Standards for Court Approval of Attorney Fee Petitions

The Probate Courts of Harris County are committed to maintaining and improving the image of the legal profession. Enforcing reasonable fees is one way Harris County Probate Courts can accomplish this goal. Exercise good ethical and moral responsibility, common sense, and professionalism in your billing. 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 given consideration to the Texas Probate Code, the Texas Rules of Disciplinary Procedure, and applicable case law.[1]

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* Probate Code § 242 (decedent's estates) and § 665B (guardianship estates).[2]

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.[3] This fee schedule does not apply to court appointed counsel for indigent parties (*see* paragraph I.B.1 herein).

Years 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 Courts 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 Courts 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 Courts must heed Harris 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 amounts it can pay for such services. Ordinarily, the Courts compensate attorneys ad litem and guardians ad litem involved in county-pay cases at an hourly rate of $100. If an attorney is willing to perform the duties of an attorney ad litem pro bono, he or she should notify each court of that willingness.

2. **Court Appointed Counsel Involving 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 award total fees of $300 to $750 to an attorney ad litem.[4]

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 Courts 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 Courts 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 and a separate commission for work done as a personal representative or as a guardian under § 241 or § 665 of the Probate 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 unreasonably low (*see* T.P.C. §§241 and 665), 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 Courts 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.[5] 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.

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 amounts. 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 Courts do not reimburse for an attorney's or staff member's travel mileage or expenses inside Harris County.

7. **Research.** The Courts 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.[6]

8. **Preparation of Fee Petitions.** The Courts will not reimburse attorneys for the costs of preparing invoices and the standardized fee applications and orders that accompany them.[7]

9. **Conversations with Court Staff.** It is not appropriate to charge an estate for the time the Courts spend providing the personal representative's attorney with assistance. Nor will the Courts 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 to provide information not ordinarily contained in properly drafted pleadings, the Courts 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 Courts, the Courts will award attorney's fees. For example, the Courts will reimburse attorneys for communications with the Courts 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.[8]

10. **Copies and Faxes.** The Courts 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 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.

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. **Avoid Filing Fee Applications for Amounts Under $1000.00.** The Courts will generally not consider an application for fees and expenses for amounts totalling less than $1000.00, unless the attorney is an attorney ad litem and is appointed by the Court in an heirship or guardianship matter, the fee is agreed upon, and the fee totals less than $1000.

14. **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, be aware that 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 on Fee Applications

A. When Hearing on Fee Application is Required

The Courts hold 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 Courts 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 a 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 file the fee application as a claim, the Court will in every case require a hearing under Probate Code § 312(c) and § 799(c).

Signed this 1st day of June, 2011 and effective as of such date.

Judge Loyd Wright — Probate Court No. 1

Judge Mike Wood — Probate Court No. 2

Judge Rory Olsen — Probate Court No. 3

Judge Christine Butts — Probate Court No. 4

Appendix A
Sample Invoice #1 (Legal Related and Fiduciary Time Separated)

Law Office of Jackie Chiles
123 Main Street
Houston, Texas 77002
(713) 867-5309
(713) 867-5308 Fax

June 1, 3011

Invoice submitted to:

Estate of Jacopo Peterman, an Incapacitated Person

Legal Related Activities

Date	Time Keeper	Description	Hours	Rate	Amount
4/9/2011	JAC	Reviewed contract with nursing home.	1.0	250	250
4/14/2011	JAC	Telephone call to the Ward's CPA to ask for another draft of the Ward's income tax return, as the first draft was accidentally shredded.	.15	250	N/C
4/15/2011	JAC	Reviewed and signed Ward's income tax return.	2.25	250	562.5
4/27/2011	JAC	Reviewed listing agreement prepared with realtor.	.5	250	125
4/27/2011	JW	Telephone call to realtor to discuss changes to listing agreement. Followed up with e-mail.	.25	90	22.5
4/27/2011	JAC	Telephone call to the Court to find out whether or not the listing agreement can be signed without first obtaining Court approval.	.25	250	N/C
4/28/2011	JAC	Opened bank account for guardianship estate. [The reason it took so long to open the bank account was because the Ward's caregiver who had a durable power of attorney was at a different bank branch demanding to make a withdrawal from the Ward's existing account. The bank's legal department had to review the durable power of attorney, the Letters of Guardianship, and the Order creating the guardianship in order to establish who rightfully had authority over the Ward's account.]	2.5	250	625
4/28/2011	JAC	Obtained copies of and reviewed Ward's joint tenant with rights of survivorship agreement relating to his savings account.	.75	250	187.5
4/28/2011	JW	Researched real property records to obtain legal description of the Ward's real property in effort to begin Inventory.	1.25	90	112.5
	For professional services rendered		**6.75**		**$1885**

Non-Legal Fiduciary Activities (Personal Representative Compensation "PRC")

Date	Timekeeper	Description	Hours
4/1/2011	JAC	Visited Ward in hospital.	.75
4/1/2011	JAC	Telephone call to the Ward's daughter to let her know Ward was asking for the family photo albums.	.25
4/1/2011	JAC	Telephone call to Dr. Mactavish to schedule podiatry appointment.	.10
4/1/2011	JAC	Called hospital to let them know that Dr. Mactavish would be coming by on Tuesday to visit with and care for Ward.	.10
4/5/2011	JAC	Worked with Ward's daughter to pack and store all of the Ward's household goods and prepare the Ward's home for sale.	6.0
4/8/2011	JAC	Visited two nursing homes and interviewed some of the staff members at each facility to determine which home would be the best fit for the Ward.	2.0
4/9/2011	JAC	Reviewed Ward's mail.	.5
4/20/2011	JAC	Deposited Ward's royalty check and and IRS refund check.	.25
4/20/2011	JAC	Changed the Ward's address with the post office.	.5
4/20/2011	JAC	Visited Social Security office to change the payee.	1.0
4/20/2011	JAC	Met locksmith at the Ward's home so that the locks could be changed.	1.5
4/25/2011	JAC	Called Ward's creditors (Visa, Mastercard, Macy's, Exxon) to verify debts.	.5
4/25/2011	JAC	Met with nursing home administrators regarding paperwork necessary to enable the Ward to be admitted once the Ward is discharged from hospital.	1.0
4/26/2011	JAC	Paid invoices from AT&T, Centerpoint, and Reliant.	.25
4/26/2011	JAC	Reconciled bank statement.	.5
4/27/2011	JAC	Met with realtor to discuss sale of home and walk through home.	2.0
	Total hours in non-legal service as fiduciary		**17.2**

The Legend set out below is not required by, but is very helpful to, the Courts:

Legend

Initials	Name	Position	Experience in Probate
JAC	Jackie Chiles	Attorney	9 years
JW	John Watson	Paralegal	12 years

Appendix A
Sample Invoice #2 (Legal Related and Fiduciary Time Listed Chronologically)

Law Office of Jackie Chiles
123 Main Street
Houston, Texas 77002
(713) 867-5309
(713) 867-5308 Fax

June 1, 3011

Invoice submitted to:

Estate of Jacopo Peterman, an Incapacitated Person

Date	Time Keeper	Fiduciary (PRC) vs. Legal Service (LS)*	Description	Hours	Rate	Amount
4/1/2011	JC	PRC	Visited Ward in hospital.	.75		
4/1/2011	JC	PRC	Telephone call to the Ward's daughter to let her know Ward was asking for the family photo albums.	.25		
4/1/2011	JC	PRC	Telephone call to Dr. Mactavish to schedule podiatry appointment.	.10		
4/1/2011	JC	PRC	Called hospital to let them know that Dr. Mactavish would be coming by on Tuesday to visit with and care for Ward.	.10		
4/5/2011	JC	PRC	Worked with Ward's daughter to pack and store all of the Ward's household goods and prepare the Ward's home for sale.	6.0		
4/8/2011	JC	PRC	Visited two nursing homes and interviewed some of the staff members at each facility to determine which home would be the best fit for the Ward.	2.0		
4/9/2011	JAC	LS	Reviewed contract with nursing home.	1.0	250	250
4/9/2011	JC	PRC	Reviewed Ward's mail.	.5		
4/14/2011	JAC	LS	Telephone call to the Ward's CPA to ask for another draft of the Ward's income tax return, as the first draft was accidentally shredded.	.15	250	N/C
4/15/2011	JAC	LS	Reviewed and signed Ward's income tax return.	2.25	250	562.5
4/20/2011	JC	PRC	Changed the Ward's address with the post office.	.5		
4/20/2011	JC	PRC	Deposited Ward's royalty check and and IRS refund check.	.25		
4/20/2011	JC	PRC	Changed the Ward's address with the post office.	.5		
4/20/2011	JC	PRC	Visited Social Security office to change the payee.	1.0		
4/20/2011	JC	PRC	Met locksmith at the Ward's home so that the	1.5		

			locks could be changed.			
4/25/2011	JC	PRC	Met with nursing home administrators regarding paperwork necessary to enable the Ward to be admitted once the Ward is discharged from hospital.	1.0		
4/26/2011	JC	PRC	Paid invoices from AT&T, Centerpoint, and Reliant.	.25		
4/26/2011	JC	PRC	Reconciled bank statement.	.5		
4/27/2011	JC	PRC	Met with realtor to discuss sale of home and walk through home.	2.0		
4/27/2011	JAC	LS	Reviewed listing agreement prepared with realtor.	.5	250	125
4/27/2011	JW	LS	Telephone call to realtor to discuss changes to listing agreement. Followed up with e-mail.	.25	90	22.5
4/27/2011	JAC	LS	Telephone call to the Court to find out whether or not the listing agreement can be signed without first obtaining Court approval.	.25	250	N/C
4/28/2011	JAC	LS	Opened bank account for guardianship estate. [The reason it took so long to open the bank account was because the Ward's caregiver who had a durable power of attorney was at a different bank branch demanding to make a withdrawal from the Ward's existing account. The bank's legal department had to review the durable power of attorney, the Letters of Guardianship, and the Order creating the guardianship in order to establish who rightfully had authority over the Ward's account.]	2.5	250	625
4/28/2011	JAC	LS	Obtained copies of and reviewed Ward's joint tenant with rights of survivorship agreement relating to his savings account.	.75	250	187.5
4/28/2011	JW	LS	Researched real property records to obtain legal description of the Ward's real property in effort to begin Inventory.	1.25	90	112.5
		For legal services rendered		**$1885**		

Total Legal Services $1885
Total Fiduciary Services 17.2 hours

Legend

Initials	Name	Position	Experience in Probate	Fiduciary vs. Legal Service
JAC	Jackie Chiles	Attorney	9 years	Legal
JC	Jackie Chiles	Attorney Fiduciary	9 years	Fiduciary
JW	John Watson	Paralegal	12 years	Legal

*Indicating Fiduciary vs. Legal Service is not necessary on the time log if indicating in Legend by different initials.

End Notes

[1] The Probate Courts of Harris County have promulgated guidelines concerning attorney fees for their respective courts. These guidelines essentially mirrored one another with some exceptions. The Probate Courts have now unanimously formulated the following standards to assist attorneys with drafting fee petitions in probate and guardianship cases. By understanding how the Courts evaluate 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.

[2] 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.

[3] Attorneys should be aware, however, that the Courts 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 Courts 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 Courts 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.

[4] In determining whether representation is "typical" or "normal," the Courts consider 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.

[5] In determining the appropriate billing rate for a paralegal, the Courts 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 (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 of continuing legal education courses in probate, guardianship, and estate planning attended in the past three years.

[6] The Courts expect attorneys who practice in Probate Court to be familiar with general probate and guardianship matters; therefore, the Courts will not reimburse attorneys for basic legal research in these areas. 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.

[7] 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.

[8] The Courts' staff is a vital source of information and assistance to the legal community. The Courts attempt 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. While the Courts understand that problems arising in the Clerk's office may frustrate attorneys, the Courts do not believe that estates should be required to pay for the attorney's time spent addressing these problems. The Courts urge attorneys to communicate concerns directly to the Clerk's office so that systemic improvements can be made to prevent the recurrence of any such problems. Moreover, 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. Alternatively, the attorney can check Probate Court records on the Clerk's website at http://www.cclerk.hctx.net/applications/websearch/.