

RULE 23 - COUNSEL FEES

A. Introduction: The Schedule of compensation set forth below serves as a guide in determination of allowable attorney fees for legal services of an ordinary nature rendered by an attorney for an executor, administrator or other fiduciary accountable to the Probate Court. The fee calculated pursuant to said schedule shall be considered by the Court to be a maximum fee to be charged unless an application for extraordinary fees is filed and approved.

An application for attorney fees shall be accompanied by a computation of attorney fees calculated pursuant to the Schedule of Compensation herein, regardless of whether the attorney is seeking a fee calculated other than pursuant to this schedule. If the attorney fee being sought exceeds the fee as calculated pursuant to the schedule set forth herein, such application shall be accompanied by an itemized statement of time and services rendered by the attorney in addition to the aforesaid computation. The Court may allow the attorney fee requested without hearing provided the fiduciary and the attorney have signed the application stating the services were necessary, beneficial to the estate and that the amount requested is reasonable. In the alternative, the Court may, on its own motion or that of any interested party, set the application for hearing.

B. Schedule of Compensation: When calculating fees under the schedule herein only property that is subject to administration (probate) is to be considered. Therefore, non-probate property (joint and survivorship, transfer/payable on death accounts, other property that is not subject to administration) shall not be included as property upon which attorney fees calculated under the schedule. Provided, however, fees may be includable for time spent on transferring joint with right of survivorship property, transfer on death property, and all other property not subject to probate administration, or accounted for on the final account on a reasonable and normal hourly basis agreed to by the attorney for the estate and the Executor or Executrix. The schedule is as follows:

1. For the first \$100,000.00 at a rate 4.5%;
2. All above \$100,000.00 and not exceeding \$400,000.00 at the rate of 4%;
3. All above \$400,000.00 at the rate of 2.5%.

The tier values set forth above are applicable to the balance of the gross appraised value of all probate real property and probate personal property, or the amount accounting for, whichever is larger.

If by reason of the application of the above percentages to values of property a disparity or injustice results, such disparity or injustice may be reviewed in respect of any account reflecting such compensation or upon exceptions to such an account.

C. Attorney Acting as Executor: When the attorney is also the executor of the estate, no fiduciary fees will be allowed the attorney except as follows:

1. The Last Will and Testament of decedent directs that the fiduciary receive compensation; or
2. An application for fiduciary fees in a specific amount is acceptable to the legatees and devisees named in the Will; or
3. An application for extraordinary fees is presented to the Court setting out reasons, acceptable to the Court, for an allowance of such extraordinary fees.