

# Standards for Court Approval of Attorney Fee Applications

The Johnson County Probate Courts adopt these standards to assist attorneys with drafting fee applications in probate and guardianship cases. By understanding how the Court evaluates fee applications, attorneys will be better able to comply with Court standards, reducing the need for consultations between attorneys and Court personnel regarding problems with specific applications. These standards are not absolute rules. The Court will make exceptions in particular circumstances as fairness and justice demands. In adopting these standards, the Court considers the Texas Estates Code ("TEC"), the Texas Disciplinary Rules of Professional Conduct, the ABA Model Guidelines for the Utilization of Paralegal Services, and applicable case law.

## I. Attorney's Fees

It is the Court's duty to ensure that estates of decedents and wards (hereinafter referred to as an "incapacitated person" or "protected person") pay only for "reasonable and necessary" attorney's fees and expenses. *See* TEC §352.051 & §352.0521 (decedent's estates) and §1155.054, §1155.52, §1155.53, and §1155.101 (guardianship estates). In determining the compensation of reasonable and necessary attorney's fees for an Ad Litem, the Court considers the unique circumstances of each case, the factors set forth in Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct, and case law. Items considered include the time and labor involved in the case, the difficulty or novelty of the work performed, the amount involved and the results obtained, the time limitations imposed by the client or by the circumstances, the customary hourly rates of attorneys with similar education and skills performing similar services, and other factors as guided by case law. In order for the Court to evaluate the reasonableness and necessity for the payment of the attorneys' fees and expenses, the Court requires that the attorney submit a written Application for Payment of Attorneys' Fees and Expenses. In the Application the attorney needs to identify the date the work was performed, the amount of time incurred in one-tenth hours, and describe the legal work performed in sufficient detail in order that the Court may make a ruling Pursuant to case law the Court will not approve time charged for administrative tasks such as scheduling hearings and opening files. **An attorney seeking to have fees paid from assets of an estate, guardianship or trust subject to Court supervision and administration should always obtain court approval of the attorneys' fees before receiving payment from the assets of an estate, guardianship, or trust.**

It is within the Court's discretion to determine whether attorney's fees are paid to attorneys who do not represent an incapacitated person, minor or unknown heir. Attorney's fees incurred by feuding family members, who are promoting or protecting their own individual interest rather than the incapacitated person's best interest, will not be reimbursed by the Court from the assets of a protected person's estate. If the court finds that a party acted in bad faith or without just cause in prosecuting or objecting to an application in a Guardianship matter, the court may require the party to reimburse the incapacitated person's estate for attorney's fees incurred and issue a judgment against the responsible party in

favor of the estate. See TEC §1155.054(d). When reasonable and necessary attorney's fees and expenses are incurred in order to protect the safety of a protected person or their assets due to family members or other third parties actions, the Court may assess attorney's fees and costs against family members and other third parties.

The Court does not believe that guardianship or probate estates should be charged with any attorney time or expenses for resolving problems or attending hearings necessitated by the misfeasance of the client or attorney. An attorney or the client will be responsible for all costs associated with attendance at any show cause hearings, including service and filing fees assessed by the Johnson County Clerk if the evidence results in the Court's finding of misfeasance by the attorney or client.

**A. Attorney Fees Paid With Estate Funds ("Private Pay Cases")**

Below is a schedule of hourly rates the Court believes are appropriate for attorneys serving as Ad Litem and representing court-appointed fiduciaries. 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 Court's 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. 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 Court's attention that a lawyer is not performing up to the standards of those licensed for an equivalent length of time. It is a particular lawyer's experience in probate and guardianship law that determines the appropriate hourly 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 before the Court should submit his or her resume with the first fee application. In addition, the Court requests that attorneys submit to the Court the resumes of each attorney and paralegal 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. An attorney who believes that his experience qualifies him for a rate increase should submit a letter to the Court detailing the reasons that such an increase is appropriate along with a current resume.

Years Practicing Probate and Guardianship Law	Court-Approved Rate
0-2 years	Up to \$175/hour
3-4 years	\$175 - \$225/hour
5-9 years	\$225 - \$300/hour*
10-15 years	\$250 - \$375/hour*
15+ years	\$350 - \$425/hour*

\*Board Certification will be a considered factor

In determining an attorney's appropriate hourly rate, the Court will consider the extent of the attorney's experience in the area of law involved and Board Certification in Probate and Estate Planning, Real Estate, Civil Trial or other field relevant to the particular case. The Court will pay the higher rate to those few lawyers whose experience and mastery of probate, estate planning, and guardianship law qualify them as experts in these areas and who demonstrate to the Court they are efficient.

B. Attorney Fees Paid by Johnson County ("County Pay Cases")

In the case of court-appointed counsel for an indigent proposed incapacitated person, there are county budgetary factors to be considered. The Court approves fees for court-appointed attorneys under a budget approved and overseen by the Commissioners Court. Thus, attorneys who accept court appointments should not expect to be reimbursed at their regular hourly attorney fee rates because the Court's annual budget limits the amounts Johnson County can pay for such services. Ordinarily, the Court compensates attorney Ad Litem and guardian Ad Litem involved in county-pay cases at hourly rate of \$125 per hour, depending upon the experience of the Ad Litem and the complexity of the case.

C. Dual Compensation: Serving as Attorney/Paralegal and Fiduciary

When serving in a dual role review Texas Disciplinary Rules of Professional Conduct, Rule 1.16, and Ethics Opinion No. 678, *Serving as Executor and Attorney for Executor*. In those situations in which the Court appoints an attorney, accountant, or related professional as a fiduciary in a guardianship or estate administration, the professional's compensation shall be calculated using the statutory probate or guardianship commission formula. However, if the guardianship or administration is particularly complex or is time intensive, the professional may request dual compensation: payment at the appropriate hourly rate for legal work and a separate hourly rate for work performed as a personal representative or as a guardian (See TEC §1155.002 through §1155.008).

To be entitled to dual compensation, the attorney fiduciary must adhere to the following guidelines:

1. If the request for dual compensation is made after receiving the appointment, the request must be made within a reasonable time after the appointment, giving notice to all parties of record by providing a copy of the motion for dual compensation and the time and date of the hearing.
2. The attorney-fiduciary must keep accurate detailed time and expense records, carefully segregating legal and fiduciary work. Attorneys must submit two separate applications: one application for legal work; the other application for fiduciary work. In Henderson v. Viesca, 922 S.W.2d 553 (Tex.App. - San Antonio 1996, writ denied), the court discusses dual compensation, detailed time records and segregation of legal and fiduciary work. Attorney time and Fiduciary time are to be submitted in two separate fee applications. Attorney time and Fiduciary time are not to be submitted together in one bill or mixed

together as it is an inefficient use of auditor staff time to separate fiduciary time and legal work.

3. Under Texas law, an attorney-fiduciary must seek only fiduciary compensation for guardian/personal representative services and may seek attorney's fees only for legal services he or she rendered to the probate or guardianship estate. Attorney fiduciaries will not be paid attorney's fees for fiduciary services. For example, fiduciaries will not be paid at their Court-approved attorney-fee rate for obtaining a bond, gathering estate assets, or making health care decisions for a ward of the Court.
4. Should the attorney believe that the statutory compensation formula as applied to a particular estate or guardianship is unreasonably low (see TEC §352.003 and §1155.006), then he or she should submit, as soon as possible, 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 (\$100 to \$150 per hour), is significantly less than the Court approved legal rates for attorneys. The hourly fee approved by the Court for support staff, including paralegals, performing fiduciary services is between \$50 and \$55 an hour, depending on the nature of the work and the complexity of the case.

#### D. Process for Filing Fee Applications

The Court understands that law firms differ in their frequency of billing. However, counsel for a party who intends to seek court approval for payment of fees from an estate and all court-appointed attorneys should file a fee application no less frequently than quarterly while the case is pending. Filing of fee applications will ensure that all parties are given at least quarterly notice of the costs associated with a pending case and will facilitate the administration process of fee applications. As the Supreme Court said in El Apple I: when there is an expectation that the lodestar method will be used to calculate fees, attorneys should document their time much as they would for their own clients that is contemporaneous billing records or other documentation recorded reasonably close to the time when the work is performed." See El Apple I, Ltd. v. Olivas, 370 SW3d 757, 763 (2012).

The Court requires that applications for attorney's fees and fiduciary fees be submitted in a manner as required by the Texas Supreme Court in Rohrmoos Venture v. UTSW DVA Healthcare, LLP 578 SW3rd 469 (Tex. 2019). Each time entry must identify the professional who did the work, the amount of time charged, and date the time was incurred, and provide sufficient information in order to allow the court to make an informed decision concerning the legal work performed. If time entries are so heavily redacted that court does not have sufficient evidence to determine the fees are reasonable and necessary, the court cannot approve the fees. See *In the Matter of the Estate of Poe, Deceased*, 2019 WL 4058592.

Each application must include the following:

- A sworn affidavit of attorney for payment of attorney's fees, which includes a detailed invoice of all services rendered and amounts charged.

- If you reduce your attorney fees and expenses based on 1.04 Disciplinary Rule Factors, the Court requests you record your time and note the no charge ("N/C") on the billing statement. If the legal services rendered in the case involved complex issues and/or other extraordinary circumstances, the Court requires a summary explanation of the factors contributing to non-routine, specialized and/or complex legal services that were rendered in the case.
- A proposed order authorizing payment of the fees.
- A completed proposed Order on Mandatory Report of Judicial Appointment and Fees.

The detailed invoice must provide sufficient details of the work performed and provide sufficient information in order to allow the Court to make an informed decision concerning the legal work performed including the following information (see El Apple I at page 763):

1. The specific task and services performed and the amount of time spent on the task, calculated at tenths of an hour.
2. The date the task was performed.
3. The name or initials of the person who performed the task and the applicable hourly billing rate.
4. The total amount charged for the task.

## II. Paralegal Charges

The Court recognizes that many attorneys rely on paralegals for gathering information and reviewing and preparing documents. The Court may reimburse an attorney for paralegal work at a rate between \$75 and \$105, after evaluating the following factors set forth in case law and in particular, El Apple at page 763: "(1) The qualifications of the legal assistant to perform substantive legal work; (2) that the legal assistant performed substantive legal work under the direction and supervision of an attorney; (3) the nature of the legal work performed; (4) the legal assistant's hourly rate; and (5) the number of hours expended by the legal assistant." The Court will also consider 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 (B.A. 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 of continuing legal education courses in probate, guardianship, and estate planning attended in the past three years.

To better evaluate these factors in determining the appropriate rate for each paralegal, the Court requests that attorneys submit to the Court the resumes of each paralegal 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. The Court will maintain these resumes and information sheets. If an attorney believes that the billing rate for a paralegal 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 Court does not approve time charged for

secretarial services at the paralegal rate even if such services are performed by an attorney or a paralegal. After a review of case law, 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. Tasks the Court considers to be secretarial include faxing documents to other counsel, scheduling or calendaring hearings, e-filing, file indexing, scanning, redacting, and other secretarial tasks.

### III. Charges for Legal Research, Preparation of Fee Applications, Copies, Faxes, and Charges for Hand-Delivery and E-Filing

#### A. Legal Research

The Court expects attorneys who practice in this Court to be familiar with general probate and guardianship matters; therefore, the Court will not reimburse attorneys for basic legal research in these areas. For example, the Court will not reimburse an attorney 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 Court will reimburse attorneys for costs associated with legal research reasonably necessary to properly represent the client, such as research addressing unusual or novel legal questions or responding to legal issues posed by the Court or opposing counsel.

#### B. Preparation of Fee Applications

Based on case law and the Disciplinary Rules, the estate of a decedent or ward should not be taxed with the attorney's time incurred in preparing bills. Therefore, this Court will not reimburse attorneys for the costs of preparing invoices and the fairly standardized fee applications and corresponding orders.

#### C. Copies and Faxes

In the interest of uniformity, the Court has determined that it will reimburse attorneys for copies at a rate of no more than \$.25 per page. Copies made by the Clerk's office (or by third parties such as hospitals) will be reimbursed at the rate charged by the Clerk (or the third party) if detailed in the fee application. The Court will not authorize payment for copying costs unless the fee application states the charge per page and the number of copies. The Court will not authorize payment for facsimile transmissions. It will, however, approve the long-distance charges associated with long-distance faxes in the same manner it reimburses long-distance phone calls.

#### D. Charges for Hand-Delivery and E-Filing

With the availability of first-class mail, faxes, and e-mail, the Court believes that the routine use of hand-delivery services is unnecessary and results in significant expense to a guardianship or probate estate. To minimize the costs to estates arising from excessive delivery charges, the Court encourages attorneys to file documents with the Clerk via e-

filing and to serve documents by e-mail, certified mail, or fax. In situations in which the Court deems hand delivery to be appropriate given the circumstances stated in the fee application, the Court would approve the reasonable cost of hand delivery.

#### IV. Court Action on Fee Applications

Consistent with the Court's local rules, 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, typically the Court will consider the applications on submission and without a hearing. However, if the amount of fees requested is significant or the Court has questions about the propriety or reasonableness of the fees, the Court will require a hearing. In such cases, the Court will request that the application be set for a hearing.