

Section 32 - Compensation - Guardianship and Conservatorship Estates

32.10 In General

32.10.1 Fee Standard

All compensation allowable to attorneys, guardians and conservators shall be based upon a reasonable hourly 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 will not be compensated at normal hourly professional rates for administrative services.

Reference: § 475.265

32.10.2 Fee Applications

Each application for compensation shall be in writing and be signed by the conservator. If the conservator's signature cannot be obtained, then the matter shall be set for hearing with notice to the conservator. The attorney shall also sign applications for attorney's compensation.

Fee applications for both attorneys and guardians/conservators must be itemized and contain a reasonably detailed description of services performed, the date performed, the amount of time expended in connection with each service, the hourly rate and the dollar amount applicable to each entry. The fee application shall also include the total hours expended and the total amount requested. Where attorney services and paralegal services are shown in the same application, it is necessary to distinguish which services and time were spent by the attorney and which by the paralegal, differentiating total hours and hourly rates charged.

32.10.3 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.

32.10.4 Attorney as Guardian/Conservator

An attorney serving as guardian/conservator may bill at his professional hourly rate only for legal services rendered. They may bill for time of paralegals and attorneys employed by him for the protectee's benefit, at reasonable hourly rates for the type of services performed. They may also bill for services performed in their guardian/conservator capacity, such as visiting the ward in a nursing home, paying routine bills and making bank deposits, at a rate appropriate for those types of services.

32.10.5 Notice to Veterans Administration

In any estate, in which the protectee is receiving VA benefits, if the original petition for appointment of a guardian or conservator was filed on or before December 31, 1980, no order authorizing the payment of fees to guardians, conservators or attorneys will be entered and no settlement will be approved unless notice of hearing thereon has been given to the Veterans Administration in accordance with §§ 475.380 through 475.480 or unless a waiver of notice of hearing has been obtained from the Veterans Administration.

32.20 Determination of Corporate Conservators' Fees

All applications by corporate conservators for compensation shall be based upon the amount of time devoted by the trust administrators, officers or the administrative assistants employed by the conservator 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.

32.30 Compensation of Lay Fiduciaries

In determining whether the lay fiduciary's request for compensation is reasonable, the Court will consider the amount of supervision and participation necessary by the attorney. A guardian/conservator's earning capacity in his normal business or occupation shall not 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 therefrom.

32.40 Fees, When Allowed

Fees for the guardian or conservator and his attorney may be allowed at any time when it appears that the fees have been earned or it is otherwise appropriate; generally, however, fees in conservatorship estates should not be sought more frequently than annually. If a settlement has been filed, fees will not be approved until the settlement is approved.

32.50 Reimbursement for Expenses

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

[END OF SECTION]