

PROBATE FEE GUIDELINES AND RULES

INTRODUCTION

It is important that certain criteria be called to your attention as they pertain to Attorney and Personal Representative Fees.

The Attorney and his, or her, Client must consider these factors. The Court, in making its determination as to the fees allowed, will also consider the same.

The criteria to be considered include the following:

A. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

B. The likelihood, if apparent to the Client, that the acceptance of the particular employment will preclude other employment by the Attorney;

C. The fee customarily charged in the locality for similar legal services;

D. The amount involved and the results obtained;

E. The time limitations imposed by the Client or by the circumstances;

F. The nature and length of the professional relationship with the Client;

G. The experience, reputation, and ability of the Attorney or Attorneys performing the services;

These factors shall include a determination as to how much of the Attorney's time was devoted to legal matters and how much of it was devoted to ministerial functions.

H. The nature and extent of the responsibilities assumed by the Attorney and the results obtained;

Included herein are considerations such as the identity of the Personal Representative, the level of expertise of the Attorney and Personal Representative in administering an estate; the character of the probate assets; and the character of any non-probate assets transferred.

I. The sufficiency of assets properly available to pay for legal services;

Inherent herein is whether the Attorney's duties are expanded by the existence of non-probate assets because of their inclusion for tax purposes, both federal and state; and,

J. The timeliness with which the necessary services are performed consistent with statutory requirements, the Court's Rules of Procedure, and the Rules of Professional Conduct applicable thereto.

In considering all of these factors, Attorneys are urged to discuss their fee and that of the Personal Representative or Guardian at the time they are retained in all Probate and Guardianship matters.

LAKE COUNTY RULES OF PROCEDURE APPLICABLE TO ESTATES

L.R.45-P.R.00 Rule 1.

All probate rules and regulations promulgated by the Veterans Administration are hereby adopted as probate rules of the Court.

L.R.45-P.R.00 Rule 2.

A Personal Representative's Information Sheet must be completed and filed with any petition opening a supervised or unsupervised Estate. The Court will not act upon the petition until the Personal Representative's Information Sheet is completed and filed. The Personal Representative's Information Sheet must be filed in compliance with Indiana Trial Rule 5(G) and the Indiana Rules on Access to Court Records, Rule 5. (SEE ATTACHED FORM A).

L.R.45-P.R.00 Rule 3.

In all supervised and unsupervised estates, the Court's Instructions to the Personal Representative, executed by the Personal Representative and the Attorney, must be filed with the Court prior to Court appointment and issuance of letters. These Instructions are to be considered as direct Orders of the Court. Instructions to Personal Representative of Supervised Estate (SEE ATTACHED FORM B) or Instructions to Personal Representative of Unsupervised Estate (SEE ATTACHED FORM C), as applicable, must be completed and filed with the Court. No substitute form will be accepted by the Court.

L.R.45-P.R.00 Rule 4.

All petitions, of any nature or kind, in all matters, must be executed and verified by the Personal Representative, the Trustee, or the Interested Party (Petitioner), and not by the Attorney. All petitions requesting relief or action by the Court should, where applicable, contain reference to the appropriate statute or rule authorizing such relief or action.

L.R.45-P.R.00 Rule 5.

All Attorneys are required to prepare Orders in a form approved by the Court (order per form or OPF) for all proceedings except where expressly indicated to the contrary by the Court.

L.R.45-P.R.00 Rule 6.

Unless waived by the applicable Court, Attorneys desiring to have the Court Reporter present for a hearing must make a written request for same ten (10) days in advance of the hearing. Hearings involving the Court Reporter shall be set subject to his or her availability.

L.R.45-P.R.00 Rule 7.

The Attorney shall prepare and serve any required notices on interested persons pursuant to I.C. §29-1-7-4.5, as amended, and proof thereof pursuant to I.C. §29-1-1-16, as amended.

L.R.45-P.R.00 Rule 8.

A verified inventory must be prepared and filed in all supervised estates within sixty (60) days after appointment of the Personal Representative. In unsupervised estates, the Personal Representative shall comply with I.C. §29-1-7.5-3.2 with respect to inventories.

L.R.45-P.R.00 Rule 9.

Attorneys must attend all hearings. The Court may, in its discretion, require the attendance of the Personal Representative or Trustee at any such hearing.

L.R.45-P.R.00 Rule 10.

All accountings filed with the Court must follow the statutory format prescribed by I.C. §29-1-16-4, as amended. Informal, handwritten, or transactional accountings will not be accepted. Unless otherwise ordered by the Court, an accounting filed with the Court shall be accompanied by an Affidavit in Lieu of Vouchers stating that receipts are available for all disbursements contained in the accounting.

L.R.45-P.R.00 Rule 11.

Receipts for all final distributions must be filed with the final report or the supplemental report before discharge will be given by the Court.

L.R.45-P.R.00 Rule 12.

The name and address of the Insurance Agency providing the corporate surety must be typed on all corporate bonds filed in any estate.

L.R.45-P.R.00 Rule 13.

In all contested matters, the Indiana Rules of Trial Procedure shall apply.

L.R.45-P.R.00 Rule 14.

In a supervised estate, any petition for the allowance of fees, pursuant to the Fee Guidelines, for the Attorney and/or the Personal Representative shall set forth a description of the services performed and a calculation of the amount of the fee requested. At the time the petition is considered by the Court, the Attorney must be present. No fee request will be considered as a part of the final report or account in a supervised estate. A separate petition must be filed requesting such fee determination. No fee shall be paid without the prior approval of the Court. No Attorney or Personal Representative fees will be authorized for payment until a Final Account is filed with the Court. If an Interim Account is filed with the Court, a petition for Attorney or Personal Representative Fees may be filed for the Court's review and approval.

L.R.45-P.R.00 Rule 15.

Attorney and Personal Representative fees will not be determined or authorized for payment by the Court in an unsupervised estate.

L.R.45-P.R.00 Rule 16.

Unless otherwise stated in the decedent's Last Will and Testament, any Attorney or Personal Representative fees determined to be due by reason of non-probate assets shall be assessed against the recipients of the non-probate assets.

L.R.45-P.R.00 Rule 17.

All documents filed with the Court must comply with the requirements of Ind. Trial Rule 5(G) and the Indiana Rules on Access to Court Records, Rule 5 utilizing the Notice of Exclusion of Confidential Information From Public Access form. (SEE ATTACHED FORM D).

L.R.45-P.R.00 Rule 18.

For good cause shown, the Court may waive any local procedural rule.

L.R.45-P.R.00 Rule 19.

When required by law, all Wills must be admitted to Probate unless filed with the Clerk pursuant to Ind. Code § 29-1-7-3.1, as amended. Pursuant to Indiana Trial Rule 86(F), an Affidavit must be filed by the Attorney or Personal Representative regarding the possession of the decedent's Last Will and Testament. (SEE ATTACHED FORM E).

L.R.45-P.R.00 Rule 20.

Bond procedures for Estates:

- a. If the decedent's Will provides for no bond, the Court may honor the request unless otherwise required by statute;
- b. If all heirs request no bond or a minimal bond, the Court may honor such request unless otherwise required by statute;
- c. In all instances, upon petition by an interested person, the Court may require a bond to protect creditors, heirs, legatees, or devisees;
- d. In all other situations, the Court will determine and set the amount of the bond and in no event shall it be less than that required to protect creditors and taxing authorities;
- e. Personal surety must meet the requirements of Ind. Code § 29-1-11-5;
- f. No Attorney will be accepted as personal surety on any bond required to be filed in Court.

L.R.45-P.R.00 Rule 21.

Subject to the discretion of the Court, the Court may restrict transfer of all or part of the liquid assets of a supervised estate by placing those assets in a federally-insured financial institution or in a brokerage account (or any combination of the two) with the following restriction placed on the face of each account or document creating or evidencing the account:

NO PRINCIPAL OR INTEREST SHALL BE WITHDRAWN WITHOUT WRITTEN ORDER OF THE LAKE CIRCUIT/SUPERIOR COURT, PROBATE DIVISION. THE PERSONAL REPRESENTATIVE AND/OR FINANCIAL INSTITUTION SHALL PROMPTLY NOTIFY THE COURT IN WRITING IN THE EVENT PRINCIPAL AND/OR INTEREST IS WITHDRAWN WITHOUT WRITTEN COURT ORDER.

Within thirty (30) days after an Order authorizing the creation of the restricted account or investment, a certificate by an officer of the institution at which the restricted account or investment has been created shall be filed with the Court which affirms that the account or investment is restricted by Court Order. (SEE ATTACHED FORM F).

The Personal Representative and/or the financial institution shall promptly notify the Court in writing in the event that any principal or interest is withdrawn from the account without Court authorization.

L.R.45-P.R.00 Rule 22.

On or before three (3) months and fifteen (15) days after the date of the first published notice to creditors, the Personal Representative, or the Personal Representative's Attorney, must allow or disallow a claim filed against the estate within three (3) months after the date of the first published notice to creditors.

For a claim filed not later than nine (9) months after the decedent's death (other than the United States, the state, or a subdivision of the state) by a claimant who did not received a notice of administration under I.C. § 29-1-7-7, the Personal Representative, or the Personal Representative's Attorney, must allow or disallow a claim not later than fifteen (15) days after the date of the filing of the claim.

For a claim filed by the United States, the state, or a subdivision of the state the Personal Representative, or the Personal Representative's Attorney, must allow or disallow a claim on or before the later of: (1) three (3) months and fifteen (15) days after the first published notice to creditors; or (2) fifteen (15) days after the date on which the claim was filed.

For purposes of allowing or disallowing a claim, the Personal Representative or the Personal Representative's Attorney shall electronically file a Notice of Allowance/Disallowance of Claim form. (SEE ATTACHED FORM G).

L.R.45-P.R.00 Rule 23.

If an estate cannot be promptly closed, the Personal Representative must report the condition of the estate to the Court one (1) year after the date of the Personal Representative's appointment, and thereafter every year until the estate is fully administered.

L.R.45-P.R.00 Rule 24.

The Federal Estate Tax closing letter and/or the countersigned receipt, or a photocopy thereof, showing payment of the Federal Estate in the estate must be filed with the Final Report or the Supplemental Report.

L.R.45-P.R.00 Rule 25.

Proof of publication of all notices required to be published shall be filed with the Court by the Attorney for the estate within thirty (30) days after receipt of the same from the newspaper. It is the Attorney's responsibility to ensure that publication was timely made, and proof thereof is properly filed with the Court.

L.R.45-P.R.00 Rule 26.

In an unsupervised estate, the Court shall not be involved other than for opening and closing the estate, unless requested pursuant to I.C. § 29-1-7.5-3(c). The Court reserves the right to revoke unsupervised administration and convert the estate to supervised administration if the Court, in its discretion, believes supervised administration is warranted.

L.R.45-P.R.00 Rule 27.

If, after three (3) months following the date that the verified closing statement is filed in an unsupervised estate and an objection has not been filed, the Attorney must file a proposed Order closing the estate within thirty (30) days after the objection deadline expires.

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed. Although your attorney will file all papers with the Court, you, as personal representative, are ultimately responsible to see that the estate is properly and promptly administered, and you are personally liable for incorrect distributions, payments, or acts, as well as any unpaid taxes or costs of administration. The Court appreciates your efforts on behalf of the estate.

As Personal Representative, you are required to:

1. Locate, collect and maintain all property owned by the decedent.
2. Keep motor vehicles and real estate insured and protected.
3. Immediately fill out a change of address at the post office to have the decedent's mail forwarded to you.
4. No later than two (2) months after your appointment, have your attorney file in this Court an inventory describing all property belonging to the estate, with date of death values, and forthwith serve a copy of the inventory on all known heirs, beneficiaries or distributees of the estate.
5. Estate Checking Account.
 - A. Open a separate checking account at an Indiana financial institution in your name "as personal representative for the estate of (the decedent)." Obtain a federal tax I.D. number for the checking account. Do not use your Social Security number or the decedent's Social Security number.
 - B. As a general rule, **DO NOT** put any of your funds or anyone else's funds in this account. However, if circumstances warrant, you should consult your attorney prior to doing so.
 - C. Always pay for estate expenses by checks from this account. Do not pay any expenses with cash.
 - D. Make sure that the bank is willing to return cancelled checks or electronic versions of the checks to you.
 - E. Keep records of all deposits including the identity of the person or entity paying the money into the estate.
6. Determine all debts that the decedent owed. Look through the decedent's tax returns and other papers. Talk to anyone who knew the decedent's business. Consult your attorney as to payment of debts, costs of

administration, bond premiums, and funeral bills. Some debts may be unenforceable. Some may have priority over others.

7. Have your attorney provide written notice of the administration of the estate to all known creditors of the estate.

8. If the decedent owned a business or was involved in contracts which were not yet fully performed, have your attorney obtain directions from the Court as to those matters.

9. **DO NOT MAKE** any distribution of personal property or real estate to an heir or devisee without prior Court order.

10. **NEVER** borrow estate property or put it to your own personal use.

11. Prepare and file income tax returns for the tax year in which the decedent died and any returns for prior years if needed. Timely prepare and file any estate, inheritance or fiduciary tax returns and pay taxes as they come due.

12. **Accounting.** Indiana law requires the estate to be closed within one (1) year of your appointment as personal representative. Before the estate can be closed, you must file with the Court a final accounting of your actions as personal representative.

A. Have your attorney file your final accounting, consisting of three (3) schedules, after the administration of the estate has been completed.

B. The first schedule must include all assets listed on the inventory, any income and additional assets obtained during administration, and any adjustments to the inventory.

C. The second schedule must be an itemized list of expenditures. Documentation for each expense shall include: (a) the payee; (b) check number or other identifying number on the instrument; (c) the amount disbursed; and, (d) if the reason for disbursement is not apparent from the description of the payee, a description of the reason for the disbursement sufficient to substantiate the reason for the disbursement as part of the administration of the estate. Cancelled checks or facsimile copies of paid checks for each expenditure must be attached as evidence of payment.

D. The third schedule must be a recapitulation indicating the remaining estate property after subtracting expenditures. A proposed distribution must be furnished to all interested parties, including heirs.

13. After the Court approves your final account, make distribution to the proper people and file a supplemental report with the Court, attaching receipts.

14. Notify the Court and your attorney of any change in your address or telephone number.

15. **NEVER** pay yourself or your attorney any fees from assets of the estate without a prior Court Order, unless your attorney confirms to you that the law or local court rules allow you to reimburse yourself from estate assets for necessary expenses that you previously paid with your personal funds.

16. Keep a record of the time you spend working on the estate. You are entitled to a reasonable fee, unless you waive a fee. Time records will help the Court determine your fee.

17. Always contact your attorney for advice if you are unsure as to any act as personal representative. Have your attorney counsel you in relation to the estate and explain anything that you do not fully understand.

18. Do not sell an estate asset without prior Court Order unless the Will, in very specific terms, authorizes the sale without court order. Consult your attorney about this.

I acknowledge that I have carefully and completely read the above instructions and received a copy for my records. I agree to properly carry out my duties.

Dated this _____ day of _____, 20 ____.

Signature, Personal Representative

Signature, Personal Representative

Print, Personal Representative

Print, Personal Representative

I acknowledge that I have carefully and completely discussed the above instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a personal representative of a supervised estate.

Signature, Attorney

Signature, Attorney

Print, Attorney

Print, Attorney

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed. Although your attorney will file all papers with the Court, you, as personal representative, are ultimately responsible to see that the estate is properly and promptly administered, and you are personally liable for incorrect distributions, payments, or acts, as well as any unpaid taxes or costs of administration.

The Court appreciates your efforts on behalf of the estate.

As personal representative, you are required to:

1. Locate, collect and maintain all property owned by the decedent.
2. Keep motor vehicles and real estate insured and protected.
3. Immediately fill out a change of address at the post office to have the decedent's mail forwarded to you.
4. Within two (2) months of your appointment, you must prepare an inventory conforming with the requirements of I.C. 29-1-7.5-3.2 (b), as amended.
5. Estate Checking Account.
 - A. Open a separate checking account at an Indiana financial institution in your name "as personal representative for the estate of (the decedent)." Obtain a federal tax I.D. number for the checking account. Do not use your Social Security number or the decedent's Social Security number.
 - B. As a general rule, DO NOT put any of your funds or anyone else's funds in this account. However, if circumstances warrant, you should consult your attorney prior to doing so.
 - C. Always pay for estate expenses by checks from this account. DO NOT pay any expenses with cash.
 - D. Make sure that the bank is willing to return cancelled checks or electronic copies or digital images of the paid checks to you.
 - E. Keep records of all deposits, including the identity of each person or entity paying the money into the estate.

6. Determine all debts that the decedent owed. Look through decedent's tax returns and other papers. Talk to anyone who knew the decedent's business. Consult your attorney as to payment of debts, costs of administration, bond premiums, and funeral bills. Some debts may be unenforceable. Some may have priority over others.

7. Have your attorney provide written notice of the administration of the estate to all known creditors of the estate.

8. **NEVER** borrow estate property or put it to your own personal use.

9. **DO NOT** distribute any estate assets until assets (including personal property) are appraised, and consult with your attorney prior to making any distribution.

10. Prepare and file income tax returns for the tax year in which the decedent died and any returns for prior years if needed. Timely prepare and file any estate, inheritance or fiduciary tax returns and pay taxes as they come due.

11. After you fully complete the estate administration, you must file a closing statement with the Court verifying that all proper claims, expenses and taxes have been paid, that all assets have been properly distributed, and that a copy of the closing statement has been sent to all distributees, fully accounting for all assets, expenses and distributions made to the heirs.

12. Notify the Court and your attorney of any change in your address or telephone number.

13. Keep a record of the time you spend working on the estate. You are entitled to a reasonable fee, unless you waive a fee.

14. Always contact your attorney for advice if you are unsure as to any act as personal representative. Have your attorney counsel you in relation to the estate and explain anything that you do not fully understand.

I acknowledge that I have carefully and completely read the above instructions and received a copy for my records. I agree to properly carry out my duties.

Dated this _____ day of _____, 20 _____.

Signature, Personal Representative

Signature, Personal Representative

Print, Personal Representative

Print, Personal Representative

I acknowledge that I have carefully and completely discussed the above instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a personal representative of an unsupervised estate.

Signature, Attorney

Signature, Attorney

Print, Attorney

Print, Attorney

**FORM D. NOTICE OF EXCLUSION OF CONFIDENTIAL INFORMATION
FROM PUBLIC ACCESS**

STATE OF INDIANA) **IN THE LAKE CIRCUIT/SUPERIOR COURT**
) **SITTING AT _____,**
COUNTY OF LAKE) **LAKE COUNTY, INDIANA**

IN THE MATTER OF THE ESTATE)
_____, **DECEASED) CAUSE NO. _____**

**NOTICE OF EXCLUSION OF CONFIDENTIAL
INFORMATION FROM PUBLIC ACCESS**
(FILED WITH TRIAL COURT CLERK for documents filed with the clerk)
(TENDERED IN OPEN COURT for documents tendered in open court)

Contemporaneous with the [filing/tender] of this notice, [party name] has [filed/tendered] confidential information under the Indiana Rules on Access to Court Records. [party name], provides this notice that the confidential information is to remain excluded from public access in accordance with the authority listed below:

<u>Name or description of document</u>	<u>ACR grounds for exclusion</u>
[List here]	[List specific A.C.R. grounds here.]
	[NOTE: If Rule 5(A)(1 or 3), 5(B)(1 or 2), or 5(D)(2) provides the basis for exclusion, you must also list the specific law, statute, or rule declaring the information confidential.]

Respectfully submitted,

INSERT SIGNATURE BLOCK

5. I will file the original Last Will and Testament upon order of the court or as otherwise directed by statute.

IN WITNESS WHEREOF, I have executed this Affidavit on _____.

STATE OF _____)

COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, and acknowledged the execution of the foregoing instrument to be his/her free and voluntary act.

Witness my hand and seal this ____ day of _____, 20____.

My commission expires: _____

Commission No.: _____

_____, Notary Public
Resident of _____ County,

FORM F. CERTIFICATE OF ACCOUNT RESTRICTION

STATE OF INDIANA) IN THE LAKE CIRCUIT/SUPERIOR COURT
) SITTING AT _____,
COUNTY OF LAKE) LAKE COUNTY, INDIANA

IN THE MATTER OF THE ESTATE)
_____, DECEASED) CAUSE NO. _____

**CERTIFICATE OF RESTRICTION OF ACCOUNT IN COMPLIANCE WITH
LAWYER'S UNDERTAKING**

The undersigned hereby certifies that he/she is an Officer or employee of the below named financial institution and that the following account has been opened:

Type of Account: _____

Account Number: _____

Amount Deposited: _____

Owner per Signature Card or Document of Title: _____

The undersigned further certifies that a copy of the Order of the Circuit/Superior Court of Lake County has been examined in full by us and that the terms of this account included a restriction that withdrawal of principal or interest may be made only on written order of the Circuit/Superior Court of Lake County.

DATE: _____

Name of Financial Institution

Signature

Printed

Title

**FORM G. ALLOWANCE/DISALLOWANCE OF CLAIM AND NOTICE OF
ALLOWANCE/DISALLOWANCE OF CLAIM**

STATE OF INDIANA) **IN THE LAKE CIRCUIT/SUPERIOR COURT**
) **SITTING AT _____,**
COUNTY OF LAKE) **LAKE COUNTY, INDIANA**

IN THE MATTER OF THE ESTATE)
_____, **DECEASED) CAUSE NO. _____**

ALLOWANCE/DISALLOWANCE OF CLAIM # _____

_____, Personal Representative of the Estate of _____, deceased, pursuant to I.C. § 29-1-14-10, hereby allows/disallows the Claim #_____, filed on or about _____ in the sum of \$_____.

The Personal Representative requests that an appropriate notation of allowance/disallowance of claim be noted by having the Clerk of the Court complete the Notice of Allowance/Disallowance of Claim filed contemporaneously herewith and process the same via the Odyssey e-filing system.

The Personal Representative will serve a Notice of Allowance/Disallowance of Claim #_____, with the Allowance/Disallowance of Claim #_____ attached to said notice, on the claimant and all parties and counsel of record via the Odyssey e-filing system, or by U.S. First Class Mail, as applicable.

Upon service, the Personal Representative or his/her/its legal counsel will file a Certificate/Affidavit of Mailing Notice of Allowance/Disallowance of Claim #_____ with this Court.

_____, Personal
Representative of the Estate of
_____ of

I AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT THE FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT.

STATE OF INDIANA)
)
COUNTY OF LAKE)

IN THE LAKE CIRCUIT/SUPERIOR COURT
SITTING AT _____,
LAKE COUNTY, INDIANA

IN THE MATTER OF THE ESTATE)
_____, DECEASED) CAUSE NO. _____

NOTICE OF ALLOWANCE/DISALLOWANCE OF CLAIM # _____

Notice is hereby given that _____, as Personal Representative of the Estate of _____, has filed with the Court an/a Allowance/Disallowance of Claim #_____, which Claim was filed with the Court on or about _____ in the sum of \$_____. A true and correct copy of the Allowance/Disallowance of Claim #_____ is attached hereto.

CLERK OF THE CIRCUIT/SUPERIOR COURT
OF LAKE COUNTY, INDIANA

By: _____
_____ Deputy

Attorney for Personal Representative