

§ 15-10-601. Definitions.

Colorado Statutes

Title 15. PROBATE, TRUSTS, AND FIDUCIARIES

COLORADO PROBATE CODE

Article 10. General Provisions, Definitions, Jurisdiction

Part 6. COMPENSATION AND COST RECOVERY

Current through Chapter 364 of the 2015 Legislative Session and through the 11/3/2015 Election

§ 15-10-601. Definitions

As used in this part 6, unless the context otherwise requires:

- (1) "Estate" means the property of the decedent, trust, or other person whose affairs are subject to this code as the estate is originally constituted and as the estate exists from time to time during administration. "Estate" includes custodial property as described in the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.; custodial trust property as described in the "Colorado Uniform Custodial Trust Act", article 1.5 of this title; and the property of a principal that is subject to a power of attorney.
- (2) "Fiduciary" means:
 - (a) A personal representative, guardian, conservator, or trustee;
 - (b) A custodian as described in the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.;
 - (c) A custodial trustee as described in the "Colorado Uniform Custodial Trust Act", article 1.5 of this title;
 - (d) An agent as defined in sections 15-10-201(1), 15-14-602(3), and 15-14-702(1); and
 - (e) A public administrator as described in section 15-12-619.
- (3)
 - (a) "Governing instrument" means a will or a trust or a donative, appointive, or nominative instrument of any other type, including but not limited to:
 - (I) An instrument that creates a custodial transfer as described in the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.;
 - (II) A custodial trust as described in the "Colorado Uniform Custodial Trust Act", article 1.5 of this title;
 - (III) A medical durable power of attorney as described in section 15-14-506;
 - (IV) An agency instrument as defined in section 15-14-602(2);
 - (V) A power of attorney as defined in section 15-14-702(7);
 - (VI) A court order appointing a guardian as described in parts 2 and 3 of article

14 of this title; and

(VII A court order appointing a conservator as described in part 4 of article 14 of
) this title.

- (b) "Governing instrument" does not include a deed; an insurance or annuity policy; a multiple-party account; a security registered in beneficiary form; a pension; a profit-sharing, retirement, or similar benefit plan; or an individual retirement account.

Cite as C.R.S. § 15-10-601

History. L. 2011: Entire part added, (SB11-083), ch. 101, p. 295, §1, effective August 10.

§ 15-10-602. Recovery of reasonable compensation and costs.

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§ 15-10-602. Recovery of reasonable compensation and costs

- (1) A fiduciary and his or her lawyer are entitled to reasonable compensation for services rendered on behalf of an estate.
- (2) A lawyer hired by a respondent, ward, or protected person is entitled to reasonable compensation and costs incurred for the legal representation the lawyer provides for the respondent, ward, or protected person.
- (3) A third party who performs services at the request of a court is entitled to reasonable compensation.
- (4) A person's entitlement to compensation or costs shall not limit or remove a court's inherent authority, discretion, and responsibility to determine the reasonableness of compensation and costs when appropriate.
- (5) Except as limited or otherwise restricted by a court order, compensation and costs that may be recovered pursuant to this section may be paid directly or reimbursed without a court order. A court shall order a person who receives excessive compensation or payment for inappropriate costs to make appropriate refunds.
- (6) Except as provided in sections 15-10-605(4), 15-14-318(4), and 15-14-431(5), if any fiduciary or person with priority for appointment as personal representative, conservator, guardian, agent, custodian, or trustee defends or prosecutes a proceeding in good faith, whether successful or not, the fiduciary or person is entitled to receive from the estate reimbursement for necessary costs and disbursements, including but not limited to reasonable attorney fees.
- (7)
 - (a) Except as otherwise provided in part 5 of this article or in this part 6, a nonfiduciary or his or her lawyer is not entitled to receive compensation from an estate.
 - (b) If a lawyer or another person not appointed by the court provides services that result in an order beneficial to the estate, respondent, ward, or protected person, the lawyer or other person not appointed by the court may receive costs and reasonable compensation from the estate as provided below:
 - (l) The lawyer or other person shall file a request for compensation for services or costs alleged to have resulted in the order within fourteen days after the entry of the order or within a greater or lesser time as the court may direct.

Any objection thereto shall be filed within fourteen days after the filing of the request for compensation or costs.

- (II) After a request for compensation or costs or an objection to such a request, if any has been filed, the court shall determine, without a hearing, the benefit, if any, that the estate received from the services provided.
 - (III) If the court determines that a compensable benefit resulted from the services, then the person requesting compensation or costs shall submit to the court only those fees or costs purportedly incurred in providing the beneficial services. If no objection to those fees and costs is filed, the court shall determine the amount of compensation or costs to be awarded for the benefit, without a hearing.
 - (IV) An interested person disputing the reasonableness of the amount of compensation or costs requested for the beneficial services may file an objection. If an objection is filed, the proceedings to resolve the dispute shall be governed by section 15-10-604.
- (c) In determining a reasonable amount of compensation or costs, the court may take into account, in addition to the factors set forth in section 15-10-603(3) :
- (I) The value of a benefit to the estate, respondent, ward, or protected person;
 - (II) The number of parties involved in addressing the issue;
 - (III) The efforts made by the lawyer or person not appointed by the court to reduce and minimize issues; and
 - (IV) Any actions by the lawyer or person not appointed by the court that unnecessarily expanded issues or delayed or hindered the efficient administration of the estate.
- (d) For the purposes of this subsection (7), services rendered by a lawyer or a person not appointed by a court that confer a benefit to an estate, respondent, ward, or protected person are those significant, demonstrable, and generally noncumulative 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, preventing or exposing maladministration or a material breach of fiduciary duty, or 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.
- (8) A fiduciary who is a member of a law firm may use the services of the law firm and charge for the reasonable value of the services of the members and staff of the firm that assist the

fiduciary in performing his or her duties.

- (9) Every application or petition for appointment of a fiduciary filed under this code, including without limitation those required under sections 15-12-301, 15-12-402, 15-12-614, 15-12-621, 15-12-622, 15-14-202, 15-14-204, 15-14-304, and 15-14-403, shall include a statement by the applicant or petitioner disclosing the basis upon which any compensation is to be charged to the estate by the fiduciary and his or her or its counsel or shall state that the basis has not yet been determined. The disclosure statement shall specifically describe, as is applicable, the hourly rates to be charged, any amounts to be charged pursuant to a published fee schedule, including the rates and basis for charging fees for any extraordinary services, and any other bases upon which a fee charged to the estate will be calculated. This disclosure obligation shall be continuing in nature so as to require supplemental disclosures if material changes to the basis for charging fees take place.

Cite as C.R.S. § 15-10-602

History. L. 2011: Entire part added, (SB11-083), ch. 101, p. 296, §1, effective August 10. L. 2012: (7)(b)(I) amended, (SB12-175), ch. 208, p. 837, §41, effective July 1.

§ 15-10-603. Factors in determining the reasonableness of compensation and costs.

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§ 15-10-603. Factors in determining the reasonableness of compensation and costs

- (1) A court may review and determine:
 - (a) The reasonableness of the compensation of any fiduciary, lawyer, or other person who:
 - (I) Is employed on behalf of an estate, fiduciary, respondent, ward, or protected person;
 - (II) Is appointed by the court; or
 - (III) Provides beneficial services to an estate, respondent, ward, or protected person; and
 - (b) The appropriateness of any cost sought to be paid by or recovered from an estate.
- (2) In considering the reasonableness of the compensation, there shall be no presumption that any method of charging a 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, in determining appropriate compensation, the court shall apply the standard of reasonableness in light of all relevant facts and circumstances.
- (3) The court shall consider all of the factors described in this subsection (3) in determining the reasonableness of any compensation or cost. The court may determine the weight to be given to each factor and to any other factor the court 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)
 - (I) 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 local availability of specialized knowledge or expertise, and the need for and advisability of retaining outside fiduciaries or lawyers to avoid potential conflicts of interest;

- (II) As used in this subsection (3), unless the context otherwise requires, "community" means the general geographical area in which the estate is being administered or in which the respondent, ward, or protected person resides.
 - (d) The nature and size of the estate, the liquidity or illiquidity of the estate, and the results and benefits 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 like services;
 - (j) The expertise, special skills, reputation, and ability of the person performing the services and, in the case of a fiduciary, whether and to what extent the fiduciary has had any prior experience in administering estates similar to those for which compensation is sought;
 - (k) The terms of a governing instrument;
 - (l) The various courses of action available to a fiduciary or an individual seeking compensation for a particular service or alleged benefit and whether the course of action taken was reasonable and appropriate under the circumstances existing at the time the service was performed; and
 - (m) The various courses of action available to a fiduciary or an individual seeking compensation for a particular service or alleged benefit and the cost-effectiveness of the action taken under the circumstances existing at the time the service was performed.
- (4) If 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 to be 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) Nothing in this section shall be interpreted to prohibit members or employees of a professional fiduciary's organization or law firm, including partners, associates, paralegals, law clerks, trust officers, caregivers, and social workers, from collaborating on the same service so long as the collaboration is reasonable and the total compensation charged for the service in the aggregate is reasonable under the circumstances.

Cite as C.R.S. § 15-10-603

History. Amended by 2013 Ch. 190, §2, eff. 8/7/2013.

L. 2011: Entire part added, (SB11-083), ch. 101, p. 298, §1, effective August 10. L. 2013: (3)(j) amended, (SB13-077), ch. 190, p. 767, §2, effective August 7.

§ 15-10-604. Fee disputes - process and procedure.

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§ 15-10-604. Fee disputes - process and procedure

- (1) A dispute over the reasonableness of a request for compensation or costs authorized by this part 6 shall be resolved in accordance with the factors set forth in section 15-10-603(3) and the process and procedure set forth in this section.
- (2) For purposes of this section, a fee dispute shall be deemed to have arisen when an objection to compensation or costs has been filed in a proceeding.
- (3) After the objection to compensation or costs has been filed, the person requesting compensation or costs shall have thirty-five days, or a greater or lesser time as the court may direct, to make available to the objector for inspection and copying all documentation that the person deems necessary to establish the reasonableness of the compensation and costs in consideration of the factors set forth in 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 fourteen days, or a 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 fourteen days shall commence on the date that the person makes the documentation available to the objector or upon the filing of the person's certification, whichever is later. The court may permit further discovery on the compensation and cost issues raised by the pleadings only upon good cause shown.
- (4) Subject to the court's inherent authority to order alternative dispute resolution methods, the court shall determine, after notice and hearing, the amount of compensation and costs it considers to be reasonable and shall issue its findings of fact and conclusions of law referencing the factors set forth in section 15-10-603(3) and any other factors it deems relevant to its decision.

Cite as C.R.S. § 15-10-604

History. L. 2011: Entire part added, (SB11-083), ch. 101, p. 300, §1, effective August 10. L. 2012: (3) amended, (SB12-175), ch. 208, p. 837, §42, effective July 1.

§ 15-10-605. Compensation and costs - assessment - limitations.

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§ 15-10-605. Compensation and costs - assessment - limitations

- (1) If the court determines that any proceedings pursuant to this code or any pleadings filed in such proceedings were brought, defended, or filed in bad faith, the court may assess the fees and the costs, including reasonable attorney fees, incurred by the fiduciary and other affected parties in responding to the proceedings or pleadings, against an estate, party, person, or entity that brought or defended the proceedings or filed the 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 incurred in challenging the compensation and costs, and may assess the reasonable fees and costs incurred in the proceeding as the court deems equitable. The court may allocate fees or costs assessed pursuant to this subsection (2) in favor of or against the estate or any party, person, or entity involved in the proceeding as justice and equity may require.
- (3) A 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 as the court deems equitable.
- (4) A fiduciary who is unsuccessful in defending the fiduciary's conduct in a proceeding pursuant to this code alleging breach of fiduciary duty shall not recover the fees or costs of that defense as the court deems equitable.

Cite as C.R.S. § 15-10-605

History. L. 2011: Entire part added, (SB11-083), ch. 101, p. 301, §1, effective August 10.