

## Can Attorney Fees Be Awarded For the Time Spent Litigating Attorney Fees?

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### Overview

Attorney fees in any legal proceeding are only awarded when there is statutory or contractual authority for the award. In probate proceedings, Iowa Code Chapter 633 establishes, upon proof of the work done, the ordinary fees that may be granted to attorneys for their work in settling an estate. Attorneys who tackle complex and unusual cases may request extraordinary fees for work done on these issues. Attorney fee awards must be approved by the probate court after proof of the ordinary (and extraordinary) work done on behalf of the estate. But, Iowa Code Chapter 633 does not specifically state whether attorneys can collect fees incurred for time involved in litigating the attorney fee award when it is challenged and appealed. Inevitably, the issue presented itself in the following case.

### *In re Estate of Bockwoldt*<sup>1</sup>

**Facts before the trial court.** In this case, the attorney undertook to sort out the estates of a married couple who died unexpectedly in a car accident. The husband had an adult son and the couple had a minor daughter. There were numerous insurance policies, farm land, guardianship issues and a potential wrongful death suit pending in another state. In addition, there were conflicts of interest that arose among the executors and eventually the attorney removed himself from representation of the wife's estate and handled only the husband's

estate.

When most of the work was completed, except for resolution of the wrongful death suit, the attorney submitted his itemized request for reimbursement of fees in 2007 for work done from 2005 through February 2007. The request included both ordinary expenses and extraordinary expenses. There were other issues pending regarding the estate at the hearing as well. The district court granted the award for fees and made other rulings. The executor of the husband's estate appealed the court's order, including the attorney fees award.

**Appellate decision, remand and back.** On appeal, the attorney represented the estate. The Court of Appeals affirmed on all issues except it reversed the attorney fees award. The court remanded the issue to the district court to make additional findings. The court was concerned, because even though the attorney submitted a 50-page detailed and itemized summary of the services provided as well as identifying all of the extraordinary services, the district court failed to follow the statute and make the attorney prove his fees. The court also felt that the district court failed to make specific findings as to which services were ordinary and which were extraordinary.

Upon remand, the attorney resubmitted his fees for the same services. The attorney sought \$76,375.50 in fees for services rendered. He did not include fees for defending the trial court's

decision on appeal or for the costs to his firm in defending the fees award. Again, the executor objected. The statutory cap on ordinary fees for the husband's estate was \$20,432.89. The application requested the court award extraordinary fees of \$55,942.61, which was the difference between the amount the attorney billed to the estate and the maximum amount allowed as ordinary fees under Iowa Code § 633.197. At the hearing, the executor admitted the attorney did all the work listed in the itemized request. The executor also admitted the ordinary expenses were due and approximately \$19,000 in extraordinary fees was due. The executor, however, objected that the remaining \$37,000 was for actual, necessary and extraordinary services for the estate. The court disagreed and granted the fees to the attorney. Again, the executor appealed.

On review, the Court of Appeals modified the district court's award because it found the court had improperly shifted the burden of proof to the executor instead of placing it on the party requesting the fees. The court also took issue with how the extraordinary fees request was calculated because the district court did not make an explicit finding that the services rendered were actually extraordinary. The court reduced the award to include only the amounts actually conceded by the executor. An application for further review by the attorney was not granted.

In 2009, the attorney filed the final report for the estate. He included a detailed, itemized request for extraordinary fees for services from February 2007 through 2009. These included his fees as well as fees for his law firm. The 2009 application indicated, "line by line," which services were extraordinary and requested compensation only for extraordinary services. A "Statement of Extraordinary Fees" was also included with the application detailing "the necessity of the extraordinary services, the responsibilities assumed, and the importance of the services to the estate." The executor, unsurprisingly, objected to the fees. The executor claimed all of the services were for defending the previous fee applications. He also argued that the law firm represented the attorney

and not the estate, so the estate should not be required to pay the firm's fees. After a hearing, the district court granted both fee requests. The executor appealed again. The Court of Appeals reversed the entire fee award. The court held that fees for litigation concerning an attorney fee award are not permitted to be recovered. Upon application, the Supreme Court granted review.

**Iowa Supreme Court.** The Iowa Supreme Court examined Iowa Code § 633.19 to determine whether it provided specific guidance on the issue, but determined that the statute was ambiguous. This required the court to turn to statutory construction principles to resolve the issue.

The court held that the statute does not specifically define what is included in the meaning of work that is necessary and extraordinary because determining whether services are extraordinary requires a factual inquiry. The court, therefore, held that nothing within the statute indicates that the legislature intended to exclude services for defending an application for attorney fees from the definition of necessary and extraordinary services. Because it was not excluded, it could be allowed if the facts supported that the services were necessary and extraordinary.

The court dismissed the executor's argument that this interpretation is the minority view of other state courts. The court found that the cases cited by the executor were clearly not relevant because only one state cited had a similar statute to Iowa's with an ordinary and extraordinary fee dichotomy. The court held that the California case, *In re Estate of Trynin*, 782 P.2d 232 (Cal. 1989), cited by the executor actually supported the court's opinion. The case held that a fact based analysis was warranted when determining whether extraordinary service fees relating to an attorney fee request would be awarded.

Having determined that attorney fees can be awarded as extraordinary services for defending a fee application under Iowa Code § 633.19, the court turned to the specific request in this case. The court first addressed whether the services in defending the estate on appeal "benefited" the

estate. The first appeal included other issues besides the fee request, which the estate won. The court held that the attorney was required to defend the estate and this defense was necessary for the estate. As part of the appeal, the attorney was required to file an amended request on remand to determine which services were extraordinary. This requirement was made necessary by the executor's appeal, which made the representation beneficial to the estate. The Supreme Court found merit in the district court's observation that "if presenting reasonable arguments to an appellate court when an interested party objects to a fee request is not considered a necessary service, then any objector could force the attorney to work for no pay."

The Supreme Court then determined that the fees in this situation were for extraordinary services. Extraordinary services are those in character and amount that are beyond the norm. The court acknowledged that most estates do not involve a dispute over extraordinary services that required numerous district court rulings and multiple appellate opinions. After determining that the fees were for necessary and extraordinary services, the court held that the attorney's application specifically detailed which services were extraordinary and what was performed. This application complied with Iowa Rule of Probate 7.2(3), and he was entitled to his requested fees.

The Supreme Court also upheld the district court's finding that the fees for the law firm were necessary and benefitted the estate. The court agreed that the services by the law firm benefitted the estate by ensuring the application for the fees for extraordinary services complied with the statute. The court gave no weight to the fact that some documentation stated the law firm represented the attorney rather than the estate, because all of the services rendered were for litigation and appellate work the court had already stated was necessary for the estate. The law firm, however, failed to provide a detailed, itemized statement of all of the services performed and which ones were extraordinary services. Instead, the firm provided a broad request stating only that it had provided 101.7

hours of work. For this reason, the appellate court ruled that the district court erred in granting the requested fees to the law firm. The issue of whether the fees were for necessary and extraordinary services performed by the law firm were remanded to the district court to review the application and make specific findings.

## Summary

In summary, the Iowa Supreme Court held that an application for attorney fees for necessary and extraordinary services rendered in defending a fee application is allowed and will be reviewed on a factual basis. The court affirmed the award for fees to the attorney in the amount of \$15,845.50, but reversed the district court's award of attorney fees to the law firm because its application did not comply with the specificity required.

When submitting an application for attorney fees that are extraordinary, the attorney must comply with Iowa Rule of Probate 7.2(3) and in addition to providing an itemized statement of services rendered must also include "a written statement showing the necessity for such expenses or services, the responsibilities assumed, and the amount of extra time or expense involved. In appropriate cases, the statement shall also explain the importance of the matter to the estate and describe the results obtained." An application that is deficient in this regard will not be approved.

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<sup>1</sup> In re Estate of Bockwoldt, No. 09-1914, 2012 WL 1232307 (Iowa Apr. 13, 2012)