

Attorney Fees in Guardianships

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Personal injury actions brought on behalf of guardianship estates can present unique issues for attorneys in Oklahoma. In two recent court decisions, the Oklahoma Supreme Court provided some guidance for attorneys in these circumstances.

First, when an attorney represents a guardian or guardianship estate, the attorney's contingent fee contract should be submitted to the guardianship estate for approval. In *Guardianship of Stanfield*, an attorney entered a contingent fee contract with a guardian in 2001. The guardian obtained a new attorney in 2005. In 2009, the guardian's original attorney requested guardianship court approval of the contingent fee contract. The guardian argued that it was too late and that the guardianship court lacked jurisdiction.

In February 2012, the Oklahoma Supreme Court held that the guardianship court had jurisdiction to approve a contingent fee contract between the guardian and her attorney. The eight-year delay in seeking court approval was not enough, by itself, to deny approval of the contract. The Supreme Court also noted that legal fees paid from the guardianship estate could be challenged later, unless the fees are approved in an adversarial proceeding.

Based on the *Stanfield* decision, attorneys should seek court approval of contingent fee contracts entered with guardians and guardianship estates. Attorneys should also seek court approval of the amount of fees before they are paid. The Oklahoma Guardianship Code requires that all attorney fees are to be approved before payment.

Second, when dividing and paying contingent attorney fees owed by a guardianship estate, the attorneys holding a claim for fees must be given notice. In *State ex rel. Oklahoma Bar Association v. Casey*, the guardian hired a law firm in 1997 to pursue a personal injury action. The guardian entered a contingent fee agreement with the law firm. The guardian fired the law firm in 1999.

The guardian's new attorney settled the personal injury claim in 2000, for \$650,000. The new attorney requested guardianship court approval of the settlement. In the application, the new attorney described the guardian's previous lawyers' legal fees as a "doubtful and disputed claim," and suggested payment of only \$30,000.

In November 2012, the Oklahoma Supreme Court held that, when seeking guardianship approval of a settlement, attorneys must give notice to anyone holding an interest in settlement proceeds. The guardian's attorney violated Oklahoma ethical rules when he failed to give the previous lawyers an opportunity to recover their fees.

Attorneys

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