

**COURT OF COMMON PLEAS
PROBATE DIVISION
HAMILTON COUNTY, OHIO**

ESTATE OF	:	CASE NO. 953353
CORA E. BOCKMAN, deceased	:	
	:	
	:	ENTRY SETTING
	:	ATTORNEY FEE
	:	
	:	
	:	

This matter came before Judge Wayne F. Wilke on August 22, 1996, concerning an application for extraordinary attorney fees of \$13,639.50 brought by Thomas A. Simons, Jr. and the law firm of Beckman, Weil, Shepardson and Faller. Present were Thomas A. Simons, Jr. and Richard M. Hopple, representing the Estate and Applicants herein, and David A. Kichler, who represents Roger W. Bockman, Jr., a beneficiary who is opposed to the fee. The Court granted the parties until September 5, 1996, to file final written arguments and until September 12, 1996, to file reply memoranda.

FACTS

The decedent herein, Cora Bockman, died testate on June 19, 1995, survived by four children, to wit: Nancy J. Helterbridle, Betty J. DeMasters, Roger Bockman, Jr., and Randy L. Bockman. The four are the sole co-equal beneficiaries of this estate. The decedent's will was admitted to probate on July 18, 1995.

Nancy J. Helterbridle was appointed Executrix of this estate, also on July 18, 1995. Nancy J. Helterbridle and Applicant Thomas A. Simons, Jr. ostensibly entered into a fee agreement on July 8, 1995, whereby the Executrix purportedly agreed to Mr. Simons' proposed rate of \$175.00 per hour and a proposed paralegal rate of \$60.00 per

hour. Mr. Simons estimated with qualification that the total fee would amount to \$3,000.00.

In January of 1996, R.C. §2115.02 required a fiduciary to file an accurate inventory of an estate within one month from the date of appointment.¹ The inventory for this estate was filed on January 11, 1996, almost six months after Nancy J. Helterbride was appointed Executrix, and that inventory indicated estate assets of \$85,909.37. Except for the Executrix' tardiness in filing an inventory, the Court's records of this estate indicate that it has progressed without incident. Testimony from the Applicants, on the other hand, indicate that the administration was rife with anticipated intrafamily squabbles.

On June 12, 1996, Thomas A. Simons, Jr. and Beckman, Weil, Shepardson and Faller (hereinafter "Beckman, Weil") filed an application for attorney fees in the amount of \$13,639.50. Of that proposed fee, \$8,400.69 represented Thomas A. Simons, Jr.'s services, while \$3,942.00 represented paralegal fees billed by Beckman, Weil. Applicant Simons indicated that he spent 48.50 hours on the estate, while the paralegals spent 67.40 hours on the administration of this estate.

On July 3, 1996, the Court held a hearing on the fee application. The beneficiaries of the estate did not all consent to the fee so that the Court continued the matter in progress in order for the objecting beneficiaries to produce evidence as to the reasonableness of the fee.

CONCLUSIONS OF LAW

¹ R.C. §2115.02 has since been amended, effective October 1, 1996, allowing a fiduciary three months in which to file an inventory.

Attorney fees for the administration of an estate are qualified expenses of an estate, provided they are approved by the probate court. Revised Code §2113.36 states, in part:

“When an attorney has been employed in the administration of the estate, reasonable attorney fees paid by the executor or administrator shall be allowed as part of the expenses of administration. The court may at any time during administration fix the amount of such fees and, on application of the executor or administrator or the attorney, shall fix the amount thereof.”

The statute cited above grants exclusive jurisdiction to a probate court to make a determination of a particular fee’s reasonableness. *In re Estate of Love* (1965), 1 Ohio App 2d. 571, 577. Furthermore, the Ohio Supreme Court has stated that reasonable attorney fees shall be based upon the actual services performed by the attorneys and upon the reasonable value of those services. *In re Estate of Verbeck* (1962), 173 Ohio St. 557, 558. One tool used by this court as an aid in determining a fee’s reasonableness is this court’s fee guideline. Additionally, the Court is guided by Disciplinary Rule 2-106, which lists other factors to consider when determining the reasonableness of a particular fee.

Hamilton County Probate Court Local Rule 40.1(H) provides members of the bar with a guideline for the fee to be charged for ordinary legal services rendered on behalf of an estate. For this particular estate, the guideline fee would be 4.5% on personal property and the gross proceeds of real estate subject to administration and for which the fiduciary is responsible, and 1.5% of non-probate property, so that the total guideline fee

would be \$4,481.00² The requested fee of \$13,639.50 therefore exceeds the guideline by \$9,158.50. However, the fact a requested fee is above the guideline is not *prima facie* evidence that a fee is excessive or unwarranted. Instead, a court must make a determination of a fee's reasonableness based upon the totality of the situation and upon the specific facts of each case.

Disciplinary Rule 2-106 of the Code of Professional Responsibility provides attorneys with ethical guidance with respect to fees charged by them. The cardinal rule under DR 2-106 is that a lawyer "shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee." Additionally, DR 2-106(B) lists factors to be considered as guides in determining the reasonableness of a fee. Those factors are numerous and include the time and labor required, the novelty and difficulty of the questions involved, the amount of the fee and the results obtained.

With respect to attorney fees in probate matters, the Court in *Verbeck* stated that "the burden is upon the attorneys to introduce in the record sufficient evidence of the services performed and of the reasonable value of such services" in order to justify the amount requested. *Id* at 559. Any objection to a requested fee increases proportionally the burden to justify it. As summarized in *Jacobs v. Holston* (1980), 70 Ohio App. 2d 55, 59, the burden of establishing the fairness and reasonableness of an attorney fee is upon the attorney.

The Court finds that the amount of time spent on this estate was not unreasonable, but that the evidence does not support the requested fee *in toto*. Aside from the problems among the beneficiaries, there was nothing especially difficult, technical or time-

² The first \$100,000 at 4.5% is \$3,821.00, plus non-probate assets of \$43,970.00 x 1.5% = \$660.00 for a

consuming involved in this estate. This estate proceeded on a relatively timely manner and required no extraordinary services. For example, there were no extraordinary proceedings to admit the will or to have the fiduciary appointed. There was no will contest. A determination of heirship was not required. None of the myriad legal problems or issues that could have arisen during the course of an administration occurred.

On the other hand, other factors exist which help justify the requested fee. The Executrix was able to sell the real estate without utilizing the services of a broker but which necessarily increased the amount of legal services required of counsel. Applicant Simons attempted to keep fees lower by engaging Beckman, Weil's paralegal to assist in the more routine tasks. There was no evidence supporting Roger Bockman, Jr.'s contention that the attorney and paralegal charged the Estate double by duplicating their efforts. The Court finds that much of the time spent by counsel on this estate was necessitated by friction and disagreement between certain beneficiaries. However, for a case of this nature, an hourly rate of \$150.00 is more reasonable and more consonant with the prevailing rates of this region.

The fee for legal services for this estate shall be calculated as follows: Mr. Simons' fee shall be based upon the time he actually spent on this estate, 48.50 hours, multiplied by an hourly rate of \$150.00 per hour. He estimates that \$525.00 worth of services is required to complete the administration so that Mr. Simons' fee is therefore \$7,275.00 for services actually rendered plus the \$525.00 needed to complete the administration of this estate.

total of \$4,481.00.

With respect to Beckman, Weil's fee, the Court finds that eight hours would be a reasonable amount of paralegal time needed to close this estate based upon the Applicant's testimony. At \$60.00 per hour, that amounts to \$480.00. Combined with the paralegal fee of \$3,942.00 for services actually rendered, the total due to Beckman, Weil is \$4,422.00.

The total fee for Thomas A. Simons, Jr. and for Beckman, Weil is therefore \$12,222.00.

SO ORDERED.

WAYNE F. WILKE, JUDGE

cc: Thomas A. Simons, Jr.
Richard M. Hopple
David A. Kichler
Nancy J. Helterbride
Roger Bockman, Jr.
Betty DeMasters
Randy Bockman