

ATTORNEYS' FEES IN FAMILY LAW PROCEEDINGS

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38TH ANNUAL ADVANCED FAMILY LAW COURSE

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CHAPTER 23

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Education

Anson High School, Anson, Texas
B.A., Texas Tech University, 1974, Deans List
Majors: English and Journalism
Minor: Spanish
J.D., University of Texas, 1977

Licenses & Certifications

State Bar of Texas, June 1977
U. S. District Court, Western District of Texas
Board Certified, Family Law, Texas Board of Legal Specialization, 1983; Re-certified 1988, 1993,
1998, 2003 and 2008
Certified, Collaborative Law, 2003

Employment

Law Office of Becky Beaver, 1977 to present
Practice limited to family law

Personal

Married to John B. Duncan, Jr.
Sons, William Duncan and Matthew Duncan
Daughter, Jennifer Duncan

Professional Activities and Honors

Texas Monthly Super Lawyer Award, 2006, 2007, 2008, 2009, 2010 and 2011, Texas Monthly Magazine
“One of the Best Boutique Firms in Texas”, 2004, Texas Lawyer Magazine
Recipient, Austin Business Journal - Profiles in Power Award, 2008
Nominee, Austin Business Journal - Profiles in Power Award, 2007
Honoree, Judge Suzanne Covington Pro Bono Service Award, Volunteer Legal Services, 2008, 2009 and 2010
Member, State Bar of Texas- Family Law Section; Women and the Law Section; Individual Rights and Responsibilities Section, Legislative Committee
College of the State Bar
Texas Bar Foundation
Texas Family Law Foundation
American Bar Association; Family Law Section, former member, Child Custody Committee
Texas Association of Family Law Specialists
Texas Supreme Court Advisory Committee on Child Support and Visitation (former member, appointed by Texas Supreme Court)
Texas Family Code Revision Committee (former member, appointed by Texas Legislature and by Family Law Section of the State Bar of Texas)

Texas Marital Property Revision Committee (former member, appointed by Texas Legislature)
 Travis County Family Law Advocates
 Texas Center for Legal Ethics and Professionalism
 Texas Board of Legal Specialization – former member, Family Law Advisory Committee
 Travis County Family PAC, Steering Committee Member
 Travis County Committee on Possession Guidelines for Children Under Three (former member, appointed by Travis County District Judges)
 Travis County Bar Association; former Vice-President, former Chair, Family Law Section
 Travis County Women Lawyers Association, former Vice-President
 Collaborative Law Institute of Texas
 Dispute Resolution Center of Travis County, Founding Board Member (appointed by Travis County Commissioners)
 Travis County Bench Bar Conference, former member, Planning Committee, Facilitator
 Travis County Committee on Local Rules of Procedure and Decorum (appointed by Travis County District Judges)
 Travis County Committee on Courthouse Security (appointed by Travis County District Judges)
 Travis County Family Law Docket Committee (appointed by Travis County District Judges)
 Travis County Domestic Relations Office Advisory Committee (appointed by Travis County District Judges)
 City of Austin Affirmative Action Advisory Committee, former Chair (appointed by City Council)
 Author, Lecturer and Presenter; State Bar of Texas, Advanced Family Law Course, New Frontiers in Family Law, Travis County Bar Association, Texas Trial Lawyers Association, CLE Options Network, American Academy of Matrimonial Lawyers/American Institute of Certified Public Accountants, University of Texas Continuing Legal Education Programs, including:

“Drafting Tips for Decrees and Transfer Documents”, State Bar of Texas, Family Law for the Lawyer and Paralegal, San Antonio, Texas, 1984
 "Whose Got the Q? QDRO's, QPSA's and QJSA's", Family Law Section, Austin Bar Association, 1985
 “Effective Discovery Strategies”, Austin Bar Association, Family Law Section, Austin, Texas, 1987
 “Family Law: Pitfalls for the Personal Injury Lawyer”, Texas Trial Lawyers Association, Sun Valley, Idaho, 1998
 “Marital Property Characterization of Personal Injury Proceeds”, State Bar of Texas, Advanced Personal Injury Law, Houston, Texas, 1998
 “Things Worse than Paying the IRS – Estate and Business Planning Instruments and the Problems They Create for Divorcing Clients”, CLE Options, Dallas, Texas, 2007
 “Clash of Tax and Divorce Planning”, American Institute of Certified Public Accounting (American Academy of Matrimonial Lawyers, Las Vegas, May, 2008
 “Valuation: The Impact of Buy Sell Agreements”, State Bar of Texas, Advanced Family Law Course, Dallas, Texas, 2009

Civic Activities

Ann Richards School for Young Women Leaders – Governor’s Council member, Gala Committee Member
 Annie’s List – Steering Committee
 Austin Association of Visual Arts, Arts Patron of the Year 2009
 Austin American Statesman - Fortunate 500, Top Pick, Faith, Education Charity, 2008; Fortunate 500 All Star 2009; Out and About All Star 2010, 2011

Austin Children's Museum – Former member, Board of Directors; former Chair, Governance Committee; former member, Executive Committee; Finance Committee; former Chair, Annual Appeal
 Austin Community Foundation – Co-Chair, 2010 Celebration of Giving; Power of the Purse member; Power of the Purse Annual Luncheon Committee; former member Women's Grant Fund Committee
 Austin Museum of Art – Board of Advisors; Enhancement and Vision Committee
 Austin Theatre Alliance (The Paramount & State Theaters) – Advisory Council
 Austin Women's Center - Former President, Board of Directors
 Ballet Austin Board of Directors – Committee member, Ballet Fete 2010; Chair, Ballet Fete 2009; Outstanding New Board Member, 2003; former member, Nominating Committee, Management Committee
 Girl Scouts of Central Texas – 2011 Women of Distinction Honoree
 Hospice Austin's "Beauty of Life" Glossy 8 Honoree, 2010
 KLRU-TV - Former member, Gala Committee
 KUT FM - Leadership Council; former co-chair, 50th Anniversary Gala Committee
 Lady Bird Johnson Wildflower Center – Art Auction Committee Chair, 2006-2010; Former Co-Chair, Gala Committee; Art Auction Committee member
 Long Center for the Performing Arts – Women's Leadership Council
 Mexic-Arte Museum – Board of Directors, Gala Committee Member
 National Senior Olympic Games - Qualifier, Basketball, 2005, 2007, 2009, 2011; Championship Bracket, 2005, 2007
 National Women's Political Caucus - Former member, National Steering Committee; National Legislative Committee; former State Vice-President; former State Membership Chair; former State Legislative Chair; local offices
 People's Community Clinic - Board of Directors, Development Committee; Chair, Luncheon Committee, 2011
 People's Community Clinic Foundation – Board of Directors
 Planned Parenthood of Austin - Former member, Board of Directors, former Chair, Clinic Committee; Executive Committee; Personnel Committee
 Seton Breast Cancer Center – Co-Chair, 2012 Tournament for Hope
 Texas Democracy Foundation – Gala Committee
 Texas State University - Wittliff Collection, Spirit of Place Gala Committee
 University of Texas Chancellor's Council
 University United Methodist Church Foundation – Former Board member
 Women & Their Work – Art Diva
 Women Vote – Steering Committee
 Supporting Member – Alzheimer's Association, American Heart Association, Andy Roddick Foundation, Arthouse at the Jones Center, Austin College Parents Council, Austin Film Society, Austin Lyric Opera Guild, Badgerdog Literary Publishing, Inc., Blanton Museum of Art, Breast Cancer Resource Center, Charles Moore Foundation, Conradt Fundraising Committee, Duke University Parents Association, Hispanic Scholarship Consortium, Hospice Austin, Lance Armstrong Foundation, Longhorn Foundation, Nobility, SafePlace, St. Stephen's Episcopal School Annual Fund, Smithsonian Institution, Texas Access to Justice Foundation, Texas Book Festival, Texas Civil Rights Project, Texas Exes, Volunteer Legal Services of Texas, Women's Advocacy Project, Zach Scott Theatre

Hobbies and Interests

Basketball, Travel

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Education

B.A., Southern Methodist University, 2001
Major: Corporate Communications & Public Affairs
Minor: Art History
J.D., St. Mary's University School of Law, 2005
Associate Editor, St. Mary's Law Journal

Licenses & Certifications

State Bar of Texas, November 2005
United States District Court, Northern District of Texas, 2005
United States District Court, Southern District of Texas, 2006
United States District Court, Eastern District of Texas, 2006
United States District Court, Western District of Texas, 2006
United States Fifth Circuit Court of Appeals, 2007

Employment

Law Office of Becky Beaver, Austin, Texas; Attorney, May 2010 to Present
J. Ramsey & Associates, P.C., Austin, Texas; Attorney, Nov. 2008 to May 2010
Cantey Hanger, LLP and Shannon Gracey Ratliff & Miller, LLP, Austin, Texas; Attorney, July 2007 to Nov. 2008
Vial, Hamilton, Koch & Knox, LLP and Vincent | Moyè, P.C. Dallas, Texas; Attorney, September 2005 – July 2007

Professional Activities

Member, State Bar of Texas-Family Law Section
Member, Austin Bar Association
Austin Young Lawyers Association: Member; Director, 2008-2009; Co-Chair, Crockett H.S. Street Law Program 2007-2008, 2008-2009
Dallas Association of Young Lawyers: E-Mentor, 2008-2009
Member, Federal Bar Association

Civic Involvement and Activities

St. Mary's University School of Law Alumni Board: Director, 2009-2011; Austin Chapter Committee Member
Catholic Diocese of Austin, Red Mass Committee: Committee Chair, 2009-2012; Committee Co-Chair, 2008
Association of Catholic Professionals, Member

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**BAR
ADMISSIONS**

- New York, 2003
- U.S. Virgin Islands, 2004
- Texas, 2004
- Texas United States District Court, Eastern District, Northern District

EXPERIENCE

- Law Office of Becky Beaver, Austin, Texas, 2011 – present
- Law Office of Michelle Kostun, Austin, Texas, 2008 – 2011
- Lackey Hershman, LLP, Dallas, Texas, 2004–2007 – *Associate Attorney*
- Dudley, Topper and Feuerzeig, LLP, St. Thomas, U.S. Virgin Islands, 2003–2004 – *Associate Attorney*

- Fried Frank Harris Shriver & Jacobson, NY, NY & London, England, 2000–2003 – *Associate Attorney; Summer Associate Attorney*

- Innocence Project, NY, NY, 1999–2000 – *Legal Advocate/Intern*
- Professor Barry S. Scheck, NY, NY, 1999–2000 – *Research Assistant/Law Clerk*
- Spodek & Barrett, NY, NY, Summer 1999 – *Summer Associate Attorney*

EDUCATION

- Benjamin N. Cardozo School of Law—Yeshiva University, NY, NY, January 2001
Juris Doctorate, Accelerated Entry Program GPA:3.611

Honors

- *Magna cum laude*, top 5%
- Order of the Coif
- Cardozo Law Review

Activities

- Intensive Trial Advocacy Program
- Trial Team
- Battered Women’s Advocate Program
- Innocence Project

PRO BONO

- Volunteer Legal Services of Central Texas, Austin, TX, 2008
Provide legal advice to income qualified clients in divorce proceedings and estate planning matters.

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ATTORNEYS' FEES IN FAMILY LAW PROCEEDINGS

I. INTRODUCTION

A practitioner seeking to successfully obtain and collect attorneys' fees in a family law proceeding must be aware of and comply with not only the statutory authority and bases which justify a fee award, but must also be careful to meet pleading and proof requirements established by Texas courts by presenting appropriate evidence in a manner which clearly demonstrates to the court the attorney's right to recover the fees requested.

This paper identifies the bases for recovery in several types of family law proceedings and alerts the practitioner to the requirements which must be met in order to obtain an award pursuant to particular statutory authority. Practice pointers are provided to assist the practitioner in maximizing a fees award and collection of the award from the opposing party.

II. STATUTORY BASIS FOR RECOVERY IN FAMILY LAW PROCEEDINGS

A statutory basis must exist in order for a court to make an award of attorneys' fees. *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 310-11 (Tex. 2006). Many such statutory bases are provided in the Texas Family Code, Texas Rules of Civil Procedure and the Civil Practice and Remedies Code. This paper identifies and discusses the statutory bases for an award of attorneys' fees in some of the areas often encountered by family law practitioners, but is by no means exhaustive.

A. Dissolution

In a suit for the dissolution of a marriage a court may award attorneys' fees as part of temporary orders and as part of the final division of the community estate.

1. Temporary Orders

Texas Family Code § 6.502(4) provides that after notice and hearing, upon the motion of one of the parties or on the court's own motion, a court may render orders "for the preservation of property and protection of the parties as deemed necessary and equitable" including: "ordering payment of reasonable attorney's fees and expenses."

The standard for an award of interim fees mirrors that of an award of temporary spousal support, *i.e.*, the need of one party to access community funds to pay attorneys' fees and other litigation expenses considered against the opposing spouse's ability to pay those expenses out of community assets. *Herschberg v. Herschberg*, 994 S.W.2d 273, 278-79

(Tex. App.—Corpus Christi, 1999, pet. denied). A court will consider whether one spouse has greater access to community property in making an interim attorneys' fee award, but will not make a party destitute in order to make such funds available to the requesting party. *Id.*

In seeking an award of interim attorneys' fees on behalf of a client, it is important to identify to the court the community asset or assets which can be used to satisfy the request for fees. In a dissolution proceeding without children, a court may only order the payment of attorneys' fees out of community property and cannot order a party to pay a spouse's interim attorneys' fees out of separate property. *Grossnickle v. Grossnickle*, 935 S.W.2d 830, 846-47 (Tex. App.—Texarkana, 1996, writ denied). If possible, identify a specific community account and provide proof to the court of the balance of funds available in that account for the payment of fees. If there is no account from which sufficient funds may be withdrawn to satisfy the request for interim fees, be prepared to suggest to the court that a particular item of community property be sold or pledged to generate the necessary funds and provide the court with a detailed plan about how the sale or pledge of that property should proceed.

2. Division of Community Estate

Texas Family Code § 7.001 grants a court the authority to make a final division of the community estate "in a manner the court deems just and right, having due regard for the rights of each party." The court has the discretion to award attorneys' fees to a party as part of this division, even where the award of fees to one party results in an unequal division of the community estate. *Carle v. Carle*, 149 Tex. 469, 474 (Tex. 1951) (the court is not required to divide community estate equally, and there is no error in ordering *one* party to pay all fees of the other party which results in an unequal division). An award of fees is but one factor the court may consider in the overall division of the community estate. *Simpson v. Simpson*, 727 S.W.2d 662, 664 (Tex.App.—Dallas 1987). Further, a court may order one party to pay the opposing party's attorneys' fees notwithstanding that the opposing party is awarded sufficient property from which he or she would be able to pay his or her own fees. *Brown v. Brown*, 520 S.W.2d 571, 578-89 (Tex.Civ.App.—Houston [14th Dist.] 1975) (ordering husband to pay \$1.25 million in wife's attorneys' fees where wife was awarded \$25 million of community property); *Braswell v. Braswell*, 476 S.W.2d 444, 445-48 (Tex.Civ.App.—Waco 1972) (husband ordered to pay \$250,000 in wife's attorneys' fees where wife was

awarded more than \$4 million in community property including \$600,000.00 in cash).

The authority of the court to order payment of attorneys' fees in a dissolution proceeding is based solely on the court's authority to divide the community estate. Accordingly, in a suit for the dissolution of a marriage without children, a court does not have authority to order a spouse to pay attorneys' fees for the opposing party out of his or her separate estate, or to award fees in an amount greater than the total value of the community estate. See *Chiles v. Chiles*, 779 S.W.2d 127, 129 (Tex.App.—Houston [14th Dist.] 1989, writ denied, *overruled on other grounds by Twyman v. Twyman*, 855 S.W.2d 619 (Tex. 1993)); *Henry v. Henry*, 48 S.W.3d 468, 480 (Tex.App.—Houston [14th Dist.] 2001); *Toles v. Toles*, 45 S.W.3d 252, 267 (Tex.App.—Dallas 2001).

In dividing the community estate and making an award for attorneys' fees, a court may consider earlier payment of attorneys' fees out of the community estate, and has discretion to award fees to either party, whether or not that party was successful before the trial court or on appeal. *Grossnickle*, 935 S.W.2d at 846.

3. Post-Decree Division of Property

Pursuant to Texas Family Code § 9.205 a court may award reasonable attorneys' fees in a suit to divide property which was not divided as part of the original divorce proceeding.

B. SAPCR

As with a suit for dissolution of a marriage without children, a court also has the authority to order payment of attorneys' fees for the opposing party either at the time of temporary orders or as part of final orders in a suit affecting the parent-child relationship ("SAPCR") which has either been brought as part of a proceeding for the dissolution of a marriage or as an independent proceeding.

1. Temporary Orders

Texas Family Code § 105.001(a)(5) provides that "for the safety and welfare of the child" a court may make temporary orders "for payment of reasonable attorney's fees and expenses."

Courts have interpreted the "safety and welfare" requirement of § 105.001(a)(5) to be mandatory, without which an award of fees may not be made. *Saxton v. Daggett*, 864 S.W.2d 729, 736 (Tex.App.—Houston [1st Dist.] 1993, no writ) (trial court may not make orders for the payment of reasonable attorneys' fees in a suit affecting the parent-child relationship "for a purpose other than the safety and welfare of the child"). To meet this standard a party must present evidence concerning the safety and welfare of a child,

not merely present evidence that an award of fees is necessary to even the financial playing field between the parties. In *re T.M.F.*, No. 09-10-00019-CV, 2010 WL 974577, at *1-2 (Tex.App.—Beaumont March 18, 2010) (error to award fees where only evidence to support request for fees was disparity in financial abilities of the parties to pay attorneys' fees and no evidence was presented concerning the safety and welfare of the children); *In re Sartain*, No. 01-07-00920-CV, 2008 WL 920664, at *2 (Tex.App.—Houston [1st Dist.] April 3, 1993, orig. proceeding).

It is not enough that issues to be presented at the final trial "may involve issues relating to the safety and welfare of the children." *In re T.M.F.*, 2010 WL 974577, at *2. A party seeking an award of interim attorneys' fees is required to present evidence that, at the time of the request, funds are necessary to protect the safety and welfare of the children. *In re Christopher Rogers*, No. 03-12-00154-CV, 2012 WL 1581374, at *1-4 (Tex.App.—Austin May 4, 2012). In *In re Christopher Rogers*, the court held that where temporary orders were already in place protecting the safety and welfare of the children and the movant's attorney testified that funds were necessary to prepare for the jury trial rather than to address a current safety and welfare issue concerning the children, the requirements of Texas Family Code § 105.001(a)(5) were not met. *Id.* Intervenor may recover fees in the same manner as if they were entitled to fees as an original party. See, e.g., *Yerby v. Heineken & Vogelslang*, 209 S.W. 835 (Tex.Civ.App.—Austin 1919), writ refused, (Oct. 15, 1919).

2. Final Orders

Pursuant to Texas Family Code § 106.002 in a SAPCR, a court may render judgment for fees and post judgment interest to be paid directly to the attorney and enforced in the attorney's name. An award under this provision of the code is also within the court's discretion.

Unlike in a dissolution proceeding without children, a court may order the payment of attorneys' fees in excess of the value of the community estate in a dissolution proceeding with children or in an independent suit affecting the parent-child relationship. *Moroch v. Collins*, 174 S.W.3d 849, 870-71 (Tex.App.—Dallas 2005, pet. denied). In other words, the court in a SAPCR may order fees paid from a party's separate estate, if necessary to protect the safety and welfare of the child. Further, in a divorce proceeding with children, the court may award fees either as part of the division of the community estate or as costs in the SAPCR and may also allocate fees between each. *Id.*

III. SEMI-MANDATORY FEE AWARDS AND FEE AWARDS FOR DISCOVERY ABUSE AND AS SANCTIONS

While many of the statutory provisions on which the request for attorneys' fees may be made in family law proceedings are discretionary, some statutes provide that a court *shall* award fees, unless it makes further findings that fees are not appropriate in the particular circumstances.

A. Enforcement

The Texas Family Code provides that a court “*shall* order the respondent to pay the movant’s reasonable attorney’s fees and all court costs in addition to the arrearages” in a suit to enforce a child support order. TEX. FAM. CODE § 157.167(a) (emphasis added). Further, § 157.167(b) provides that “[i]f the court finds that the respondent has failed to comply with an order providing for the possession of or access to a child, the court *shall* order the respondent to pay the movant’s reasonable attorney’s fees and all court costs in addition to any other remedy.” TEX. FAM. CODE § 157.167(b) (emphasis added). This section also provides that if the court finds the enforcement of the order was “necessary to ensure the child’s physical or emotional health or welfare, the fees and costs . . . may be enforced by any means available for enforcement of child support, including contempt, but not including income withholding.” *Id.*

However, the statute giveth and the statute taketh away. Pursuant to § 157.167(c) “for good cause shown” the court may waive the mandatory payment of attorneys’ fees and costs if the court “states the reasons supporting the finding.” Where a party is in arrears more than \$20,000.00 in child support and the court finds the party in contempt, the court may not waive the mandatory payment of fees and costs, unless the court also specifically finds that the party is: 1) involuntarily unemployed or disabled; and 2) lacks financial resources to pay the fees and costs. TEX. FAM. CODE § 157.167(d). A court must make the necessary findings however, or the award of attorneys’ fees is mandatory. *See Goudeau v. Marquez*, 830 S.W.2d 681, 682 (Tex.App.—Houston [1st Dist.] 1992) (finding that “[t]he provision requires the trial court to impose attorney’s fees and court costs, provided they are reasonable, absent a specific finding that the respondent need not pay the attorney’s fees or court costs. The provision is mandatory.”) (citations omitted).

The practitioner should be mindful that even where a statute mandates an award of fees, the party requesting the award must still satisfy the burden of proof and evidence should be presented to the court

demonstrating the reasonableness of the amount of fees requested. *In re A.L.S.*, 338 S.W.3d 59, 70 (Tex.App.—Houston [14th Dist.] 2011, rehearing overruled) (finding that there is no abuse of discretion in awarding no fees to a prevailing party on enforcement of payment of child support where party failed to put on any evidence supporting reasonableness of fees requested). The practitioner should also specify those fees incurred which support the mandatory award to be enforced. *See Kogel v. Robertson*, No. 03-04-00246-CV, 2005 WL 3234627, at *10 (Tex.App.—Austin Dec. 2, 2005). In *Kogel v. Robertson*, the portions of the trial court’s fee award were not attributed specifically to the enforcement of child support arrearages versus the award of fees for the modification proceeding. *Id.* Because the award on the basis of child support arrearages allowed for enforcement by contempt, the Court of Appeals could not uphold the award with no distinction between those fees awarded for the suit to enforce child support arrearages and those awarded on the basis of modification, and therefore determined that the entire award could only be enforced as a debt and not by contempt. *Id.*

B. Attorneys’ Fees for Discovery Abuse

Texas Rule of Civil Procedure 215 contains several provisions for the award of attorneys’ fees for discovery abuse and failure to comply with discovery obligations. Sanctionable discovery abuse may include “unreasonably frivolous, oppressive, or harassing” discovery requests or an answer or response that is “unreasonably frivolous” or “made for purposes of delay.” TEX. R. CIV. P. 215.3. It may also include the failure of a witness or a party giving notice of a deposition to attend the deposition. TEX. R. CIV. P. 215.5. Additionally, Texas Rule of Civil Procedure 215.1 sets forth a list of other discovery abuses that may trigger an award of fees. The Texas Rules of Civil Procedure provides that in lieu of or in addition to other sanctions, a court *shall* award reasonable expenses, including attorneys’ fees “unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.” TEX. R. CIV. P. 215.2 (emphasis added). The purpose of awarding fees is to compensate the party for additional litigation expenses incurred as a result of the abusive discovery tactics. *Lopez v. La Madeleine of Tex., Inc.*, 200 S.W.3d 854, 865 (Tex.App.—Dallas 2006).

C. Attorneys’ Fees for Frivolous Filings

Texas Rule of Civil Procedure 13 and Texas Civil Practice and Remedies Code § 10.001 et seq. allow for the imposition of sanctions against a party and/or his or her attorney, if a pleading is brought in

bad faith, is groundless or brought for the purposes of harassment. Among the sanctions a court may impose are reasonable expenses and attorneys' fees. *See* TEX. CIV. PRAC. & REM. CODE § 10.002(c), § 10.004(c); TEX. R. CIV. P. 215.2. The amount of an attorneys' fee award imposed as sanctions for a frivolous filing is within the court's discretion and there should be "a reasonable relationship between the harm done and the sanctions assessed." *Glass v. Glass*, 826 S.W.2d 683, 688-90 (Tex.App.—Texarkana 1992, writ denied 1992) (finding abuse of discretion where the fees award was disproportionately large relative to the amount in controversy).

IV. PLEADING, DISCOVERY ISSUES AND PROVING-UP REQUEST

A party seeking an award of attorneys' fees should ensure that a statutory basis for an award exists and that an affirmative pleading is on file requesting an award of attorneys' fees. *Swate v. Medina Comty. Hosp.*, 966 S.W.2d 693, 701 (Tex.App.—San Antonio 1998) (finding that "[a]bsent a mandatory statute, a trial court's jurisdiction to render a judgment for attorney's fees must be invoked by pleadings, and a judgment not supported by pleadings requesting an award of attorney's fees is a nullity."). Practitioners must also be prepared to prove to the court that the fees sought were reasonable and necessary for the prosecution of the suit.

Reasonableness is a question of fact to be determined by a judge or jury. *Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998). A jury may determine the reasonableness of attorneys' fees but its opinion on which party should pay fees is advisory, although the court may consider and adopt the jury's finding.

A. Reasonable and Necessary

The party seeking fees must prove the base amount of the fees sought by providing the hours worked, the amount charged by hour, a description of the work performed, a statement that the work was necessary to the prosecution or defense of the case, and a statement that the fees were reasonable. *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818-19 (Tex. 1997). The Texas Supreme Court has identified factors which should be considered in evaluating whether fees sought are reasonable and necessary. *Id.* This non-exclusive list of factors, based on Rule 1.04 of the Texas Rules of Disciplinary Procedure, includes the following:

1) The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;

- 2) The likelihood ... that the acceptance of the particular employment will preclude other employment by the lawyer;
- 3) The fee customarily charged in the locality for similar legal services;
- 4) The amount involved and the results obtained;
- 5) The time limitations imposed by the client or by the circumstances;
- 6) The nature and length of the professional relationship with the client;
- 7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
- 8) Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

One consideration in assessing reasonableness is the conduct of the parties during the course of the litigation. *In the Interest of S.E.C.*, 2009 WL 3353624, No. 05-08-00781-CV, at *2 (Tex.App.—Dallas Oct. 20, 2009) (attorney testified that although the fees incurred were high for the type of proceeding, the fees incurred were necessary and reasonable due to conduct of opposing party, including a failure to pay debts as agreed, and litigation conduct such as the filing multiple motions and the scope and nature of discovery); *see Hammonds v. Hammonds*, 583 S.W.2d 807, 809-10 (Tex.Civ.App.—Dallas 1979) ("the court could also have properly concluded that unjustified delay and lack of co-operation by appellant added unnecessarily to the services required of appellee's counsel").

In addition, evidence of settlement negotiations may also be considered when determining the amount of attorneys' fees a court should award. *See F. Lee Lawrence v. C.W. Boles*, 631 S.W.2d 764, 768-69 (Tex.App.—Tyler 1981); *see e.g., Travelers Ins. Co. v. Barrett*, 366 S.W.2d 692, 694-95.

The dollar amount of fees awarded depends on a number of factors including the total value of the property at issue. *See Brown*, 520 S.W.2d at 578-89 (\$1.25 million awarded in attorneys' fees where community estate valued at approximately \$50 million); *Braswell*, 476 S.W.2d at 445-48 (\$250,000.00 awarded in attorneys' fees where community estate valued at approximately \$10 million); *Phillips v. Phillips*, 296 S.W.3d 656, 672-73 (Tex.App.—El Paso 2009) (\$175,000.00 awarded in attorneys' fees in dissolution suit).

When opposing a request for attorneys' fees, it may be appropriate to challenge the hourly rate of the attorney, the tasks performed and/or the amount of time spent on the case or certain tasks therein, as unreasonable or unnecessary. In *Beard v. Beard*, both the attorney of the party requesting fees and the opposing attorney proffered testimony regarding the

amount of fees which were reasonable and necessary under the circumstances. 49 S.W.3d 40, 65 (Tex.App.—Waco 2001). The movant sought an award of \$60,000.00 in attorneys' fees and costs. The trial court awarded \$1,500.00. The award was upheld on appeal due to the testimony of the opposing witness who testified that \$1,500.00 was a reasonable fee for the nature of the case, a divorce with only two community assets and no children. *Id.* Evidence was also presented that two pre-trial hearings sought by the movant were unnecessary and that movant had also engaged in excessive discovery. *Id.* Note however, that failure to present evidence or other objection on the record opposing the reasonableness and/or necessity of a fee request or award, may waive the objection. *Treadway v. Treadway* 613 S.W.2d 59, 60-61 (Tex.Civ.App.—Texarkana 1981).

B. Discovery Issues – Rule 194 Disclosures

Be aware of your responsibilities to provide information to the opposing party as part of the discovery process in connection with a request for attorneys' fees. Likewise, make sure that you propound the necessary requests to the opposing party in order that you will be aware of their claims for attorneys' fees and will be in a position to object to their proceeding with such a request if they have not complied with the appropriate discovery requirements.

Pursuant to Texas Rule of Civil Procedure 194.2(c), a party is required to state the legal theories, and in general factual bases of his or her claims and defenses. In response to this request for disclosure, a party should identify his or her claim for attorneys' fees and state the legal theories and factual bases for the claim.

Pursuant to Texas Rule of Civil Procedure 194.2(d), a party is required to identify persons having knowledge of relevant facts. In response to this request for disclosure, a party should identify all attorneys and legal assistants in the firm who have performed work on the case.

Most importantly, a party must identify an attorney as a testifying expert pursuant to 194.2(f) for the purpose of proving the elements necessary to secure the award of attorneys' fees. In addition, a party is required pursuant to Rule 194.2(f) to provide the following regarding a testifying expert: 1) name, address and telephone number; 2) subject matter of testimony; 3) mental impressions and opinions, including facts known by the expert that relate to or form the basis of those mental impressions and opinions; 4) all documents, reports or compilations provided to, reviewed by or prepared by or for the expert in anticipation of the expert's testimony; and 5) the expert's current resume and bibliography.

Where an opposing party fails to comply with these disclosures required by Texas Rule of Civil Procedure 194, it is appropriate to move to strike the request for fees and object to the presentation of any evidence to the court at a hearing or trial in support of his or her request for an award of attorneys' fees. *E.F. Hutton & Co. v. Youngblood*, 741 S.W.2d 363, 364 (Tex. 1987); *Campos v. State Farm Gen. Ins. Co.*, 943 S.W.2d 52, 54-55 (Tex.App.—San Antonio, 1997, writ denied). Nothing in the rules or Texas law permits a party not designated as a testifying expert to testify as an expert at a hearing or trial. *Collins v. Collins*, 904 S.W.2d 792, 801 (Tex.App.—Houston [1st Dist.], writ denied, 923 S.W.2d 569 (Tex. 1996)).

The Court must exclude a witness who was not listed in response to a request for disclosure unless there is a showing of good cause for the untimely response and a showing that the failure timely to respond will not unfairly surprise or prejudice the parties. TEX. R. CIV. P. 193.6(a); *Fort Brown Villas Condo. Ass'n v. Gillenwater*, 285 S.W.3d 879, 881 (Tex. 2009).

C. Trial Exhibits to Prove-up Fee Request

Attorneys' fees must be proven by offering expert testimony that the fees were reasonable and necessary. *Twin City Fire Ins. Co. v. Vegal-Garcia*, 223 S.W.3d 762, 770 (Tex.App.—Dallas 2007, pet. denied); *Woollett v. Matyastik*, 23 S.W.3d 48, 52 (Tex.App.—Austin 2000, pet. denied). Testimony of the attorney alone is sufficient to support an award of fees. *See Lofton v. Texas Brine Corp.*, 777 S.W.2d 384, 386 (Tex. 1989).

An expert witness or representing attorney should present testimony using the factors set out in *Andersen* as a guide. Although it is not necessary to elicit testimony on each of the *Andersen* factors, the prudent practitioner would do so.

The following exhibits should be presented to the court in connection with the attorney's testimony.

- 1) Fee Agreement. This establishes for the court the hourly fees charged by an attorney or attorneys and legal assistants working on the case. Redact from the fee agreement any privileged information including any legal advice which may be contained in the agreement.

Work performed by a paralegal or legal assistant under the supervision of any attorney, which constitutes work traditionally performed by an attorney, may be included in an attorneys' fees award. *All Seasons v. Window & Door Mfg. v. Red Dot Corp.*, 181 S.W.3d 490, 504 (Tex.App.—Texarkana 2005, no pet.); *Clary Corp. v. Smith*, 949 S.W.2d 452, 469 (Tex.App.—Fort Worth 1997, pet. denied); *Gill*

v. Sav. Ass'n, 759 S.W.2d 697, 702 (Tex.App.—Dallas 1988, writ denied).

In order to recover fees for a paralegal or legal assistant's time, the practitioner must show the following: "(1) that the legal assistant is qualified through education, training or work experience to perform substantive legal work; (2) that substantive legal work was performed under the direction and supervision of an attorney; (3) the nature of the legal work which was performed; (4) the hourly rate being charged for the legal assistant; and (5) the number of hours expended by the legal assistant." *Id.*

- 2) Invoices and billing statements. Invoices and billing statements for fees, costs and expenses incurred should be sufficiently detailed in order that the client – and the fact finder – can understand and evaluate the nature of the work performed on behalf of the client. Invoices and billing statements should clearly state the hourly rate for each individual working on the case and state the amount of time for which work was performed each day. As with fee agreements, invoices and billing statements should be redacted to protect attorney work-product, attorney-client privileged information and other confidential and privileged information.
- 3) Line Item Exhibits. The basis upon which an award of attorneys' fees is sought will dictate the nature of evidence to be presented to the court. Presenting information to the court organized to support the request may increase the court's willingness to approve the request. Several examples are provided below:
 - a) Fees Already Incurred. When seeking an award for fees and expenses already incurred, a helpful exhibit to provide to the court in addition to a detailed invoice or billing statement is an exhibit which provides line item totals and breaks down fees and expenses incurred as a result of work performed by each attorney and legal assistant as well as a breakdown of expenses and costs incurred for expert witnesses.
 - b) Anticipated Fees for Interim Award. If interim fees are sought, the attorney should prepare an exhibit setting forth the anticipated fees and litigation expenses the attorney reasonably believes will be necessary through an identified time in the case. The exhibit should identify the attorneys and legal assistants who will work

on the case, state the hourly rate for each and estimate the number of hours which will be spent by each person working on the case for each category of legal work to be performed. For reference, an exhibit is attached to this article as an example of what is necessary to show anticipated interim attorneys' fees.

c) Fees Associated with a Particularized Request.

When an attorney seeks an award for a specific portion of a case or for specific work performed it may be necessary to segregate for the court how much attorney time was spent on particular issues and the expenses incurred therewith. For example, in seeking fees on a motion to compel the attorney should present an exhibit which segregates the fees incurred seeking the production of requested information from the opposing party, drafting the motion to compel and preparing for and attending the hearing.

An attorney should also segregate fees for which they are entitled to recover from those which they are not, and further. *See Tony Gullo Motors I, L.P.*, 212 S.W.3d at 311; *Kogel v. Robertson*, No. 03-04-00246-CV, 2005 WL 3234627, at *10 (Tex.App.—Austin Dec. 2, 2005).

The practitioner is cautioned that even where testimony and other evidence supporting the reasonableness of a fee request is presented, a court may still find the amount requested to be unreasonable. *See Smalley v. Smalley*, 2012 WL 1448433, No. 09-11-00261-CV at *3-6 (Tex.App.—Beaumont April 26, 2012) (reversing trial court award of \$110,000.00 in appellate attorneys' fees where court considered counsel's testimony, the amount in controversy, the nature and complexity of the case, and the *court's own* "common knowledge and experience..."). Evidence should be presented not only on the *Andersen* factors but specific testimony that the amount requested is reasonable should be elicited. *Tucker v. Thomas*, 2011 WL 6644710, No. 14-09-01081-CV at *14 (Tex.App.—Houston [14th Dist.] Dec. 20, 2011) (finding and abuse of discretion of an award of attorneys' fees based on "invoices showing the attorney's fees she incurred, the work performed, the hours billed, and the billing rates, [where] the record contains no testimony as to whether the fees are reasonable").

D. Opposing a Fee Request

General cross examination of an attorney testifying in support of a fee request is not enough. A practitioner should consider objecting to or questioning the testifying attorneys' fees witness on his or her qualifications as an expert and/or experience to give the testimony, challenge supporting exhibits on evidentiary grounds and make specific inquiries concerning the particular work performed for which an award of fees is sought. *In the Interest of S.E.C.*, 2009 WL 3353624 at *2 (affirming fee award where opposing counsel did not oppose witness qualifications, object to affidavit admitted in support of fees or otherwise attempt to controvert majority of fees sought).

E. Enforcement of a Fee Award

1. As Child Support/Necessaries

Attorneys' fees can be ordered to be paid as child support. *Tucker v. Thomas*, 2011 WL 6644710, No. 14-09-01081-CV at *1 (Tex.App.—Houston [14th Dist.] Dec. 20, 2011) (detailed survey of Texas courts' treatment of fees as necessaries for children and payment of same as child support, holding that "under the Texas Family Code, the trial court in a non-enforcement modification suit has jurisdiction and authority to order a parent to pay reasonable attorney's fees, as additional child support, for legal services benefitting the children"); *cf. Finley v. May*, 154 S.W.3d 196, 198-99 (Tex.App.—Austin 2004, no pet.) The trial court in *Tucker* ordered the parents to each pay one-half of the amicus attorneys' fees as child support and further ordered the father to pay attorneys' fees incurred by the mother as child support. This case provides a comprehensive review and analysis of case law and provisions of the Texas Family Code related to ordering attorneys' fees to be paid to third parties such as guardians ad litem and amicus attorneys on the basis that such fees are necessaries for the children and ordering such payments be made as additional child support. It is advisable that practitioners plead for attorneys fees to awarded be paid as child support, and this specific request should also be included in pretrial forms submitted to the court and testimony elicited supporting the request.

2. Contempt

In certain circumstances an award of attorneys' fees may be enforceable by contempt. As discussed above, an award in a suit to enforce a child support order may be enforced by contempt.

The obligation to pay child support is not considered a debt, but a legal duty. *See Ex parte Hall*, 854 S.W.2d 656, 658 (Tex. 1993). An award of attorneys' fees in a SAPCR may be enforced by the

means available for the judgment for a debt. *Taylor v. Speck*, 308 S.W.3d 81, 84 (Tex.App.—San Antonio 2010, no pet.). However, the Texas Supreme Court has determined that the failure to pay one's child support obligations is also punishable by contempt. *In re Henry*, 154 S.W.3d 594, 596 (Tex. 2005). In *Henry*, respondent failed to pay child support and property taxes pursuant to the final decree and imposed criminal contempt sentence, which was suspended while respondent made weekly child support payments. *Id.* at 595-96. However, respondent failed to comply with the suspension order's conditions and was ordered into confinement. *Id.* The Court determined that an award of attorneys' fees related to child support contempt actions are viewed as costs, not as debts and are therefore enforceable by contempt. *Id.* (citing *Ex parte Helms*, 152 Tex. 480, 259 S.W.2d 184, 188-89 (1953)).

V. WITHDRAWAL FOR FAILURE TO PAY FEES, RECOVERING FEES AND THE STATE BAR OF TEXAS CLIENT-ATTORNEY ASSISTANCE PROGRAM (CAAP)

When a lawyer takes on a matter, that lawyer should endeavor to handle the matter to completion. See Tex. Disciplinary Rules Prof'l Conduct R. 1.15 cmt. 1. However, a lawyer may withdraw from representation on the basis that the client has failed to pay attorneys' fees. Tex. Disciplinary Rules Prof'l Conduct R. 1.15 (b). Texas Disciplinary Rule of Professional Conduct allows an attorney to withdraw from representation if:

- The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services, including an obligation to pay the lawyer's fee as agreed, and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- The representation will result in an unreasonable financial burden on the lawyer or had been rendered unreasonably difficult by the client; or
- Other good cause for withdrawal exists.

Tex. Disciplinary Rules Prof'l Conduct R. 1.15(b)(5)(6), (7); *see also In re Daniels*, 138 S.W.3d 31, 33 (Tex.App.—San Antonio 2004)(finding that attorney established good cause in seeking to withdraw from representation of client where client failed to fulfill obligations under the engagement agreement, including failure to pay attorneys' fees and

the continued representation would result in an unreasonable financial burden on the attorney).

If a client fails to pay the attorneys' fees owed, and the lawyer must withdraw from representation, it may be necessary for the lawyer subsequently to intervene in the underlying divorce proceeding in order to collect the fees owed. *In Wythe II Corporation v. Stone*, lawyer withdrew from representation of client and intervened in the underlying lawsuit between the client and the insurance company. 342 S.W.3d 96, 106-07 (Tex.App.—Beaumont 2011, reh'g denied). The client counterclaimed against the lawyer for breach of fiduciary duty and fraud. *Id.* at 102. However, the Court of Appeals affirmed the trial court's granting of summary judgment in favor of the lawyer on the fee contract. *Id.* at 106-07.

In *Martel v. Martel*, husband's first attorney withdrew from representation and subsequently intervened in the underlying divorce proceeding in order to collect attorneys' fees owed. 2001 WL 996052 (Tex. App.—Dallas, Aug. 31, 2001) *7. The trial court awarded attorney outstanding attorneys' fees and collection costs and the Dallas Court of Appeals affirmed the judgment. *Id.*

The State Bar of Texas has established a procedure for preemptively resolving fee disagreements between attorneys and their clients. The Texas Client-Attorney Assistance Program (CAAP) is a program which mitigates the need for clients to file formal grievances, and then provides assistance if in fact a grievance needs to be filed. The CAAP encourages the client to talk to his or her attorney about any outstanding disagreements on fees and if the disagreement cannot be resolved, to contact the CAAP in order to assist the client in determining if the fee dispute may be resolved without filing a grievance. If the CAAP determined that the attorney has not broken any rules and there is merely a disagreement between the attorney and client, the client will be referred to a local bar association. If it is determined that rules have been broken, then the client will be assisted through the grievance process.

VI. CONCLUSION

Numerous statutory provisions authorize a court to award attorneys' fee to a party. To be successful in obtaining such an award, a practitioner should be mindful of the limitations in the law relevant to the particular basis upon which an award is sought. Clear, detailed and organized billing statements and other exhibits that succinctly set out the basis for the request will increase the likelihood that a court will grant a request for attorneys' fees.

APPENDIX A

[CLIENT]'S ATTORNEYS' FEESLegal Fees and Expenses Previously Incurred

<u>Fees</u>	<u>Hours</u>	<u>Billed</u>	
Attorney/[ATTORNEY1]	0	\$0.00	
Attorney/[ATTORNEY2]	0	\$0.00	
Attorney/[ATTORNEY3]	0	\$0.00	
Paralegals	0	\$0.00	
Litigation Assistants	0	\$0.00	
Subtotal of Attorney's and Staff Fees:			\$0.00
<u>Expert Witness Fees</u>			
[EXPERT1]		\$0.00	
Subtotal of Expert Witness Fees Total			\$0.00
<u>Expenses</u>			
Delivery Fees		\$0.00	
Facsimile Fees		\$0.00	
Federal Express		\$0.00	
Filing Fees		\$0.00	
Long Distance Fees		\$0.00	
Medical Records Fees		\$0.00	
Miscellaneous Fees		\$0.00	
Postage		\$0.00	
Process		\$0.00	
Copies and Bates Labeling		\$0.00	
Secretary of State Records Fee		\$0.00	
Transcripts and Videographer Fees		\$0.00	
Westlaw		\$0.00	
Exhibits		\$0.00	
Subtotal of Expenses Incurred:			\$0.00
Total Legal Fees and Expenses Incurred to Date:			<u>\$0.00</u>

Anticipated Legal Fees and Expenses**Attorney Time - [ATTORNEY1]**

Preparation of pleadings, briefs, injunctions, discovery requests, motions, responses and	0	\$0.00
Work on scheduling hearings, subpoena preparation, document review, exhibits, prepare for hearings	0	\$0.00
Motion and Discovery Hearings	0	\$0.00
Preparation of orders	0	\$0.00
Acquiring signing of orders and communications with opposing counsel regarding orders	0	\$0.00
Work on discovery responses	0	\$0.00
Deposition preparation	0	\$0.00
Depositions of Parties	0	\$0.00
Depositions of Experts	0	\$0.00
Depositions of Lay Witnesses	0	\$0.00
Witness and Opposing Counsel Communication	0	\$0.00
Client conferences and communications	0	\$0.00
Settlement conferences	0	\$0.00
Communications with experts	0	\$0.00
Mediation Preparation and Mediation (two and one- half days)	0	\$0.00
Trial Preparation, Voir Dire, Motions in Limine	0	\$0.00
Jury Trial – 10 days (12 hours per day)	0	\$0.00
Preparation of Decree and Agreement Incident to Divorce and transfer documents	0	\$0.00
Hearings on post-trial issues and preparation of post- trial motions	0	\$0.00

TOTAL [ATTORNEY1]'s time at [RATE1] per hour**\$0.00**

Attorney Time - [ATTORNEY2]

Preparation of pleadings, briefs, injunctions, discovery requests, motions, responses and	0	\$0.00
Work on scheduling hearings, subpoena preparation, document review, exhibits, prepare for hearings	0	\$0.00
Motion and Discovery Hearings	0	\$0.00
Preparation of orders	0	\$0.00
Acquiring signing of orders and communications with opposing counsel regarding orders	0	\$0.00
Work on discovery responses	0	\$0.00
Deposition preparation	0	\$0.00
Depositions of Parties	0	\$0.00
Depositions of Experts	0	\$0.00
Depositions of Lay Witnesses	0	\$0.00
Witness and Opposing Counsel Communication	0	\$0.00
Client conferences and communications	0	\$0.00
Settlement conferences	0	\$0.00
Communications with experts	0	\$0.00
Mediation Preparation and Mediation (two and one- half days)	0	\$0.00
Trial Preparation, Voir Dire, Motions in Limine	0	\$0.00
Jury Trial – 10 days (12 hours per day)	0	\$0.00
Preparation of Decree and Agreement Incident to Divorce and transfer documents	0	\$0.00
Hearings on post-trial issues and preparation of post- trial motions	0	\$0.00

TOTAL [ATTORNEY2]'s time at [RATE2] per hour**\$0.00**

Attorney Time – [ATTORNEY3]

Preparation of pleadings, briefs, injunctions, discovery requests, motions, responses and	0	\$0.00
Work on scheduling hearings, subpoena preparation, document review, exhibits, prepare for hearings	0	\$0.00
Motion and Discovery Hearings	0	\$0.00
Preparation of orders	0	\$0.00
Acquiring signing of orders and communications with opposing counsel regarding orders	0	\$0.00
Work on discovery responses	0	\$0.00
Deposition preparation	0	\$0.00
Depositions of Parties	0	\$0.00
Depositions of Experts	0	\$0.00
Depositions of Lay Witnesses	0	\$0.00
Witness and Opposing Counsel Communication	0	\$0.00
Client conferences and communications	0	\$0.00
Settlement conferences	0	\$0.00
Communications with experts	0	\$0.00
Mediation Preparation and Mediation (two and one- half days)	0	\$0.00
Trial Preparation, Voir Dire, Motions in Limine	0	\$0.00
Jury Trial – 10 days (12 hours per day)	0	\$0.00
Preparation of Decree and Agreement Incident to Divorce and transfer documents	0	\$0.00
Hearings on post-trial issues and preparation of post- trial motions	0	\$0.00

TOTAL [ATTORNEY3] 's time at [RATE3] per hour**\$0.00**

Paralegals' Time

Client contact	0	\$0.00
Hearing Preparation	0	\$0.00
Witness interviews and contacts	0	\$0.00
Deposition Preparation and Summaries	0	\$0.00
Document review and organization	0	\$0.00
Document and subpoena preparation	0	\$0.00
Opposing counsel communication	0	\$0.00
Trial - exhibit and trial preparation	0	\$0.00
Assist with post trial issues	0	\$0.00

TOTAL Paralegal's Time at [RATE4] per hour \$0.00

Litigation Assistants' Time

Client contact	0	\$0.00
Hearing Preparation and Assistance	0	\$0.00
Document Preparation and Review	0	\$0.00
Deposition Preparation and Summaries	0	\$0.00
Opposing counsel communication	0	\$0.00
Trial - exhibit and trial preparation	0	\$0.00
Jury Trial - 10 days (14 hours per day)	0	\$0.00

TOTAL Litigation Assistants' Time at [RATE5] per hour \$0.00

TOTAL ANTICIPATED ATTORNEYS' FEES REQUESTED: \$0.00

Anticipated Costs

Transcripts, Videographer and Depositions	\$0.00
Filing, Subpoena, and Service Fees	\$0.00
Exhibit Preparation	\$0.00
Document Delivery	\$0.00
Copying & faxes	\$0.00
Miscellaneous Costs	\$0.00
Real Estate Experts - Inspections, Report Preparation, Deposition, Trial Preparation and Testimony	\$0.00
Valuation and Characterization Experts - Completion of Valuations, Tracing, Rebuttal, Deposition Preparation and Depositions, Mediation, Trial Preparation and Trial Testimony	\$0.00
Mediation Fees	\$0.00

Total Anticipated Litigation Expenses:**\$0.00****Total Anticipated Legal Fees and Litigation Expenses:****\$0.00**