as a fiduciary in a guardianship or an administration, the attorney normally must elect either to seek payment calculated on the statutory probate or guardianship commission formula or to obtain reimbursement for attorney's fees. If the guardianship or administration is particularly complex, the Court may approve dual compensation upon request of the attorney, preferably at the time of appointment. Dual compensation would include payment at the appropriate hourly rate for legal work done in the case a separate commission for work done as personal representative or as a guardian under §352 *et. seq.* or §1155 *et. seq.* of the Estates Code, respectively. To be entitled to dual compensation, the attorney fiduciary must adhere to the following guidelines;

- 1. Full disclosure.** There must be full disclosure of the attorney-fiduciary's request for dual compensation at the time of appointment or upon motion and hearing if the request for dual compensation is made after appointment. If the request is after the time of appointment, notice of the motion and hearing shall be given to all interested parties who have made an appearance in the case.
- 2. Keep Records and Separate Legal and Non-Legal Work.** The attorney-fiduciary must keep meticulous time and expense records, carefully segregating legal and non-legal work. The attorney work should be submitted periodically just as an attorney would if representing a client. The non-legal work should be reflected on the regular bills for legal work, without a dollar extension, and with the notation

“PRC” for “Personal Representative Compensation.” An example invoice is attached as Appendix A.

3. **Compensation for Legal and Non-Legal Services.** Under Texas law, an attorney-fiduciary must seek only fiduciary compensation for guardian or personal representative services and may seek attorney’s fees only for legal services. Applications for attorney’s fees should give a detailed account of the legal services he or she rendered to the probate or guardianship estate. Attorney-fiduciaries will not be paid attorney’s fees for fiduciary services. Should the attorney believe that the statutory compensation formula as applied to a particular estate or guardianship is unreasonable low (see Estates Code §352 *et. seq.* and §1155 *et. seq.*), then he or she should submit, with the annual or final account, the total personal representative compensation time reported or contemporaneous time records of the fiduciary services for which additional hourly compensation is requested above the statutory fee. Note that the hourly fee approved by the court for attorney-fiduciary services (between \$45-100 per hour) is significantly less than the Court approved legal rates for attorneys. If an attorney-fiduciary is submitting an application for higher compensation because the statutory compensation formula is unreasonably low, this must be set for a hearing with the Court.
4. **Quarterly Fiduciary Compensation.** Should the attorney-fiduciary find it a hardship to wait for the compensation as a fiduciary, a fee may be paid on a quarterly basis. The Court must find that a hardship exists for the attorney-fiduciary to be paid quarterly.

II. Paralegal/Legal Assistant Charges

The Courts will reimburse an attorney for paralegal/legal assistant work at a rate between \$45 and \$100 depending upon the experience of the paralegal.^v The Court does not pay for secretarial services at the paralegal rate even if such services are performed by paralegals. It is the Court’s position that secretarial services are included in the attorney’s overhead, for which an attorney is reimbursed at his or her hourly rate.

III. Billing in Ongoing Guardianship and Estate Matters

Please observe the following guidelines when preparing fee applications.

A. Form of Fee applications

1. **Period of Accounting.** Indicate the period covered by the application in the title or prominently in the body.
2. **Include Total Accumulated Fees.** Each application for fees should contain a statement indicating the total amount of attorney fees and expenses approved since the inception of the guardianship or estate administration.
3. **Include Affidavit.** Attach an affidavit by the applicant attorney swearing to the reasonableness of the fees and the necessity of the services and indicating the number of years he or she has practiced probate and guardianship law.
4. **Signature of Client.** The fiduciary who hired the attorney should sign the application.

5. **Fees Sought Should not be Preprinted on Order.** Attach an Order approving the fees containing a blank for the fees, expenses, and total amount, so the Judge may fill in the approved amounts.

B. Invoice Accompanying Fee Application

1. **Avoid Block Billing.** Itemize all unrelated activities separately, with their respective times and amount. Do not block bill for unrelated activities. Block billing is a practice whereby time entries contain several unrelated items with a single cumulative time and amount, rather than complete itemization.
2. **Include Descriptions.** Describe the topic or purpose for each telephone or office conference.
3. **Include Legend.** If it is not clear from the invoice for whom time is being billed, please include a Legend to indicate the name of the timekeeper, initials of the timekeeper, whether the timekeeper is an attorney or paralegal, and the years of probate experience of the timekeeper.
4. **Include all Time.** Include all the time you have spent on the file, even that time for which you are not charging, and indicate such fact with the following notations: "NO CHARGE" or "N/C."
5. **Justify Extraordinary Efforts.** If you believe that the time you have spent on an activity may be perceived as excessive, include a statement in brackets at the end of the entry as to why such extraordinary time was justified.
6. **Travel.** The Court does not reimburse for an attorney's or staff member's travel mileage or expenses inside Galveston County. Travel outside the county must be approved by the Court prior to travel/departure.
7. **Research.** The Court will only 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.^{vi}
8. **Preparation of Fee Petitions.** The Court will not reimburse attorneys for the costs of preparing invoices and the standardized fee applications and orders that accompany them.^{vii}
9. **Conversation with court Staff.** It is not appropriate to charge an estate for the time the Court spends providing the personal representative's attorney with assistance. Nor will the Court reimburse attorneys for time spent in discussions with an auditor aimed at correcting deficiencies in the client's accountings. Of course, if a member of the Court's staff requests an attorney 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 communication with the Court regarding the need for corrective action when a guardian, administrator, or an attorney dies during an ongoing estate. In addition, the Court

will not reimburse attorneys from probate and guardianship estates for calls to the Clerk's office. ^{viii}

- 10. Copies and Faxes.** The Court will reimburse attorneys up to \$.15 per page for copies. Copies made by the Clerk's office will be reimbursed at the rate charged by the Clerk. The Court 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.
- 11. Deliveries.** In situations in which the Court deems hand delivery to be appropriate given the circumstances stated in the fee petition, the Court will approve the actual cost of hand delivery up to \$25, regardless of whether an attorney, paralegal, secretary, or commercial courier service actually delivered the document.
- 12. Costs Necessitated by Misfeasance or Malfeasance.** Estates should not 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 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.
- 13. Itemized Invoice Should Accompany Fee Application.** Any time an attorney is making application for his or her fees to the Court, an invoice itemizing the time and expenses is required, even when the estate is solvent and the fee amount is agreed upon by all parties. However, when an attorney ad litem is appointed by the Court in an heirship or guardianship matter and the attorney ad litem's fee is agreed upon and totals less than \$1000, an invoice is not required.

IV. Court Action of Fee Applications

A. When Hearing on Fee Application is Required

The Court holds all attorney-fee applications for 10 days to give other parties an opportunity to file objections to those applications. If no objections are filed, the Court will consider the applications on submission and without a hearing, unless the amount of fees requested is significant or the Court has questions about the propriety or reasonableness of the fees. In such cases, the Court will request that the application be set for hearing. As explained in Paragraphs I.C.1 and I.C.3 herein, a hearing is required if an attorney-fiduciary is seeking dual compensation after appointment or more than the statutory formula for compensation as a fiduciary.

B. Hearing Required if Fee Request Filed as Claim

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. If the representative chooses to disregard the Court's policy and files the fee application as a claim, the Court will in every case require a hearing under Estates Code §355.056 and §1157.056.

Signed this 13th day of March, 2014 and effective as of such date.

Kimberly Sullivan
Judge Kimberly Sullivan

End Notes

ⁱ The Probate Court of Galveston County has promulgated guidelines concerning attorney fees for this respective Court. These guidelines essentially mirrored one another with some exceptions. The Probate Court has now 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.

ⁱⁱ 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.

ⁱⁱⁱ Attorneys should be aware, however, that the 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 the Courts' guidelines. Similarly, the 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, the 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 Courts 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.

^{iv} 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 than 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.

^v In determining the appropriate billing rate for a paralegal, the Court considers the following factors: 1) 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 (Associates degree or higher); 2) number of years experience in the probate, estate planning, and guardianship field; 3) certification in Estate Planning and Probate Law from the Texas Board of Legal Specialization; and 4) number on continuing legal education courses in probate, guardianship, and estate planning attended in the past three years.

^{vi} The Courts expect attorneys who practice in Probate Court to be familiar with general probate and guardianship matters; therefore, the Court will not reimburse attorneys for basic legal research in these areas. The Court considers 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 Court does not reimburse for those costs.

^{vii} 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 Court is cognizant that Court authority must be obtained for the approval of fee petitions in certain circumstances, the Court believes that the estate of a decedent or ward should not be taxed with the attorney's billing costs.

^{viii} The Courts staff is a vital source of information and assistance to the legal community. The Court attempts to answer questions and to provide guidance where appropriate. However, please attempt to resolve estate issues with your client, i.e. the personal representative, to minimize or obviate unnecessary use of court personnel. Likewise, the Court understands you may have questions for the Clerk's office, however, the Court does not believe that estates should be required to pay for the attorney's time spent addressing these situations. Moreover, the Court urges 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. Alternatively, the attorney can check the Probate Court records on the County Clerk's website at www.co.galveston.tx.us