Dallas County Probate Court Guidelines for Court Approval of Attorney Fee Petitions

The Probate Courts of Dallas County (the "Court") 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 Estate Code, but also the Texas Rules of Disciplinary Procedure, and applicable case law.

I. Attorneys' Fees

It is the Court's duty to ensure that estates of decedents and incapacitated persons only pay for "reasonable and necessary" attorneys' fees and expenses. *See* Texas Estates Code §§ 352.051, 1155.054. The factors considered in determining the reasonableness of attorney's fees are set forth in Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct. These include the following:

1. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. the fee customarily charged in the locality for similar legal services;
4. the amount involved and the results obtained;
5. the time limitations imposed by the client or by the circumstances;
6. the nature and length of the professional relationship with the clients;
7. the experience, reputation, and ability of the lawyer or lawyers performing the services; and
8. whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

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

Below is a table setting forth what the Court believes are appropriate rates for court-appointed fiduciaries' attorneys' 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 fee application. Similarly, an attorney who believes that his or her experience before the Court qualifies for a rate increase should include in the affidavit in support of the fees the detailed reasons that such an increase is appropriate.

Years Practicing Probate and Guardianship Law	Court-Approved Rate
0-2 years	Up to $250/hour
3-5 years	Up to $300/hour
6-10 years	Up to $400/hour
11-20 years	Up to $500/hour
20+ years	Up to $600/hour

In determining how lawyers will be paid pursuant to the categories listed 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.

Attorney fee petitions must be accompanied by an affidavit signed by the attorney requesting the attorney's fees. The affidavit provides the attorney with an opportunity to establish the reasonableness of the fees requested and explain why the services provided were necessary. If the petition seeks attorneys' fees in excess of $1,000.00 but less than $5,000.00, 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 $5,000.00, 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 Court compensates an attorney ad litem involved in County-pay cases at an hourly rate of $150. The hourly rate for a guardian ad litem in indigent cases is similar to that paid to an attorney ad litem, although it is common for the total fees to be higher for a guardian 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 Court ordinarily awards a fee of $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 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.

C. Fees when an Attorney is also the Fiduciary

In rare situations the Court 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 situations in which the Court appoints an attorney as a fiduciary in a guardianship or administration there are non-legal fiduciary tasks that will be performed by the attorney. The Court recognizes and acknowledges 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 Court recognizes there is no prohibition against the attorney seeking to be paid dual compensation as both attorney and guardian or administrator, and the Court 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, in most instances at the beginning of the 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. Simply filing a notice of dual compensation at the time the request for payment is submitted is insufficient.
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 Court recognizes 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 Court relies 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 Court is the final arbiter.
4. Should the attorney-fiduciary think that the statutory compensation formula as applied to a particular estate or guardianship would be unreasonably low (see Tex. Est. Code. §§ 352.003 and 1155.006) 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 Court 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.

II. Paralegal/Legal Assistant Charges

The Court recognizes 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 $100 and $175 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 (BA 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 Court suggests 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.

A paralegal/legal assistant certified in Estate Planning and Probate Law by the Texas Board of Legal Specialization is eligible for a $25 per hour increase above the standard hourly rate the Court would otherwise approve. In appropriate circumstances, a paralegal/legal assistant with special qualifications, such as a master's degree in accounting or a law-related field, may also be eligible for a $25 per hour increase. Further, if particular litigation requires special expertise that a paralegal/legal assistant is qualified to perform and has performed in the past, and the request in made to the Court before the work is done, then the Court may approve up to a $25 per hour increase above the court's standard approved rate. The three categories of specialized

circumstances may not accumulate as the court will only approve a $25 per hour increase above the standard hourly rate per paralegal/legal assistant.

Years of Experience	Court-Approved Rate	With Certification, Special Qualifications, or Litigation Requiring Special Expertise
0-2 years	Up to $100/hour	Up to $125/hour
3-5 years	Up to $125/hour	Up to $150/hour
6-10 years	Up to $150/hour	Up to $175/hour
11+ years	Up to $175/hour	Up to $200/hour

Attorneys should understand that the Court will not pay for clerical or administrative services at the paralegal rate even if such services are performed by paralegals. It is the Court's position that administrative services are included in the attorney's overhead for which an attorney is reimbursed at his or her hourly rate. The Court will approve reimbursement for reasonable and necessary "specifically delegated substantive legal work" performed by a paralegal.[1] "Substantive legal work" includes, but is not limited to, conducting client interviews; maintaining general contact with the client; drafting pleadings and correspondence; conducting investigations and document research; and attending court hearings and trials with an attorney.[2]

Attorneys seeking the highest rate for paralegal services should include the paralegal's qualifications as set forth above in the attorney's affidavit 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 Court does 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 Court requests that attorneys itemize each service billed by identifying the time spent on each service and the corresponding charge for each service. Attorneys should bill at a minimum time increment of a tenth (.10) of an hour. The Court will not permit a quarter of an hour (.25) as a minimum billing increment. The Court is unable to find that a quarter of an hour (.25) is reasonable in all instances when the task may have taken significantly less time.

IV. Guidelines for Specific Types of Charges

A. Travel

[1] In 2005, the State Bar of Texas Board of Directors and the Paralegal Division of the State Bar of Texas adopted a new definition for "Paralegal" as a person whose work involves "the performance under the ultimate direction and supervision of a licensed attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal principles and procedures that, absent such a person, an attorney would be required to perform the task." https://txpd.org/about-pages/texas-paralegal-definition-and-standards/

[2] *Id.*

In determining how to reimburse attorneys for travel time, the Court follows 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 IRS rate.

Second, the Court expects that most clients will ordinarily visit their attorney's offices for consultations and document execution. Therefore, the Court will reimburse attorney travel-time to visit clients only: (1) if that client is an incapacitated person 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 in 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.

B. Legal Research

The Court expects attorneys who practice in these Courts to be familiar with general probate and guardianship matters; therefore, the Court 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 Court 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 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 Courts do not reimburse for those costs.

C. Preparation of Fee Petitions

As part of their overhead costs, it is the general practice of attorneys to include the generating and reviewing of billing invoices and the drafting and mailing of the accompanying cover letters. 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 incapacitated person should not be taxed with the attorney's billing costs. Therefore, the Court, 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 are a vital source of information and assistance to the legal community. The Court is proud of their 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 Court requires all personal representatives to have counsel, the Court does 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 in the estate being administered by that client. Again, the Court and its staff have no problem discussing these matters with an attorney.

The Court does 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 Court 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 Court not to reimburse attorneys from probate and guardianship estates for calls to the Clerk's office. The Courts urge adherence to the 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

The Court has determined that they will reimburse attorneys up to $.15 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 Court pay any copying costs not accompanied by a statement of the charge per page and the number of copies. The Court will not pay for facsimile transmissions.

V. Contents of Fee Application

In order to promote the efficient review of fee applications, the Court asks attorneys to include the following in all fee requests:

1. The title or subtitle of both the application and the proposed order should indicate the time period covered by the bill. For example: "Order Approving Attorney Fees, March 1, 2025 – March 31, 2026."
2. Clearly identify each of the following for each billing statement:
    a. The date the service was rendered,
    b. The identity of the attorney, paralegal, or legal assistant performing the service. Please limit the use of initials to instances where a legend is provided;
    c. A detailed description of the services;
    d. The time involved; and
    e. The amount billed for that service.
3. Provide a separate statement for fiduciary services with the same detail above.
4. Avoid block billing. If the application lists a series of services for one entry, include the time for each individual task accompanied for a total for the entry.

5. When the fiduciary is requesting compensation based on a statutory formula, explain how the fee was calculated.

VI. Costs Necessitated by Misfeasance or Malfeasance

The Court does not believe that guardianship or probate estates should be charged with any attorney's 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 Court believes 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.

VII. 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 Court has 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 Court's policy and file the fee application as a claim, the Court will—in every case—require a hearing under Tex. Est. Code § 355.056 and § 1157.056.

The Court always reserves the right to require hearings on fee applications.

These guidelines shall apply to all billing incurred on or after June 1, 2025.

Signed this 23 day of May, 2025.

Honorable Julia R. Malveaux Judge The Probate Court	Honorable Ingrid M. Warren Judge Probate Court No. 2	Honorable Margaret Jones-Johnson Judge Probate Court No. 3