

Matter of Giller

2017 NY Slip Op 31130(U)

April 13, 2017

Surrogate's Court, Nassau County

Docket Number: 2014-379840/G

Judge: Margaret C. Reilly

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**Petition for Judicial Settlement of the Accounting of
Norman Michaels as the Execuor of the Estate of**

DECISION

RICHARD M. GILLER,

**File No. 2014-379840/G
Dec. No. 32646**

Deceased.

PRESENT: HON. MARGARET C. REILLY

The following papers were considered in the preparation of this decision:

Petition.	1
Accounting.	2
Releases and Receipts.	3
Reports of the Guardian ad Litem (Sconzo).	4
Affidavit of Legal Services (Sconzo).	5
Report of the Guardian ad Litem (Grizopoulos).	6
Affidavit of Legal Services (Grizopoulos).	7
Affirmation of Legal Services and Exhibits (Kozupsky).	8
Supplemental Affidavit of Legal Services (Kline).	9
Affidavit of Accounting Services.	10
Proposed Stipulation of Settlement.	11

This is a petition for approval of a stipulation of settlement in a proceeding to settle the accounts of the executor of the estate.

The petition seeks approval of: 1) executor’s commissions; 2) payment to the executor personally for accountant’s services; 3) reimbursement for administration expenses; 4) reimbursement for funeral expenses; 4) approval of legal fees; 5) approval of the settlement of a claim; and 6) discharge of the executor.

Helen Giller, the surviving spouse and primary beneficiary of the estate signed a release and receipt approving the account. Nicole Miller (the decedent’s niece), a legatee

and contingent remainderman of the marital trust, has also signed a release.

A guardian ad litem was appointed for the infant Natalie Giller (the decedent's niece) and a separate guardian ad litem for infants Ella L. Schnee, Julia P. Schnee and Morgan P. Schnee (the decedent's wife's grandchildren). Natalie Giller is a legatee and contingent remainderman of the marital trust. Ella L. Schnee, Julia P. Schnee and Morgan P. Schnee are legatees.

Each of the guardians ad litem filed detailed reports. The guardian ad litem for Natalie Giller objected to the reduction of her ward's legacy, based on the insufficient funds left in the estate pursuant to the accounting, and requested that the deficiency in the payment of her ward's legacy be supplied from the settlement of a claim brought by Stephen Giller, the decedent's brother. The proposed settlement provides for the full payment of the legacy of Natalie Giller and her guardian ad litem recommends approval of the settlement. The guardian ad litem for the other three infants (the decedent's wife's grandchildren) also recommends approval of the settlement. Under the present settlement, the payment to those infants is reduced from \$25,000 to \$10,147.15. The estate was valued at \$259,268.05 and the probate was uncontested.

Each of the reports of the guardians ad litem also analyzed the legal services for the attorneys for the executor and concluded that there were duplications in the work charged to the estate. The attorney has filed a supplemental affirmation of legal services. Counsel for the executor affirms that those charges were in fact made in error, and credits were provided

to the estate. Payment was also made to the executor, who is an accountant, for accounting services.

The Surrogate's Court can review attorneys' fees even when no party objects to them (*Stortecky v Mazzone*, 85 NY2d 518 [1995]).

Fundamentally, the legal services were for 1) the probate proceeding in which probate was unopposed; 2) administration of the estate; and 3) settlement of a claim.

In evaluating the cost of legal services, the court may consider a number of factors. These include: the time spent (*see Matter of Kelly*, 187 AD2d 718 [2d Dept 1992]); the complexity of the questions involved (*see Matter of Coughlin*, 221 AD2d 676 [3d Dept 1995]); the nature of the services provided (*see Matter of Von Hofe*, 145 AD2d 424 [2d Dept 1988]); the amount of litigation required (*see Matter of Sabatino*, 66 AD2d 937 [3d Dept 1978]); the amounts involved and the benefit resulting from the execution of such services (*see Matter of Shalman*, 68 AD2d 940 [3d Dept 1979]); the lawyer's experience and reputation (*see Matter of Brehm*, 37 AD2d 95 [4th Dept 1971]); and the customary fee charged by the Bar for similar services (*Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]). Notwithstanding the modest size of the estate, counsel for the petitioner seeks approval of \$39,859.71 for legal services.

Based on this proposed settlement three of the infants will not receive their full

legacies. Further, it is not clear if there are funds remaining for payment for the services of the guardians ad litem.

The Court declines to approve the proposed settlement.

This matter will appear on the court's calendar on May 15, 2017, at 10:00 a.m., to address the issue of attorneys' fees.

Ronald Giller, Esq., the attorney for claimant, Stephen Giller, is a signatory to the proposed stipulation but has not filed a notice of appearance in this proceeding.

This constitutes the decision and order of the court.

Dated: April 13, 2017
Mineola, New York

E N T E R:

HON. MARGARET C. REILLY
Judge of the Surrogate's Court

cc: Smith Gambrell & Russell, LLP
Att: Jonathan Kline, Esq.
Attorneys for Petitioner
1301 Avenue of the Americas, 21st Floor
New York, NY 10019

Gregory Grizopoulos, Esq.
Guardian ad Litem for Ella Schnee, Julia, Schnee and Morgan Schnee
170 Old Country Road, Suite 502
Mineola, NY 11501

Ronald Giller, Esq.
Attorney for Stephen Giller, Claimant
Gordon & Rees LLP
18 Columbia Turnpike, Suite 220
Florham Park, NJ 07932-2266

Lisa M. Sconzo, Esq.
120 Pine Street
Garden City, NY 11530