

Section 18 - Compensation - Supervised Administration

18.10 In General

18.10.1 Standard

The criteria for determining hourly compensation to personal representatives and attorneys, including office staff, is a "reasonable fee standard." Attorney fee applications will be considered in light of Rule 4-1.5 of the Code of Professional Responsibility. A "reasonable fee standard" for attorneys' compensation only applies to legal services. Attorneys cannot be compensated at normal hourly professional rates for administrative services.

Reference: §§ 473.153, 473.155

18.10.2 Signatures

Each application for compensation shall be in writing and shall be signed by all personal representatives. If the personal representative refuses to sign the application, the application must be set for hearing with notice to the personal representative. The attorney shall also sign applications for the attorney's compensation.

18.10.3 Effect of Citation, Show Cause or Exception Letter

The Court may decline to consider an application for compensation while a citation, show cause order or auditor's exception letter is unresolved.

18.10.4 Co-Personal Representatives

Where co-personal representatives are seeking compensation, the application shall state the requested division of compensation among them in dollar amounts. The equivalent of one statutory fee will be allowed for co-personal representatives absent extraordinary circumstances. This policy is not to be construed to preclude co-personal representatives from seeking hourly compensation in excess of the statutory fee. If the co-personal representatives cannot agree in writing to the division of the fee, the matter will be set for hearing.

References: Form 10160, Form 10161

18.10.5 Hourly Compensation

When hourly compensation is sought in a decedent's estate, the application must be prepared in manuscript form and contain a reasonably detailed description of the nature of all services performed, the date performed, the amount of time expended in connection with the service, the total hours expended and the hourly rate charged. Where attorney services and office staff personnel services are shown in the same application, it is necessary to distinguish which services and time were spent by the attorney and which by other office staff members, differentiating total hours and hourly rates charged. Where several attorneys render services at different hourly rates,

the attorneys and the hourly rates charged must be stated. The court does not have a form for hourly compensation applications.

Reference: § 473.153

18.10.6 Statutory Compensation

If statutory compensation is sought, the application shall be made in accordance with form 10160.

References: Form 10160, Form 10161, Form 10162, Form 10163
§ 473.153

18.10.7 How Reflected on Settlement

Final fees will be allowed prior to the filing of the final settlement and must be shown on the final settlement as credit entries (resulting in their deduction from the amount to be distributed) even though not payable until approval of the settlement and decree of distribution. The Court may allow a partial fee on application and order prior to approval of the settlement and decree of distribution.

References: Form 10160, Form 10161, Form 10162, Form 10163, Form 10559
§ 473.153.4

18.10.8 Payment for Specialized Services

So-called mixed fee applications, that is, applications for a statutory fee, plus an hourly fee for the attorney or for the personal representative for "additional services" will not be considered in any case. For applications based upon an hourly rate, reasonable compensation may also be allowed out of the estate for services rendered by any of the persons of the categories listed below. In estates in which statutory compensation is sought by the attorney or by the personal representative, the Court will consider, and will allow in appropriate cases, applications for reasonable compensation (to be paid out of the estate in addition to statutory compensation) for:

18.10.8(a) Specialized services rendered by an attorney with experience in tax matters, whether or not that attorney is associated with the same law firm with which the attorney for the personal representative is associated;

18.10.8(b) Services rendered by accountants or tax specialists (or tax return preparers) where the services are rendered to assist the attorney or the personal representative in the preparation of any estate tax return, inheritance tax return, or any federal or state income tax return;

18.10.8(c) Specialized services to represent or assist the personal representative in connection with any audit or other administrative or judicial proceedings relating to tax returns;
or

18.10.8(d) Services rendered by an accountant to assist the attorney or the personal representative in establishing records of account and reporting on final results in those estates requiring this service.

Practice tip: If compensation for specialized services is sought, such specialized services must be identified in the application.

18.10.9 Expenses of Attorney, Corporate Personal Representative

Ordinarily the Court will not allow attorneys or corporate personal representatives to be reimbursed for items of expense which are usual and customary costs of doing business, e.g., routine photocopies, in-town mileage and postage. The expenses are contemplated in the hourly rate. If, however, extraordinary costs are generated because of litigation or other circumstances unique to the estate, the application should so state.

18.10.10 Attorney as Personal Representative

Where the personal representative is an attorney and claims the statutory fee, no compensation will be allowed to an attorney employed by him unless (1) authorized by the will, (2) consented to by all heirs or devisees whose rights may be adversely affected by the allowance, or (3) authorized by court order in connection with litigation instituted by or against the estate or as provided in Section 18.10.8. The Court will allow hourly compensation to an attorney-personal representative, and attorneys and office staff employed by him, based on the "reasonable fee standard."

Reference: §§ 473.153.3, 473.155.2

18.20 Determination of Corporate Personal Representatives' Fees in Excess of Statutory Fee

All applications by corporate personal representatives for compensation in excess of the schedule set forth in § 473.153, shall be based upon the amount of time devoted by the trust administrators, officers or the administrative assistants employed by the personal representative using a reasonable fee standard. Where administrator/officer's services and administrative assistant's services are shown in the same application, it is necessary to distinguish which services and time were spent by each respectively, differentiating total hours and hourly rates charged.

18.30 Hourly Compensation of Lay Personal Representatives

In determining whether the lay personal representative's request for compensation in excess of the statutory fee is reasonable, the Court will consider the amount of supervision and participation necessary by the attorney. A personal representative's earning capacity in his normal business or occupation shall not alone constitute grounds for determining the rate of compensation, but may be considered along with any special skills or expertise in determining reasonableness, only to the extent the estate directly benefits.

18.40 Computation of Statutory Fee

18.40.1 In General

The statutory fee shall be computed pursuant to § 473.153.1, based on:

- (1) The value on the date of distribution of all personal property administered,
- (2) The funds disbursed for payment of claims, expenses of administration, taxes and
- (3) The value of all personal property assets on hand including the proceeds of all real property sold under order of the Probate Division. Compensation may not be claimed as to the proceeds of the sale of real property sold pursuant to a power of sale in the will or pursuant to an independent personal representative's statutory authority unless a court order authorizing the sale has been entered. *Matter of Stroh*, 899 S.W.2d 534 (Mo. App. E.D. 1995). See also Section 18.40.3 on including proceeds from the sale in the calculation of the statutory fee.

References: Form 10160, Form 10161, Form 10162, Form 10163

18.40.2 Advancements to Estates

Where the estate would otherwise be insolvent, funds advanced to the estate may not be included as part of the estate for the purpose of calculating the statutory fees. If the estate contains real property which would have to be sold for the purposes set forth in § 473.460.1, the advancements made to the estate in order to avoid the sale of the real property may be considered in computing the statutory fee, provided that the advancements do not exceed the inventory value of the real property.

References: Form 10160, Form 10161, Form 10162, Form 10163
§§ 473.153, 473.460.1

18.40.3 Proceeds of Sale

Where real property is sold by the personal representative pursuant to court order, the sale proceeds are included when calculating the statutory fee subject to the following limitations. The amount of the sale proceeds included in the computation of the statutory fee shall be the sum of money or any other personal property received as a result of the sale and administered by the personal representative. If the sale is handled by someone other than the personal representative, only the net proceeds remitted to the personal representative are included. For example, real property is sold for \$20,000 and there is a \$10,000 encumbrance. The personal representative is paid the full purchase price from which he disburses \$10,000 for the purpose of satisfying the lien of the deed of trust, as well as the disbursement of other expenses of sale. The personal representative is entitled to utilize the full \$20,000 in calculating his statutory fee. On the other hand, if the contract for sale provides first for escrowed funds to satisfy the lien and expenses of sale and then for the net proceeds to be paid to the personal representative, the personal representative may utilize only the net sum realized to the estate in calculating his fee. The same is applicable to a pledge of stock or other securities.

Reference: Form 10160, Form 10161, Form 10162, Form 10163
§ 473.153.1

18.50 Allowance, Partial Fee, Decedents' Estates

Partial fees for the personal representative and his attorney may be allowed at any time when it appears that the fees have been earned or it is otherwise appropriate.

Reference: § 473.153.4

[END OF SECTION]