

Estate of Ferrin
2020 NY Slip Op 34491(U)
October 22, 2020
Surrogate's Court, Bronx County
Docket Number: 2010-2009/B
Judge: Nelida Malave-Gonzalez
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SURROGATE'S COURT, BRONX COUNTY

October 22, 2020

ESTATE OF RUTH FERRIN, Deceased
File No.: 2010-2009/B

After a decree was entered appointing a successor trustee of a testamentary supplemental needs trust (SNT) whose lifetime beneficiary is the decedent's daughter who is under a disability and the remaindermen are two charities (see Matter of Ferrin, NYLJ, Oct. 3, 2019 at 29, col 1 [Sur Ct, Bronx County 2019], counsel for the petitioner, the temporary guardian of the person and property of the daughter, filed an SCPA 2110 proceeding seeking to be paid for legal services and disbursements incurred in the successor trustee proceeding and for the prospective legal services and disbursements to be rendered in this application. Jurisdiction was obtained over the daughter under a disability, the director of the residential facility in Staten Island where she resides, the two charities, the successor trustee and the New York Attorney General, without opposition. The testamentary SNT assets approximate \$384,500. The successor trustee was previously

appointed trustee of an inter vivos SNT pursuant to the order of the Supreme Court, Richmond County (Aliotta, J.), into which the daughter's distributive share of her sister's estate pending in New York County is to be deposited.

In support of the application, counsel's affirmation of services annexes a copy of the retainer agreement dated April 19, 2019 executed by the temporary guardian and time sheets detailing 48 hours spent by counsel, associate counsel and paralegal employees at the law firm in the underlying successor trustee proceeding and an additional 5.4 hours of estimated services to be performed in the instant fee application, billed at hourly rates of \$350 to \$400 for counsel and \$75 to \$125 for paralegal services. Also annexed is a retainer agreement executed by the temporary guardian detailing the respective hourly rates of the firm's attorneys and paralegal employees assigned to the matter. Based on the foregoing, counsel seeks to be paid \$5,108.75 for legal services and \$1,262.28 in disbursements rendered in the successor trustee proceeding and an additional anticipated \$1,362.50 for legal services and \$834.90 disbursements in this fee application. A review of disbursements incurred in the underlying successor trustee proceeding reveals multiple payments to an attorneys' judicial service for obtaining copies of orders and filing documents with the court, as well as postage.

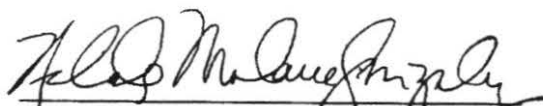
The court bears the ultimate responsibility for approving legal fees and has the discretion to determine what constitutes reasonable compensation (see SCPA 2110; Matter of Stortecky v Mazzone, 85 NY2d

518 [1995]); *Matter of Stellis*, 216 AD2d 473 [2d Dept 1995]; *Matter of Vitole*, 215 AD2d 765 [2nd Dept 1995]) (also see *Matter of Pekorsky v Estate of Cohen*, 259 AD2d 702 [2nd Dept 1999]; *Matter of Cook*, 41 AD2d 907 [1st Dept 1973], *affd* 33 NY2d 919 [1973]; *Matter of Verplanck*, 151 AD2d 767 [2d Dept 1989]). There is no hard-and-fast rule to determine what is reasonable compensation in a particular case, and the court is not bound by counsel's summary of the hours expended (see *Matter of Vitole*, 215 AD2d at 765). In determining reasonable compensation, the court may consider a number of factors, including the time spent, the difficulties involved in the matters in which the services were rendered, the nature of the services and the amount of the fee sought, the professional standing of the counsel, the size of the estate, and the benefit to the estate from the services provided (see *Matter of Freeman*, 34 NY2d 1 [1974]; *Matter of Potts*, 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925], *Matter of Coughlin*, 221 AD2d 676 [3rd Dept 1995]). Time spent is, in fact, the least important factor considered by a court in fixing reasonable compensation (see *Matter of Kaufmann*, 26 AD2d 818 [1st Dept 1966]; *Matter of Snell*, 17 AD2d 490 [3d Dept 1962]; *Matter of Haber*, NYLJ, Sept. 11, 2014, at 22, col 4 [Sur Ct, Bronx County 2014]). Time spent in establishing counsel's own legal fee is not compensable (see *Matter of Kelly*, NYLJ, Apr. 24, 2001 at 29, col 1 [Sur Ct, Suffolk County 2001]; *Matter of Marshak*, NYLJ, Apr. 30, 1996 at 1, col 6 [Sur Ct, New York County 1996]; *Matter of Marsh*, NYLJ, July 6, 2015 at 32, col 5 [Sur Ct, Westchester County 2015]). Certain disbursements, *inter alia*,

for telephone calls, postage, copying, overnight delivery, and travel are considered to constitute law office overhead and will not be allowed (see *Matter of Aitken*, 160 Misc2d 587 [Sur Ct., NY County 1994]; *Matter of Diamond*, NYLJ, July 14, 1993, at 30, col 1 [Sur Ct, Westchester County 1993], *affd* 219 AD2d 717 [2d Dept 1995]).

Accordingly, counsel is to be paid the total sum of \$5,108.75 for services rendered in the underlying successor trustee proceeding and \$784.48 for disbursements incurred in that proceeding reflecting the elimination of certain items normally considered office overhead. The additional request for \$1,362.50 for services in the fee application is denied (see *Matter of Kelly*, NYLJ, Apr. 24, 2001, at 1, col 6; *Matter of Marshak*, NYLJ, Apr. 30, 1996 at 1, col 6). As SCPA does not provide the court with the discretion to award attorneys' fees for future services or disbursements not actually incurred (see SCPA 2110 [1]; *Matter of Rubin* 172 AD2d 841 [2d Dept. 1991]; *Matter of Cirnigliaro*, NYLJ, May 22, 2018 at 33 [Sur Ct Oneida County 2018]; *Matter of Stroud*, NYLJ, Jan. 8, 2013, at 23, col 1 [Sur Ct, Bronx County 2012]), the request for anticipated disbursements in the instant proceeding is denied as premature, without prejudice to renewal upon counsel's serving and filing a supplemental affirmation detailing disbursements actually incurred with the order to be settled hereon.

Settle order.


HON. NELIDA MALAVE-GONZALEZ
SURROGATE