

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

ESTATE OF
KARL G. GOODMAN

CASE NO. 952343

ENTRY GRANTING
EXTRAORDINARY ATTORNEY
FEES

Several issues in this case came for oral argument before Judge Wayne F. Wilke on July 21, 1997. By Entry dated August 8, 1997, the Court ruled on several of those issues and ordered the parties to final written closing arguments with respect to the remaining issue, to wit: the application for extraordinary attorney fees. The Executor, represented by Augustine Giglio, has asked the Court to allow the payment of extraordinary attorney fees to G. Ernie Ramos in the amount of \$ 7,333.52. Residuary beneficiary Thomas Seibert, who is represented by Rose Fleming, opposes the payment of those fees from the Estate herein.

The Court finds that G. Ernie Ramos was retained by the Executor to represent the Executor in the lawsuit of *Helen H. Dinkel v. George C. Eyrich, Executor, et al.* which was filed in the Hamilton County Court of Common Pleas General Division. The center of that litigation involved the principal asset of this estate, namely, real estate located at 2128 Slane Avenue. Ultimately, the Estate was successful in defending the claim so that the property in dispute remains part of this estate. On July 3, 1996, the Court approved the payment of partial fees to Mr. Ramos in the amount of \$4,635.75.

The Executor seeks the payment of additional and final fees to Mr. Ramos in the amount of \$2,697.77.

A probate court is granted exclusive jurisdiction to “direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates” pursuant to R.C. §2101.24(A)(1)(c). Expenses of administration are just one category of expense which may ultimately affect the distribution of an estate. One common type of administration expense is the attorney’s fee.

By virtue of R.C. §2113.36, a probate court is granted exclusive jurisdiction to determine and to set attorney fees that are to be paid by a fiduciary and allowed as part of the expenses of administration. *In re Estate of Cercone* (1969), 19 Ohio App.2d 26, 31. George C. Eyrich was sued, not in his individual capacity, but as Executor of the Estate of Karl Goodman. Consequently, the Estate was obliged to defend the suit and the resulting costs should be borne by the Estate.

While the Court finds that Mr. Ramos’s services were necessary to the Estate, the burden of establishing the fairness and reasonableness of such an attorney fee is upon the attorney. See *In re Estate of Verbeck* (1962), 173 Ohio St. 557, 559, *Jacobs v. Holston* (1980), 70 Ohio App.3d 55, 59. Disciplinary Rule 2-106 provides that such a determination of reasonableness ought to include an inquiry of the time and labor required, the novelty and difficulty of the questions involved, and the amount of the fee and the results obtained. Each fee is to be based upon the totality of the situation.

The Court finds that Mr. Ramos has demonstrated the reasonableness of the fee which he seeks. Thomas Seifert’s objections to the requested fee amount to speculation and conjecture and serve only to second-guess Mr. Ramos’s trial strategy. Accordingly,

the Court orders the Executor to pay from the assets of the Estate attorney fees to G. Ernie Ramos in the amount of \$2,697.77, for a total fee of \$7,333.52.

SO ORDERED.

WAYNE F. WILKE, JUDGE

cc: Rose Ann Fleming
George C. Eyrich
Augustine Giglio
G. Ernie Ramos