

## PART 6

### COMPENSATION AND COST RECOVERY

**15-10-601. Definitions and Usage.** As used in this part 6, unless the context otherwise requires:

- (1) “Court” has the meaning described in section 201 (10), article 10 of title 15, C.R.S.
- (2) “Estate” has the meaning described in section 201 (17), article 10 of title 15, C.R.S., and includes a custodial account created under the “Colorado Uniform Transfers to Minors Act,” article 50 of title 11, C.R.S.; a custodial trust under the “Colorado Uniform Custodial Trust Act,” article 1.5 of title 15, C.R.S.; and the property of a principal that is subject to a power of attorney.
- (3) “Fiduciary” has the meaning under section 201 (19), article 10 of title 15, C.R.S., and includes a custodian under the “Uniform Transfers to Minors Act,” article 50 of title 11, C.R.S.; a custodial trustee under the “Colorado Uniform Custodial Trust Act,” article 1.5 of title 15, C.R.S.; and an agent as defined in sections 201 (1), article 10 of title 15, C.R.S., 602 (3), article 14 of title 15, C.R.S., and 702 (1), article 14 of title 15, C.R.S.
- (4) “Governing instrument” means a will, trust, or a donative, appointive, or nominative instrument of any other type and includes a custodial account created under the “Colorado Uniform Transfers to Minors Act,” article 50 of title 11, C.R.S.; a custodial trust under the “Colorado Uniform Custodial Trust Act,” article 1.5 of title 15, C.R.S.; a “medical durable power of attorney” under section 506, article 14 of title 15, C.R.S., an “agency instrument” as defined in section 602(2), article 14 of title 15, C.R.S.; and a “power of attorney” as defined in section 702 (7), article 14 of title 15, C.R.S., a court order appointing a guardian under parts 2 or 3, article 14 of title 15, C.R.S.; and a court order appointing a conservator under part 4, article 14 of title 15, C.R.S.; but excludes a deed, insurance or annuity policy, multiple party account, security registered in beneficiary form (TOD), pension, profit sharing, retirement or similar benefit plan, or individual retirement account.
- (5) No person’s “entitlement” to compensation or costs shall limit or remove the court’s inherent authority, responsibility and discretion to determine the reasonableness of compensation and costs when appropriate.

**15-10-602. Recovery of Reasonable Compensation and Costs.**

- (1) Subject to the terms of a governing instrument, and except as otherwise provided in this part 6, fiduciaries and their lawyers are entitled to reasonable compensation for services rendered on behalf of the estate.

- (2) Lawyers hired by a respondent, ward, or protected person, are entitled to reasonable compensation and costs incurred for the legal representation provided on behalf of the respondent, ward, or protected person.
- (3) Third parties performing services at the request of the court are entitled to reasonable compensation.
- (4) Except as limited or otherwise restricted by court order, compensation and expenses under this section may be paid directly or reimbursed without court order. Any person who has received excessive compensation or payment for inappropriate expenses may be ordered to make appropriate refunds.
- (5) Except as provided in section 15-10-605, if any fiduciary or person with priority for appointment as personal representative, conservator, guardian, agent, custodian or trustee, defends or prosecutes any proceeding in good faith, whether successful or not, the fiduciary or person is entitled to receive from the estate necessary expenses and disbursements, including reasonable lawyers' fees incurred.
- (6) Except as provided in parts 5 and 6 of this article, non-fiduciaries and their lawyers are not entitled to receive compensation from an estate. However, any lawyer and any person not appointed by the court whose services result in an order beneficial to the estate, respondent, ward or protected person, may receive costs and reasonable compensation from the estate as provided below:
  - (a) For purposes of this subsection, services by a lawyer or any person not appointed by the court that confer a "benefit" to an estate, respondent, ward or protected person contemplate significant, demonstrable and generally non-cumulative services that assist the court in resolving material issues in the administration of an estate. By way of example and not limitation, such benefits may result in significantly increasing or preventing a significant decrease in the size of the estate, they may prevent or expose mal-administration or a material breach of fiduciary duty, or they may be material to clarifying and upholding a decedent's, settlor's, principal's, respondent's, ward's or protected person's intent with respect to a material issue in dispute.
  - (b) Any request for compensation for services or costs alleged to have resulted in an order beneficial to an estate, respondent, ward or protected person, shall be filed within fifteen (15) days (or such greater or lesser time as the court may direct) of the entry of the order beneficial to the estate. Any objection thereto shall be filed within fifteen (15) days (or such greater or lesser time as the court may direct) of the filing of the request for compensation or costs.

- (i) Thereafter and unless it directs otherwise, the court shall first determine, without a hearing, what, if any, benefit was received by the estate as a result of the services.
  - (ii) If a compensable benefit is found to have resulted, then the party requesting such compensation or costs shall submit to court for approval, only those fees or costs purportedly incurred in providing the beneficial services. The court shall then determine, after notice and hearing (if requested), the amount of compensation or costs to be awarded for the benefit.
  - (iii) Any interested person disputing the reasonableness of the compensation or costs sought for the beneficial services may file an objection and the proceedings shall then be governed by section 15-10-604.
- (c) The court in the exercise of its equitable powers to determine a reasonable amount for such compensation or costs, may take into account, in addition to the factors set forth in section 15-10-603(3): the value of the benefit to the estate, respondent, ward or protected person, the number of parties involved in addressing the issue, the efforts made by the lawyer or court appointed person to reduce and minimize issues and any actions by such individuals that unnecessarily expanded issues or delayed or hindered the efficient administration of the estate.
- (7) A fiduciary who is a member of a law firm may use that law firm and charge for the reasonable value of the legal services of the members and staff of that law firm that assist the fiduciary in performing his or her duties.

**15-10-603. Factors in Determining the Reasonableness of Compensation and Costs.**

- (1) The reasonableness of the compensation of any fiduciary, lawyer or other person: (a) employed on behalf of the estate, fiduciary, respondent, ward or protected person, (b) appointed by the court or (c) providing beneficial services to the estate, respondent, ward or protected person and the appropriateness of any cost sought to be paid by or recovered from an estate may be reviewed by the court.
- (2) In considering the reasonableness of any compensation, there shall be no presumption that any method of charging a fee, including but not limited to, a percentage or flat or fixed fee for services rendered to an estate, fiduciary, principal, respondent, ward or protected person is per se unreasonable. Regardless of the method used for charging a fee, reasonableness is the standard by which appropriate compensation is

to be determined in light of all relevant facts and circumstances.

- (3) The court shall consider the factors described in this subsection in determining the reasonableness of any compensation or cost. While all of these factors should be considered of equal relevance, the court may determine the weight to be given to the following factors, and any other factors it considers relevant, in reaching its decision:
- (a) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the service properly;
  - (b) the likelihood, if apparent to the fiduciary, that the acceptance of the particular employment will preclude the person employed from other employment;
  - (c) the compensation customarily charged in the community for similar services with due consideration and allowance for the complexity or uniqueness of any administrative or litigated issues, the need for and availability locally of specialized knowledge or expertise, and the need for and advisability of retaining outside fiduciaries or lawyers to avoid potential conflicts of interest;
  - (d) the nature and size of the estate, the liquidity or illiquidity of the estate, and the results obtained during the administration of the estate;
  - (e) whether and to what extent any litigation has taken place and the results of such litigation;
  - (f) the life expectancy and needs of the respondent, ward, protected person, devisee, beneficiary or principal;
  - (g) the time limitations imposed on or by the fiduciary or by the circumstances of the administration of the estate;
  - (h) the adequacy of any detailed billing statements upon which the compensation is based;
  - (i) whether the fiduciary has charged variable rates that reflect comparable payment standards in the community for the performance of like services; and
  - (j) the experience, reputation and ability of the person performing the services and in the case of fiduciaries whether and to what extent, they have had any prior experience in administering estates similar to those for which compensation is sought.

- (4) Where a governing instrument provides that a fiduciary is entitled to receive compensation in accordance with a published fee schedule in effect at the time the services are performed, fees charged in accordance with the published fee schedule shall be presumed reasonable. The absence of such a provision in a governing instrument shall not preclude the fiduciary from receiving compensation in accordance with a published fee schedule in effect at the time the services are performed.
- (5) For purposes of this section, the “community” is the general geographical area in which the estate is being administered or the respondent, ward or protected person resides as influenced by the more broadly based factors set forth in subsection (3) above, in light of the relevant facts and circumstances of the estate.
- (6) Nothing in this section is intended to prohibit members of a professional fiduciary’s organization or law firm, including partners, associates, paralegals, law clerks, trust officers, care givers and social workers, from collaborating on the same service provided that the delegation is reasonable and that the total compensation charged for the service in the aggregate is reasonable under the circumstances.

**15-10-604. Fee Disputes: Process and Procedure.** (1)(a) Any dispute over the reasonableness of compensation or costs authorized by this part 6 shall be determined in accordance with the factors set forth in section 15-10-603(3) above, and the process and procedure set forth below.

- (b) For purposes of this section, a fee dispute shall be deemed to have arisen once an objection to compensation or costs has been filed in a proceeding.
- (c) After the objection has been filed, the proponent requesting compensation or costs shall have thirty (30) days from the filing date of the objection (or such greater or lesser time as the court may direct) to make available to the objector for inspection and copying, all documentation that the proponent deems necessary to establish the reasonableness of the compensation and costs under section 15-10-603(3), and to certify to the court that such documentation was made available to the objector on a certain date. The objector shall then have fifteen (15) days (or such greater or lesser time as the court may direct) to file specific written objections to such compensation and costs based on the factors set forth in section 15-10-603(3). The fifteen (15) days shall commence on the later of the date such documentation was made available or the filing of the proponent’s certification. Unless otherwise directed by the court or agreed to between the parties, the reasonable costs of copying such documentation shall be borne by the objector. The court may permit further discovery on the compensation and cost issues raised by the pleadings only upon good cause shown.

- (d) After notice and hearing (if requested) the court shall issue its findings of fact and conclusions of law referencing the factors described in section 15-10-603(3), and any other factors it deemed relevant to its decision.

**15-10-605. Assessment of and Limitations on Compensation and Costs.**

- (1) If the court determines that any proceedings under this Code or any pleadings filed in such proceedings were brought, defended or filed in bad faith, the court may assess the fiduciary's fees and the costs, including reasonable lawyers fees, incurred by the fiduciary and other effected parties in responding to such proceedings or pleadings, against any estate, party, person or entity which brought or defended those proceedings or filed such pleadings in bad faith. Nothing in this section is intended to limit any other remedy, sanction or surcharge provided by law.
- (2) If any person entitled to compensation under this part 6 is required to defend the reasonableness of compensation or costs in a proceeding, the court may review the fees and costs incurred by the person in defending the compensation or costs, and the fees and costs incurred in challenging that compensation and costs, and may assess the reasonable fees and costs incurred in that proceeding as the court deems equitable. An assessment of fees or costs under this subsection may be allocated in favor of or against the estate or any party, person, or entity involved in the proceeding as justice and equity may require.
- (3) Any fiduciary who is unsuccessful in defending the propriety of the fiduciary's conduct in any proceeding under this Code alleging breach of fiduciary duty, shall not recover the fees or costs of that defense to the extent of any matter in which breaches of fiduciary duty are found.
- (4) Any person who is unsuccessful in defending the reasonableness of compensation or costs at a hearing, shall not be entitled to recover the fees or costs of that defense to the extent that the compensation is determined to have been unreasonable.