

Guidelines for Court Approval of Attorney Fee Applications in Guardianship and Conservatorship Matters

Purpose: The court recognizes that the determination of attorney’s fees is a sensitive matter. Adequate compensation is important to attract and enable competent lawyers to work in the probate field. At the same time, the public must be satisfied that fees are rationally determined and represent fair value for the services performed.

The Court intends that the Guidelines will assist attorneys in drafting attorney fee applications in guardianship and conservatorship cases. These guidelines are the standards that the Court will use in evaluating fee applications. However, they are not absolute rules. The Court will make exceptions in particular circumstances as fairness and justice demand.

I. Attorney’s Fees

It is the Court’s duty to ensure that estates of the wards¹ pay only for “reasonable” attorney’s fees.² Every attorney who is seeking to be paid out of the ward’s estate has a duty to: (1) act in the best interests of the ward; (2) avoid engaging in excessive or unproductive activities; (3) preserve the assets of the ward’s estate; and (4) affirmatively assess the financial cost of pursuing any action compared to the reasonably expected benefit to the ward, minor ward, incapacitated person or protected person and such person’s estate.

In determining the reasonableness of the attorney’s fees, the court shall consider the best interest of the ward, and shall consider the following factors³ to the extent applicable:

1. Whether the services provided any benefit or attempted to advance the best interests of the ward;
2. The extent the services were needed or of corresponding value to the ward;

¹ For ease of reference, the term “ward” includes “incapacitated person,” “protected person,” and “ward” as defined in A.R.S. § 14-5101.

² A.R.S. § 14-5414.

³ See *In re: Guardianship of Sleeth*, 597 Ariz. Adv. Rep. 27 (App. 2010).

3. The usual and customary fees charged in the relevant professional community for such services;
4. The risks and responsibilities associated with the services;
5. The size and composition of the estate, including the ward's ability to pay;
6. The character of the work performed including its difficulty, intricacy, importance, and responsibility imposed;
7. The amount of time required;
8. The skill and expertise required;
9. The ability, training, education, experience, professional standing, and skill of the provider of the services;
10. The success, failure and results of the work performed;
11. The extent that the services were provided in the most efficient and cost-effective manner feasible;
12. Whether there was appropriate delegation to staff members under the attorney's control;
13. The fidelity or disloyalty displayed by the attorney;
14. Any estimate the attorney has given of the value of the services.

Time expended will not be the exclusive criterion for determining fees. The court will consider approving fees in excess of time expended where appropriate. Conversely, a mere record of time expended will not warrant an award of fees in excess of the worth of the services performed.

All fee applications shall comply with Rule 33 of the Arizona Rules of Probate Procedure. It is insufficient to provide the Court with broad summaries of the work done and the time incurred.⁴ Additionally, the fee

⁴ *Schweiger v. China Doll Restaurant, Inc.*, 38 Ariz. 183, 673 P.2d 927 (App. 1983).

application shall include the name of the person doing the work and the experience level of that person in guardianship and conservatorship matters.

All fee applications shall also include: (1) the most recent total value of the estate; (2) the total value of the estate at the inception of the guardianship and/or conservatorship; (3) the amount of attorney's fees and costs already approved by the court since the inception of the guardianship and/or conservatorship.

A. Court-Approved Fees for Attorneys⁵

Below is a table setting forth what the Court believes are appropriate rates for attorney's fees, except court-appointed attorneys for the ward. Attorneys should be aware, however, that the Court may depart from these rates in certain circumstances. For example, the Court may consider the customary rates in the county where the litigation takes place in adjusting the rates. Additionally, a particularly difficult conservatorship 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. Moreover, the Court will reduce an attorney's fee when the time spent by the attorney on a particular matter far exceeds the amount normally spent 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. Please be advised that it is a particular lawyer's *experience in guardianship and conservatorship law* that determines his or her rate, not the number of years that the lawyer has been licensed. If an attorney believes that his or her experience before the Court qualifies for a rate increase, the attorney should explain to the Court, in writing, the reasons why such an increase is appropriate.

Yrs of Practice	Approved Rate Range⁶	Median Rate
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⁵ These approved fees do not apply to those attorneys appointed by the Court from the County's contract lawyer list to work on cases for which the estate has little or no money to pay for attorneys fees. For those cases, the approved rate is the contract rate entered into between the County and the attorney.

⁶ Figures obtained from the *Economics of Law Practice in Arizona, 2010*, published by the State Bar of Arizona. All figures, except the "new, no experience" and "estate planning, probate and trusts" rates categories, came from Table 24 (2010 Hourly Billing Rates by Firm Size, Years in Practice and Office Location) which did not include those categories in the Table. Figures for the "new, no experience" category came from Table 26 (2010 Hourly Billing Rates for Associates and Legal Assistants by Years of

New, no experience	\$154 - \$235	\$175
1 – 2 years	\$175 - \$255	\$195
3 – 5 years	\$185 - \$285	\$200
6 – 10 years	\$200 - \$325	\$235
11 – 15 years	\$200 - \$350	\$250
16 – 25 years	\$225 - \$425	\$250
Greater than 25 years	\$225 - \$450	\$275
Estate planning, probate and trusts (all years of practice)	\$220 - \$400	\$250

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. In the 26 + category, the Court will approve the highest rate to those few lawyers whose experience and mastery of probate law qualify them as experts in these areas.

B. Fees when an Attorney is also the Fiduciary

If the Court appoints an attorney as a fiduciary in a guardianship or conservatorship, the attorney normally must elect either to seek payment as the fiduciary or to obtain reimbursement for attorney’s fees. If the guardianship or conservatorship is particularly complex, the Court may approve dual compensation. Dual compensation would include payment at the appropriate hourly rate for legal work done in the case and a separate fee for work done as a fiduciary. To be entitled to dual compensation, the attorney-fiduciary must adhere to the following guidelines:

1. There must be full disclosure of the attorney-fiduciary’s request for dual compensation at the time of appointment or upon motion if the request for dual compensation is made after appointment. If the request is after the time of appointment, notice of the motion shall be given to all interested parties who have made an appearance in the case.

2. The attorney-fiduciary must keep meticulous time and expense records, carefully segregating legal and non-legal work. An

Experience). Figures for the “estate planning, probate and trusts” rates category came from Table 25 (2010 Hourly Billing Rates by Primary Field of Law and Practice Category).

attorney-fiduciary 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 estate. Attorney-fiduciaries will not be paid attorney's fees for *fiduciary services*.

- a. Example: the attorney-fiduciary will not be paid at the Court-approved attorney-fee rate for obtaining a bond, gathering estate assets, or making health care decisions for a ward of the Court.

C. Court-appointed attorney's fees pursuant to A.R.S. § 14-5314(B)(guardianships) and 14-5414 (conservatorships)

Because significant rights are taken away from an adult who is adjudicated incompetent, the court is required to appoint counsel for the proposed protected person in every adult guardianship and conservatorship case, unless that person already has independent counsel.⁷

In Maricopa County, court-appointed attorneys are selected from a listing of attorneys on contract with the Office of Public Defense Services ("OPDS"). OPDS will pay the court-appointed attorney \$300 per assignment, and an additional \$70 an hour after 10 hours. However, the court-appointed attorney's primary source of compensation shall be the estate of the ward, or if the petition is dismissed, the petitioner.

It is unfair to the ward that he may end up paying a higher hourly rate than the next ward simply because of which attorney was selected for him. Therefore, court-appointed attorneys who are compensated from the ward's estate, or if the petition is dismissed, the petitioner, should be paid the same hourly rate to be set by court rule. If an attorney believes that his or her experience before the Court qualifies for a rate increase, the attorney should explain to the Court, in writing, the reasons why such an increase is appropriate. The Court will approve the following for court-appointed attorney's fees:

\$1,000 per assignment, and an additional \$250 an hour after 10 hours.

⁷ See A.R.S. §14-5303(C)(guardianships) and A.R.S. §14-5407(B)(conservatorships).

II. Paralegal/Legal Assistant (“Legal Assistant”) Charges

The Court recognizes that many attorneys rely on legal assistants for gathering information and reviewing and preparing documents. Below is a table setting forth what the Court believes are appropriate rates for legal assistants. The Court will not pay for secretarial services at the legal assistant rate *even if such services are performed by legal assistants*. 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. If an attorney believes that his or her paralegal/legal assistant’s experience qualifies for a rate increase, the attorney should explain to the Court, in writing, the reasons why such an increase is appropriate.

Yrs of Practice	Approved Rate Range⁸	Median Rate
New, no experience	\$65 - \$142	\$90
1 – 4 years	\$70 - \$150	\$95
5 – 9 years	\$90 - \$175	\$100
10+ years	\$94 - \$185	\$110

III. Pre-Approval Requirements

There is a presumptive maximum amount of attorney’s fees and costs that may be spent annually according to the budget submitted to the court. If the attorney believes that the fees and costs will exceed the budget in any given year, the attorney should obtain prior court approval or risk not getting the attorneys fees approved at a later date.

⁸ Figures obtained from the *Economics of Law Practice in Arizona, 2010*, published by the State Bar of Arizona. All figures came from Table 26 (2010 Hourly Billing Rates for Associates and Legal Assistants by Years of Experience).

IV. Time for Billing

(If there is a statutory/rule change): Attorneys shall submit fee applications at least once a year. All fee requests submitted to the Court more than one year after the services were performed will not be approved.

(If there is not a statutory/rule change): The Court prefers that all bills be submitted at least once a year. All fee requests submitted to the Court more than one year after the services were performed may not be approved depending on the circumstances.

V. Guidelines for Specific Types of Charges

The Court will not reimburse costs based on a fixed percentage of the attorney's billable rate to cover administrative and overhead costs such as photocopies, faxes, delivery charges. The Court will only reimburse based on actual costs, as discussed below.

A. Travel

Travel time from an attorney's office to the courthouse to attend hearings, or to a client's location will be reimbursed at half of the attorney's approved rate. The Court encourages the attorneys to request telephonic and/or video conferences whenever possible.

The Court does not ordinarily reimburse for an attorney's or staff member's travel mileage or expenses inside the county where the attorney has an office. If the attorney or staff member travels outside the county where he has an office, the Court will reimburse mileage at the current I.R.S. rate.⁹

B. Legal Research

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 will not reimburse for those costs.

⁹ Current rate can be obtained at <http://www.irs.gov/newsroom/article/0,,id=216048,00.html>. For 2010, the reimbursement rate per mile is fifty cents (\$.50).

C. Preparation of Attorney's Fee Petitions

The Court considers the cost of generating and reviewing billing invoices and of drafting and mailing the cover letters that accompanies the invoices, including Probate Rule 33 Attorney's Fee Petitions, to be part of an attorney's overhead. Consequently, the Court will not reimburse attorneys for the costs of preparing invoices, fee applications and orders that accompany them.

The Court will consider awarding the reasonable fees and costs if the attorney's fee application is contested and the Court finds by clear and convincing evidence that the objection is done for the purpose of harassment, is groundless, and is not made in good faith.¹⁰ In those instances, the attorney's fees and costs for defending the fee application may be assessed against the objecting party rather than the estate.

D. Copies and Faxes

The Court will reimburse attorneys the actual cost of the copies, up to a maximum of ten cents (\$.10) per page.¹¹ Copies made by the Clerk's office will be reimbursed at the rate charged by the Clerk¹² if the fee petition indicates this fact. The Court will pay copying costs only if it is accompanied by a statement of the charge per page and the number of copies.

The Court considers faxes as a part of an attorney's overhead. Therefore, 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.

E. Deliveries

The Court discourages the routine use of hand-delivery services because it results in significant expense to the estate. To minimize the costs to estates arising from excessive delivery charges, the Court encourages the use of first-class mail, certified mail, faxes, and e-mail. In situations where hand

¹⁰ Language is based on A.R.S. § 12-341.01.

¹¹ The Kinko's copy center in downtown Phoenix charges \$.10 per page for standard copying without a volume discount.

¹² The Clerk's Office in Maricopa County charges fifty cents (\$.50) per page.

delivery is necessary, the Court will approve the actual cost of hand delivery up to \$15, regardless of whether an attorney, paralegal, secretary, or commercial courier service actually delivered the document.

VI. Fees and Costs Necessitated by Misfeasance or Malfeasance

(If there is no statutory/rule change for fee shifting): The Court will not reimburse for attorneys fees and costs out of the ward's estate for resolving problems or attending hearings necessitated by the misfeasance or the malfeasance of the client or the attorney. For instance, if a guardian or conservator sells restricted property without Court approval and there are attendant costs associated with rectifying the situation, the Court believes the guardian or conservator should be personally responsible for any added expense. Likewise, order to show cause hearings, such as compliance calendar hearings, fall within this exception, and the attorney and/or the client will be responsible for all costs associated with attendance at the hearing.

Appendix A: Recommended Fees Rate Range

Recommended Attorney’s Fee:

Yrs of Practice	Approved Rate Range¹³	Median Rate
New, no experience	\$154 - \$235	\$175
1 – 2 years	\$175 - \$255	\$195
3 – 5 years	\$185 - \$285	\$200
6 – 10 years	\$200 - \$325	\$235
11 – 15 years	\$200 - \$350	\$250
16 – 25 years	\$225 - \$425	\$250
Greater than 25 years	\$225 - \$450	\$275
Estate planning, probate and trusts (all years of practice)	\$220 - \$400	\$250

Recommended Court-Appointed Attorney’s Fee: \$1,000 per assignment, and an additional \$250 an hour after 10 hours.

Recommended Paralegal/Legal Assistant’s Fees Rate Range

Yrs of Practice	Approved Rate Range¹⁴	Median Rate
New, no experience	\$65 - \$142	\$90
1 – 4 years	\$70 - \$150	\$95
5 – 9 years	\$90 - \$175	\$100
10+ years	\$94 - \$185	\$110

Factors that may justify an increase or decrease in the approved rate:

1. the customary rates in the county where the litigation takes place;

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2. special expertise in a difficult area of law;
3. size of the estate;
4. time spent on a particular matter far exceeds the norm;
5. lawyer or paralegal/legal assistant did not perform up to the standards of those licensed/working for an equivalent length of time.

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Appendix B: Summary of Attorney's Fees Guidelines

Item	Amount Paid
Attorney's fee petition preparation	Not billable.
Copies	<p>Actual cost up to maximum of \$.10 per page.</p> <p>Copies made by Clerk's office reimbursed at rate charged by the Clerk</p>
Deliveries	Actual cost up to maximum of \$15
Faxes	Not reimbursable.
Fiduciary services performed by attorney	Billable at fiduciary rate only.
Legal research subscription fees (ie: Westlaw/Lexis/books)	Not reimbursable.
Mileage or travel expenses	<p>Inside the county: not reimbursable.</p> <p>Outside the county: reimbursed at the current I.R.S. rate.</p>
Secretarial services	Not billable.
Travel time	Billable at half of the approved hourly rate.