

**PROBATE COURT OF HAMILTON COUNTY, OHIO**

ESTATE OF ABBIE A. BAER, DECEASED

CASE NO. 980172

**DECISION OF MAGISTRATE DENYING APPLICATION  
FOR EXTRAORDINARY FIDUCIARY FEES**

This matter came before Magistrate Thomas W. Landon on February 14, 2000, regarding an application for extraordinary fiduciary fees of \$8,020.55. Present was Phillip F. Cameron, counsel for the applicant. The applicant did not appear.

The decedent died testate in August of 1997. June Flint, one of the decedent's nieces, served as Abbie Baer's guardian and was appointed Administrator W.W.A. of her estate on February 19, 1998. Revised Code §2115.02 requires an inventory to be filed within three months of a fiduciary's appointment, in this case, May 19, 1998. June Flint served as the decedent's guardian and should have been knowledgeable about the decedent's estate. However, June Flint had still not filed an inventory by August of 1998 so the Court issued her and her attorney notices that the inventory was overdue. The Administrator filed her inventory shortly thereafter.

June Flint's final account as guardian indicated the decedent owned assets totaling \$478,689.37. Of that amount, only \$41,315.37 were probate assets. The Administrator's inventory contained consistent information. While R.C. §2109.30 requires a fiduciary to file a first account within nine months of appointment, June Flint still had not filed her

first account by May of 1999, over six months late. Since she failed to file an account by June of 1999, the Court issued citations to both her and her attorney on June 8, 1999.

Incredibly, even though her first account had still not been filed, the Administrator, on July 8, 1999, brought an application for extraordinary fiduciary fees in the amount of \$13,500.00. Despite filing her inventory three months late and having not even filed an account, the Court approved the payment of a fiduciary's commission to Ms. Flint in the amount of \$5,479.45, which was the statutory amount set by R.C. §2113.35. The Administrator filed her first account five days later. According to the Status Report filed with the first partial account, the fiduciary planned to "make final distribution after the [partial] account is filed."

On January 21, 2000, the Administrator filed a second application for an extraordinary fiduciary fee of \$8,202.55 so that her proposed total fee would be the \$13,500.00 that was previously denied. In support of her application, the Administrator submitted timesheets that indicate she spent 128.12 hours performing her duties. For the reasons that follow, I recommend that no further fee be granted.

Revised Code §2113.35 provides for commissions to be paid to executors and administrators. That section allows payment for the first one hundred thousand dollars at the rate of four per cent; and a commission of one per cent on all property not subject to administration but includable for purposes of computing the Ohio estate tax. Based on the Administrator's representation of the value of the decedent's estate, the fiduciary's commission amounts to:

\$ 41,315.37	x	4%	= \$1,652.62
\$382,685.00	x	1%	= \$3,826.85
			\$ 5,479.47

Revised Code §2113.36 provides for further commission for extraordinary services not required of an executor or administrator in the common course of her duty. To receive an extraordinary fee, June Flint must demonstrate what services she purportedly rendered that were not required of her in the common course of her duty. This she has not done. In fact, the record indicates that the Court would be justified in reducing the statutory commission for failing to file a timely inventory and account.

A fiduciary's commission is premised upon the reality that a fiduciary is obligated to expend time and energy concluding a decedent's affairs. In this case, June Flint has failed to demonstrate she expended an inordinate amount of time in administering this estate or that her efforts were out of the ordinary. Her timesheets indicate she spent 128.12 hours in her capacity as fiduciary. Since she was granted a commission of \$5,479.00, her hourly rate equates to \$42.81. She deserves nothing further.

As an aside, the Administrator's application for \$13,500 was denied back in July and she failed to file timely objections to that decision. The Court may bar the application under *res judicata* alone.

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THOMAS W. LANDON, MAGISTRATE

cc: Phillip F. Cameron / 33967