

LOCAL RULE 71.1

COUNSEL FEES

(A) Estate Administration.

General Rule: Attorney fees for the administration of decedents' estates shall not be paid until the final account is ready to be filed. Partial payment of attorney fees may be taken for those estates if the early payment of fees provides an income tax benefit to the estate, the estate is involved in protracted litigation, or there are other valid reasons which prevent the estate from being closed within a (twelve) 12-month period.

(1) Forms.

Forms as proscribed by the Court shall be used for counsel fee applications and for Notice of Attorney fees. See Appendices (E) and (F).

(2) Final Accounts.

(a) A counsel fee application is not required when:

- (i) Written consents from the heirs at law or residuary beneficiaries whose combined beneficial interests equal or exceed seventy-five percent (75%) of the net distributable estate, are filed with the Final Account, and
- (ii) Notice of Attorney Fees is given to those not consenting and whose beneficial interests would be affected.

Notice, as required in Paragraph (A)(2)(a)(ii) of this Rule shall be sent by regular mail by the attorney of record, and shall be mailed thirty (30) days prior to the filing of the Final Account. Consents and certificate of service shall be filed at the time of the required accounting.

(b) A counsel fee application shall be filed when:

- (i) Counsel is unable to obtain the consents as provided in Paragraph (A)(2)(a)(i).
- (ii) Counsel serves as both attorney for the estate and fiduciary and is charging both an attorney fee and fiduciary fee.
- (iii) An Objection to Counsel Fees is filed or an exception to an accounting based on fees is filed.

(3) Partial Accounts.

(a) In solvent estates, a counsel fee application for the payment of partial attorney fees is not required when written consents from all of the heirs at law or residuary beneficiaries are filed with the Partial Account.

- (b) In the event counsel is unable to obtain the consent to partial payment of attorney fees from all of the heirs at law or the residuary beneficiaries, the attorney shall be required to file a counsel fee application.
 - (c) When counsel serves as both attorney for the estate and fiduciary and is charging or plans to charge both an attorney fee and fiduciary fee, the attorney shall be required to file a counsel fee application.
- (4) Counsel Fee Applications.
- (a) All counsel fee applications shall be accompanied with itemized time records, which shall state the date and time expended, who performed the service, the nature of the service performed, the hourly rate requested, or the specific basis of the fee requested. All counsel fee applications for partial payment of attorney fees shall also set forth the reasons for requesting the early payment of fees.
 - (b) All counsel fee applications shall be accompanied by written consent from the heirs at law or residuary beneficiaries with Notice given to those not consenting, and whose beneficial interests would be affected.
 - (c) Notice, as required under Paragraph (A)(4)(b) of this Rule, shall be sent by regular mail by the attorney of record, and shall be mailed thirty (30) days prior to the filing of an accounting upon which fees are disclosed. Certificate of service shall be filed with fee application.
 - (d) No counsel fee application shall include separate charges for standard overhead items such as copying, long distance telephone calls, facsimiles and parking unless such charges are extraordinary and counsel can demonstrate good cause for separately billing such items in its fee application.
 - (e) No counsel fee application shall include time spent on the preparation of a fee application or charges for filing documents with the clerk.
 - (f) A Magistrate may require a hearing on fees or may approve an application for fees without hearing, unless an Objection to Counsel Fees is filed or an exception to an accounting based on fees is filed, which will require a hearing in either event.
- (5) Insolvent Estates.

A counsel fee application must be filed and a hearing will be held on counsel fees at the hearing on report of insolvency.

- (6) Counsel Fees Two Thousand Dollars (\$2,000.00) or Less

No counsel fee application or consents from the residuary beneficiaries or heirs at law shall be required when counsel's fee is Two Thousand Dollars (\$2,000.00) or less. Counsel must file an itemized billing statement with the Court.

(B) Guardianship Administration.

The Court shall consider an application for counsel fees for the establishment of the guardianship upon the filing of an inventory and shall consider additional fees annually upon the filing of each account. All counsel fee applications shall be accompanied by itemized time records that state the date and time expended, who performed the service, the hourly rate requested, or the specific basis of the fee requested. All counsel fee applications shall follow Local Rule (A)(4)(d) and Local Rule (A)(4)(e)

Notice of the fee application shall be given to the guardian of the estate. The guardian of the estate may waive notice and consent to the payment of the fees. A Magistrate may require a hearing on fees, or may approve an application for fees without hearing.

(C) Trust Administration.

The Court shall consider an application for counsel fees for the establishment of the trust upon the filing of an inventory and shall consider additional fees annually or upon the filing of each account. All counsel fee applications shall be accompanied by itemized time records that state the date and time expended, who performed the service, the hourly rate requested, or the specific basis of the fee requested. All counsel fee applications shall follow Local Rule (A)(4)(d) and Local Rule (A)(4)(e).

Notice of the fee application shall be given to the trustee. The trustee may waive notice and consent to the payment of the fees. The Court may require notice of the application/hearing on the payment of fees be given to all current trust beneficiaries affected by the payment of the fees. A Magistrate may require a hearing on fees, or may approve an application for fees without hearing.

(D) Paralegal Fees.

Paralegal services may be used so long as the paralegal's work is supervised by a licensed attorney and does not constitute the unauthorized practice of law. All paralegal fees for which payment is sought shall be itemized and included in all counsel fee applications when required to be filed under these rules.

(E) Contingent Fee Arrangements.

Prior to a fiduciary entering into a contingent fee contract with an attorney for services, an application for authority to enter into the fee contract shall be filed with the court, unless otherwise ordered by local court rule. The contingent fee on the amount obtained shall be subject to approval by the court.

(F) Land Sales.

An application for counsel fees in a land sale shall be filed at the time that the judgment entry confirming sale, ordering deed and distribution, is filed. Fees shall be taken at this time. Notice and hearing shall be as the Court directs. See Appendix G.

[Local Rule 71.1 amended effective May 16, 2017.]