

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of: )  
 )  
ADOPTING ARIZONA CODE OF ) Administrative Order  
JUDICIAL ADMINISTRATION § 3-303: ) No. 2012 - 63  
PROFESSIONAL SERVICES: )  
STATEWIDE FEE GUIDELINES AND )  
COMPETITIVE BIDS )  
\_\_\_\_\_ )

The above-captioned provision implements the recommendations of the Committee on Improving Judicial Oversight and Processing of Probate Court Matters (“Probate Court Committee”) regarding fee guidelines and compensation for professionals in Title 14 matters.

The Arizona Judicial Council (Council) reviewed the recommendations of the Probate Court Committee on October 28, 2011 and directed that the Committee’s recommendations be drafted as a new section of the ACJA for consideration at the Council’s Meeting on June 18, 2012. The ACJA § 3-303 is also consistent with Rule 33, *Arizona Rules of Probate Procedure*, adopted December 18, 2011, and effective on September 1, 2012. The above-captioned provision was presented to the Council on June 18, 2012, and was approved and recommended for adoption.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the above-captioned provision, attached hereto, is adopted as a new section of the Arizona Code of Judicial Administration, effective September 1, 2012.

Dated this 31st day of July, 2012.

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REBECCA WHITE BERCH  
Chief Justice

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**

**Part 3: Superior Court**

**Chapter 3: Probate Court**

**Section 3-303: Professional Services: Statewide Fee Guidelines and Competitive Bids**

**A. Definitions.** In this section the following definitions apply:

“Court” means the superior court in each county.

“Estate” means “includes the property of the decedent, trust or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration. As it relates to a spouse, the estate includes only the separate property and the share of the community property belonging to the decedent or person whose affairs are subject to this title” as provided in A.R.S. § 14-1201(17).

“Presiding judge” means the presiding judge of the superior court in each county.

**B. Applicability.** Pursuant to Rules 10.1 and 33, *Arizona Rules of Probate Procedure* and the administrative authority provided by Article VI, Section 3 of the Arizona Constitution, and A.R.S. §§ 14-1104 and 14-5109, the statewide fee guidelines and requirements for competitive bids adopted by this section apply to the reasonable compensation and reimbursement for services rendered by Professionals in Title 14 proceedings. In this section the term professional applies to licensed and unlicensed court-appointed fiduciaries, guardians ad litem and attorneys.

1. The presiding judge shall implement these statewide fee guidelines, effective September 1, 2012.
2. These fee guidelines:
  - a. Apply to the compensation of the following individuals who are paid by an estate:
    - (1) Court-appointed fiduciaries, specifically guardians, conservators, and personal representatives, licensed and unlicensed;
    - (2) Guardians *ad litem*; and
    - (3) Attorneys.
  - b. Do not apply:
    - (1) To compensation paid by a trust or decedent’s estate, if compensation is specified or set forth in the relevant trust or testamentary instrument; or
    - (2) When the fees are not paid by the Estate, including court-appointed counsel who are paid by the court.

**C. Purpose.** Pursuant to Rule 33(F), Arizona Rules of Probate Procedure, “When determining reasonable compensation, the superior court shall follow the statewide fee guidelines set forth in the Arizona Code of Judicial Administration”. Therefore the use of these guidelines is mandatory.

**D. Use of the Fee Guidelines.**

1. Each judicial officer shall, pursuant to Rule 33(F) *Arizona Rules of Probate Procedure*,
  - a. Use and comply with the fee guidelines and general compensation factors adopted by this section;
  - b. Weigh the totality of the circumstances in each case. Professional services shall be tailored to the specific circumstances of each case in order to meet the best interest of each unique ward, protected person, estate, and trust. Therefore, reasonable compensation is best determined on a case-by-case basis, while applying consistent compensation guidelines; and
  - c. Exercise discretion to assign more or less weight to any of the compensation factors as the officer deems just and reasonable.
2. Compensation of the Professional. Unless otherwise ordered by the court, compensation and reimbursement for professional services shall meet the following requirements:
  - a. All fee petitions shall comply with Rule 33 of the *Arizona Rules of Probate Procedure*.
  - b. All hourly billing shall be in an increment to the nearest one-tenth of an hour, with no minimum billing unit in excess of one-tenth of an hour. No “value billing” for services rendered is permitted, rather than the actual time expended.
  - c. “Block billing” is not permitted. Block billing occurs when a timekeeper provides only a total amount of time spent working on multiple tasks, rather than an itemization of the time expended on a specific task.
  - d. Necessary travel time and waiting time may be billed at 100% of the normal hourly rate, except for time spent on other billable activity; travel time and waiting time are not necessary when the service can be more efficiently rendered by correspondence or electronic communication, for example, telephonic court hearings.
  - e. Billable time that benefits multiple clients, including travel and waiting time, shall be appropriately apportioned among each client.
  - f. Billable time does not include:
    - (1) Time spent on billing or accounts receivable activities, including time spent preparing itemized statements of work performed, copying, or distributing

- statements; however, time spent drafting the additional documents that are required by court order, rule, or statute, including any related hearing, is billable time. The court shall determine the reasonable compensation, if any, in its sole discretion, concerning any contested litigation over fees or costs; and
- (2) Internal business activities of the Professional, including clerical or secretarial support to the Professional.
- g. The hourly rate charged for any given task shall be at the authorized rate, commensurate with the task performed, regardless of whom actually performed the work, but clerical and secretarial activities are not separately billable from the Professional. The Professional shall abide by the following requirements:
- (1) An attorney may only bill an attorney rate when performing services that require an attorney; a paralegal rate when performing paralegal services; a fiduciary rate when performing fiduciary services; and shall not charge when performing secretarial or clerical services, for example and
- (2) A fiduciary may only bill a fiduciary rate when performing services that require the skill level of the fiduciary; a companion rate when performing companion services; a bookkeeper rate when performing bookkeeping and bill-paying services for a client; and shall not charge when performing secretarial or clerical services, for example.
- h. Reasonable costs that are incurred in the best interest of the Estate are reimbursable at actual cost, without increase in price. Reimbursable costs include, but are not limited to:
- (1) Goods or services obtained for or consumed by the Estate;
- (2) Postage and shipping fees;
- (3) Deposition and transcript costs;
- (4) Fees charged by a process server;
- (5) Publication fees;
- (6) Expert witness fees;
- (7) Messenger costs;
- (8) Case-specific bonds; and
- (9) Electronic database fees charged by an outside vendor, (for example, Westlaw, LexisNexis, PACER) except for charges to research Arizona (or other applicable) statutes, case law, and regulations.
- i. Reimbursable costs do not include any cost not specifically or directly associated with the delivery of goods or services to an identified Estate, for example, overhead.
- j. Time and expenses for any misfeasance or malfeasance are not compensable.
- k. Time and expenses to correct or mitigate errors caused by the professional, or their staff, are not billable to the Estate.

- l. Time or expenses to respond or defend against a regulatory complaint against the professional and the professional's licensed business entity are not billable to the Estate.
  - m. A Professional may only charge interest on their unpaid compensation or unpaid reimbursement with court approval.
3. Judicial Officer Review. The judicial officer shall consider the following general compensation factors when reviewing hourly rates and charges and determining what constitutes reasonable compensation:
- a. The usual and customary fees or market rates charged in the relevant professional community for such services. Pursuant to Rule 10.1, *Arizona Rules of Probate Procedure*, market rates for goods and services are a proper and ongoing consideration for the court in Title 14 proceedings.
  - b. To the extent authorized by law, a non-licensed fiduciary who is related to a protected person, ward, or decedent, may receive reasonable compensation for services as a conservator, guardian, or personal representative, respectively, commensurate with the services performed. The judicial officer shall also consider the number of billable hours and services rendered in comparable cases.
  - c. Common fiduciary services rendered in a routine guardianship or conservatorship engagement. The fiduciary shall provide a reasonable explanation for exceeding these services. The common fiduciary services are:
    - (1) Routine bookkeeping, such as disbursements, bank reconciliation, data entry of income and expenditures, and mail processing: four (4) hours per month, at a commensurate rate for such services;
    - (2) Routine shopping: six (6) hours per month if the ward is at home, and two (2) hours per month if the ward is in a facility, at a commensurate rate for such services;
    - (3) One routine personal visit per month by the fiduciary to the ward or protected person;
    - (4) Preparation of conservator's account and budget: five (5) hours per year;
    - (5) Preparation of annual guardianship report: two (2) hours per year; and
    - (6) Marshalling of assets and preparation of initial inventory: eighty (80) hours.
  - d. Not more than one attorney may bill for attending hearings, depositions, and other court proceedings on behalf of a client, nor bill for staff to attend, absent good cause;
  - e. Each fiduciary and guardian *ad litem* shall not bill for more than one person to attend hearings, depositions, and other court proceedings on behalf of an Estate, absent good cause. This provision does not preclude an attorney, who represents a fiduciary or guardian ad litem, from submitting a separate bill.

- f. The total amount of all annual expenditures, including reasonable professional fees, may not deplete the Estate during the anticipated lifespan of the ward or protected person, until and unless the conservator has disclosed that the conservatorship has an alternative objective, such as planned transition to public assistance or asset recovery, as set forth in the disclosure required by Rule 30.3 of the *Arizona Rules of Probate Procedure*.
  - g. The request for compensation in comparison to the previously disclosed basis for fees, any prior estimate by the Professional, and any court order;
  - h. The expertise, training, education, experience, and skill of the Professional in Title 14 proceedings;
  - i. Whether an appointment in a particular matter precluded other employment;
  - j. The character of the work to be done, including difficulty, intricacy, importance, necessity, time, skill or license required, or responsibility undertaken;
  - k. The conditions or circumstances of the work, including emergency matters requiring urgent attention, services provided outside regular business hours, potential danger (for example: hazardous materials, contaminated real property, or dangerous persons), or other extraordinary conditions;
  - l. The work actually performed, including the time actually expended, and the attention and skill-level required for each task, including whether a different person could have rendered better, faster, or less expensive service;
  - m. The result, specifically whether benefits were derived from the efforts, and whether probable benefits exceeded costs;
  - n. Whether the Professional timely disclosed that a projected cost was likely to exceed the probable benefit, affording the court an opportunity to modify its order in furtherance of the best interest of the Estate;
  - o. The fees customarily charged and time customarily expended for performing like services in the community;
  - p. The degree of financial or professional risk and responsibility assumed; and
  - q. The fidelity and loyalty displayed by the Professional, including whether the Professional put the best interest of the Estate before the economic interest of the professional.
4. Non-traditional Compensation Arrangements.
- a. Flat-fee: Unless otherwise prohibited by law or court rule, flat-fee compensation is permissible under the following conditions:

- (1) The flat fee may include all or part of an engagement, if the predictability of costs is enhanced and if the economic interests of the Professional are thereby better aligned with the Estate;
  - (2) The basis for any flat fee compensation is disclosed by the Professional in advance, in writing, specifying in detail the services included in any flat-fee, the units of each service, and the usual hourly rate for such services; and
  - (3) The Professional documents the actual delivery of services included with the flat fee.
- b. Contingent Fee: Unless otherwise prohibited by law or rule, nothing in these guidelines shall prohibit a contingent fee engagement with an attorney that is properly executed in writing. An example of a contingent fee includes representation on a personal injury claim.

**E. Modifications to the Statewide Fee Guidelines.** The Arizona Judicial Council shall review the statewide fee guidelines, at least bi-annually, to ensure the guidelines and general compensation factors continue to reflect usual and customary billing practices and are reasonable, efficient and cost effective, as required by A.R.S. § 14-5109.

**F. Competitive Bids.**

1. Pursuant to Rule 10.1(C), *Arizona Rules of Probate Procedure*, the court may order that competitive bids for goods or services be obtained at any stage of Title 14 proceedings.
2. A court shall competitively bid attorney services for those attorneys seeking appointment by the court as counsel for a ward or protected person in a Title 14 proceeding, where a prior attorney-client relationship has not been established. A court may use another method to establish the fees for these attorney services, if that method:
  - a. Results in fees that are comparable to, or more economical than fees established through a competitive bid process, and
  - b. Serves the best interests of the ward or protected person.