BEXAR COUNTY PROBATE COURT
ADMINISTRATIVE ORDER NUMBER 2016-01

IN RE:	§	**IN THE PROBATE COURT**
	§	
ADMINISTRATIVE ORDER NO. 2016-01	§	
	§	
	§	**BEXAR COUNTY, TEXAS**

ADMINISTRATIVE ORDER ON APPLICATION FOR GUARDIAN'S COMPENSATION IN EXCESS OF THE STATUTORY COMMISSION

The Court finds that there is an inconsistent evidentiary presentation in applications presented to the court on guardian's commissions wherein that the applicant seeks to have the court deem the commission unreasonably low under the provisions of Tex. Estates Code § 1155.006.

The Court finds that there is statutory limit on compensation of the Guardian of the Person (§ 1155.002), Guardian of the Estate (§ 1155.003) and Guardian of the Person and Estate aggregate compensation (§ 1155.005), Modification of Unreasonably Low Compensation (§ 1155.006).

> **TEX. ESTATES CODE § 1155.002. COMPENSATION FOR CERTAIN GUARDIANS OF THE PERSON.**
>
> **(a) The court may authorize compensation for a guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose. The court may set the compensation in an amount not to exceed five percent of the ward's gross income.**
>
> **(b) If the ward's estate is insufficient to pay for the services of a private professional guardian or a licensed attorney serving as a guardian of the person, the court may authorize compensation for that guardian if funds in the county treasury are budgeted for that purpose.**
>
> **TEX. ESTATES CODE § 1155.003. COMPENSATION FOR GUARDIAN OF THE ESTATE.**
>
> **(a) The guardian of an estate is entitled to reasonable compensation on application to the court at the time the court approves an annual or final accounting filed by the guardian under this title.**
>
> **(b) A fee of five percent of the gross income of the ward's estate and five percent of all money paid out of the estate, subject to the**

award of an additional amount under Section § 1115.006(a) following a review under Section 1155.006(a)(1), is considered reasonable under this section if the court finds that the guardian has taken care of and managed the estate in compliance with the standards of this title.

TEX. ESTATES CODE § 1155.005.MAXIMUM AGGREGATE COMPENSATION.

Except as provided by Section 1155.006(a) for a fee the court determines is unreasonably low, the aggregate fee of the guardian of the person and guardian of the estate may not exceed an amount equal to five percent of the gross income of the ward's estate plus five percent of all money paid out of the estate.

TEX. ESTATES CODE § 1155.006 (b): MODIFICATION FOR UNREASONABLY LOW COMPENSATION

(b) A finding of unreasonably low compensation may not be established under Subsection (a) solely because the amount of compensation is less than the usual and customary charges of the person or entity serving as guardian.

It would be beneficial to set a standard for a factual analysis in support of the argument that the commission should be deemed unreasonably low. The Court has reviewed the analysis and factors that a court applies in the reasonableness of attorneys fees as analogous to a guardians request to declare compensation deemed unreasonably low.

Rule 1.04 (c) of the Texas Disciplinary Rules provides, in pertinent part:

(c) Factors that may be considered in determining the reasonableness of a fee include, but not to the exclusion of other relevant factors, the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

In the case of *Arthur Anderson Co. v. Perry Equipment Corporation,* 945 S.W. 2d 812, 818 (Tex. 1997), the Supreme Court applied these factors.

In addition, the Court in *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714, 717-19 (5th Cir. 1974) and its progeny have enumerated a non-exclusive list of at least 12 factors to consider in awarding attorney fees.

The Court has determined that there is a need for the guardian to establish, factually, that a guardian's commission is unreasonably low. Like *Johnson,* the Texas Rules of Professional 1.04(b) and in the *Arthur Anderson case*, the factors are not exclusive either in scope or in the application solely to attorneys fees. The Court finds, therefore, that the factors considered in determining reasonable attorneys fees are analogous to the factors that the court should consider to support a finding of unreasonably low guardian commissions.

The Court further finds that Private Professional Guardians, attorney financial institutions and others who serve as guardian shall be paid a commission and not an hourly rate for services as a temporary or permanent guardian.

IT IS THEREFORE, ORDERED that on all future applications for commission where the applicant seeks to recover fees in excess of those authorized by statute and therein requests to have the court deem the commission unreasonably low, the applicant shall, in separately numbered paragraphs, identify and describe in detail the factual basis that support the following factors, as applicable, to the guardianship, in support of a request to deem the statutory commission unreasonably low, including, but not limited to:

(1) the time and labor required as demonstrated by detailed time entries describing the work performed by individual;
(2) the novelty, difficulty and complexity of the medical or financial issues involved;
(3) the amount requested and the source for payment of the fees;
(4) whether the Ward receives Medicaid and has an applied income;
(5) the time limitations imposed, *e.g.*, urgent situations, by the circumstances or the ward or the estate;
(6) the relationship between the applicant and the ward;

(7) whether or not other assistance was also given by hired professionals or para-professionals such as case managers, real estate agents or other paid service providers;
(8) the likelihood that the acceptance of the particular appointment precluded other employment by the applicant;
(9) the total estate value and the type of assets that are managed;
(10) the location of the ward, particular issues in managing the ward's person, placement, medical or personal decisions.

IT IS FURTHER ORDERED that on all future applications, the applicant shall provide a calculation of the statutory commission pursuant to Tex. Estates Code §§ 1155.002 and/or 1155.003 and 1155.006, as applicable.

This order is effective for all applications to deem guardian's commission unreasonably low filed on or after June 1, 2016.

Signed April 27, 2016.

Judge Kelly M. Cross
Presiding Judge
Bexar County Probate Court No. 1

Judge Tom Rickhoff,
Presiding Judge
Bexar County Probate Court No. 2