



The Ultimate Estate Administration Procedures Training Package

MODULE #6:

Setting Your Fees for Administration

SPEAKER

Kristina K. Schneider
Practice Success Coach



COPYRIGHT NOTICE

- The Ultimate Estate Administration Procedures Training Package is the copyrighted material of The Ultimate Estate Planner, Inc.
- This training should only be used in the ordinary course of your estate planning practice and with members of your law practice.
- This product should not be transferred, directly or indirectly, to any others, or used to train others, without the prior written consent of The Ultimate Estate Planner, Inc.



SHOULD YOU CHARGE HOURLY OR FIXED FEES?

Hourly Fees

- Traditionally, most law firms quote an hourly fee for Estate Administration cases
 - There are a lot more moving parts and complexities in EA than EP
- General concern that you're going to underquote a fixed fee and not get properly prepared for time and work involved



Hourly Fees

| PROS | CONS |
|---|--|
| Ensure that you are properly paid for all time (yours and your staff) with any work performed | The nature of hourly billing encourages inefficiency |
| Short-term profitability when first starting out and building your EA processes | The infrastructure to support hourly billing supports more attorney work (higher billable rate) and less delegating, where a lot of tasks are administrative |
| | Much more difficult to quote fees and creates additional anxiety within the prospective client |
| | Software and time involved in tracking time, preparing and reviewing bills, collecting payment (and potential for negotiating!) |
| | |

Fixed Fees

| PROS | CONS |
|--|--|
| Certainty trumps uncertainty (for all involved) | You may underquote a fixed fee and not be able to recoup potential money loss that would have otherwise been made if billing by the hour |
| Demands and results in more efficiency | |
| No time or special software required to track time and bill for time | |
| The infrastructure of most estate planning law firms already supports this model | |
| Better predictability of cash flow | |
| Higher customer satisfaction, which may result in more referrals and more legal work | |
| | |

Should You Charge Hourly or Fixed Fees?

- There are a lot more benefits to a fixed fee model
- BOTTOM LINE: You've gotta do what makes the most sense for your firm
- Things to consider
 - How much EA work are you trying to manage at one time?
 - Are you in need of working more efficiently?
 - Some form of a hybrid pricing model that allows you to quote hourly fees if the matter becomes more complex or cumbersome? (more on this later)

IMPORTANT WARNING



- If you're currently billing by the hour, moving to our efficient process and system may create a significant drop in EA revenue
 - The goal is to be able to make up the revenue in volume and taking on more matters
- There will be a transitional phase that you will experience while you consider moving to fixed fees and implement our efficient processes



HOW DO YOU DETERMINE WHAT TO CHARGE WITH FIXED FEES?

STEP #1:

Track and Monitor Your Current Time

- How much time is it taking you (or your staff) currently to complete billable tasks for EA matters?
- Break these metrics down by task
 - EASIER TO TRACK: inventory preparation, final accounting, sub-trust allocation, distribution documents
 - MORE DIFFICULT TO ESTIMATE: client phone calls, emails, meetings, information and appraisal gathering

STEP #2:

Establish a Minimum Fee

- Setting your fees is more of an art than a science, but these metrics can help you get more scientific to help guarantee you profits!
- Figure out based on your metrics and your hourly billing, what is a median fee?
 - NOTE: Not the average fee!
 - Help minimize potential undercharging

Don't Have Enough Historical Data?

- You may wish start out with an hourly fee billing structure to give you a better understanding
- Consider capping the maximum fee which may help ease the client's anxiety about the fee
- You can also learn what other colleagues charge as fixed fees and test
 - Other attorneys, as well as local banks and professional trustees
 - We recommend charging toward the high end of the fees you learn others are charging

STEP #3:

Create a Fee Schedule

- A written fee schedule will help ease any anxieties that you may have about quoting the fee
 - It also reduces negotiation, because clients will see you consulting a fee schedule to determine your fees vs. arbitrarily quoting a fee out of the air
 - NOTE: This fee schedule is NOT to be given to the client
- Attorney discretion given to quote additional fees within guidelines

Factors to Consider in Determining Discretionary Portion of the Fee

- Types of Assets
 - Real Estate
 - Operating Business
 - Business Entities (LLCs, FLPs, etc.)
- Numbers of accounts
 - Bank accounts
 - Brokerage accounts
 - Annuities
 - IRAs and other retirement plans
- Number of real estate deeds involved
- Number of sub-trusts to be established or funded (AB or ABC Trust)
- Number of beneficiaries/distributions

Guidelines for Maximum Fee Quote

- Not shared with the client, but used as your rule
- **OPTION #1:** Maximum fee is set as percentage of estate size
- **OPTION #2:** In comparison to statutory probate fee or local professional Trustee fees
 - EXAMPLE: Probate fees run 1 to 2%; California Professional Trustee fees run 1 to 1.25%
 - Our maximum guideline is about half of these fees (around 0.5 to 1%)

Services NOT Included in Our Fee Quote

- Services adjunct to, but not part of basic EA
 - Litigation (wrongful death, between the Trustees and beneficiaries)
 - Modifying or terminating a sub-trust (internally through Trust Protector action, consensual agreement or court petition)
 - Other court actions (interpret document, determine rightful heirs, and probate)
- May break these services out and separately quote (now or when becomes necessary)

Let’s Take a Look at Our Fee Schedule

EXHIBIT 38

| FEE SCHEDULE ESTATE ADMINISTRATION | |
|---------------------------------------|----------|
| HOURLY BILLING RATES: | |
| ATTORNEYS | |
| Philip Kavesh | \$600.00 |
| Associate Attorneys | \$500.00 |
| PARALEGALS | \$95.00 |
| EXECUTIVE ASSISTANTS | \$75.00 |

Let's Take a Look at Our Fee Schedule

EXHIBIT 38

| ESTATE ADMINISTRATION FEES | | |
|---|----------------------|---|
| Note: When quoting fees, first calculate number of real properties and multiply by \$500 /// (\$500 for each additional affidavit of death & deed) | | |
| 1ST DEATH | | |
| SMALL ESTATE PACKAGE | \$ 750.00 | (1 Trust cert + 1 Affidavit of Death + Assessor forms - \$250 each) |
| AB OR ABC FUNDING: | \$ 7,000.00 MINIMUM | (ONLY 1 brokerage or retirement account, 1 life ins. policy, 1 deed, 2-3 bank accts, 0 p'ship/LLC/mineral rights or other unusual assets) * +\$1,000 for every add'l 2-3 accounts |
| Family Agreement (Agreement to Modify Trust) | \$ 6,000.00 MINIMUM | (ONLY 1 brokerage or retirement account, 1 life ins. policy, 1 property, 2-3 bank accts, 0 p'ship/LLC/mineral rights or other unusual assets) * +\$1,000 for every add'l 2-3 accounts |
| 706 (taxable at 1st death) | \$ 10,000.00 MINIMUM | |
| 706 - PORTABILITY ONLY | \$ 4,000.00 MINIMUM | (ONLY 1 brokerage or retirement account, 1 life insurance policy, 1 property, 2-3 bank accts, 0 p'ship/LLC/mineral rights or other unusual assets) * Beyond this, start at \$6,000 - the more assets + more complications, higher the fee. E.g. +\$1,000 for every add'l 2-3 accounts |
| BOTH ABC funding and 706 | \$ 11,000.00 MINIMUM | |

Let's Take a Look at Our Fee Schedule

EXHIBIT 38

| ESTATE ADMINISTRATION FEES | | |
|--|---------------------|---|
| Note: When quoting fees, first calculate number of real properties and multiply by \$500 /// (\$500 for each additional affidavit of death & deed) | | |
| 2ND DEATH | | |
| DISTRIBUTION TO BENES | \$ 5,000.00 MINIMUM | for OUTRIGHT distribution where 1 bene who's also ttee (ONLY 1 brokerage or retirement account, 1 life ins. policy, 1 property, 2-3 bank accts, 0 p'ship/LLC/mineral rights or other unusual assets) * +\$500 / each add'l OUTRIGHT bene |
| | \$ 5,500.00 MINIMUM | for 1 bene who's also ttee via PAT distribution, OR, 2 benes via OUTRIGHT |
| | \$ 6,000.00 MINIMUM | for 2 benes PAT * +\$1,000 / each add'l PAT bene * +\$1,000 for every add'l 2-3 accounts * +\$1,000 for every add'l piece of real estate * +\$1,000 for add'l complications (e.g. disinheritance, 13100, unusual assets, difficult client who'll need handholding, etc.) |
| 706 (taxable) | \$10,000.00 MINIMUM | |
| BOTH distribution and 706 (taxable) | \$13,500.00 MINIMUM | |

COURT / SUMMARY PROBATE PROCEDURES

| | |
|---|---|
| SPOUSAL PROPERTY PETITION | \$3,000 + COURT COSTS |
| 15404 PETITION for MODIFICATION / TERMINATION | \$7,500 - \$10,000 (assuming all benes agree) + COURT COSTS |
| 17200 PETITION FOR INSTRUCTIONS (incl. Heggstad) | \$7,500 - \$10,000 + COURT COSTS |
| 13200 PETITION (R/P court confirmed transfer to Trust - no court appearance) | \$1,000/piece of real estate + APPRAISAL FEES + COURT COSTS |
| 13151 PETITION (may req. court appearance) | \$2,000/piece of real estate + APPRAISAL FEES + COURT COSTS |
| 13100 AFFIDAVIT (Under \$150,000 total gross, no R/E over \$20,000) | \$500.00 |

PROBATE

***\$2,500 ESTIMATED COURT COSTS PLUS STATUTORY FEE
(COURT COSTS TO BE HELD IN KMO TRUST ACCOUNT - BALANCE REFUNDED IF NOT 100% USED)

STATUTORY FEE SCHEDULE: **\$1,000,000 = \$23,000 in statutory fees** **0.0230** **2.30%**

| | |
|--|-------------|
| 4% - 1ST 100,000 | \$4,000.00 |
| 3% - 2ND 100,000 | \$3,000.00 |
| 2% - NEXT 800,000 | \$16,000.00 |
| 1% - NEXT 9 MILLION | |
| 1/2% - NEXT 15,000,000 | |
| OVER 25,000,000 REASONABLE AMOUNT ALLOWED BY COURT | |

MAKE SURE YOU CONSULT YOUR STATE RULES REGARDING PROBATE FEES

Let's Take a Look at Our Fee Schedule

EXHIBIT 38

| MISCELLANEOUS | |
|--|---|
| TRUST PROTECTOR ACTION | \$2,500.00 |
| NOTICE OF PROPOSED ACTION | \$1,000.00 (for 2 benes ONLY. +\$500 for every add'l bene) |
| INCAPACITY/TRUSTEE STEP-IN PACKAGE (for surviving spouse) | \$ 750.00 (NOT including Affidavit of Change of Trustee) |
| INCAPACITY/TRUSTEE STEP-IN PACKAGE (for successor ttee AFTER SS) | \$1,250.00 (NOT including Affidavit of Change of Trustee) |
| | * +\$250 if rush order - w/in 1 week of retaining KMO |
| | * +\$250 / each Affidavit of Change of Trustee (incl. assessor forms) |
| AFFIDAVIT OF DEATH w/ assessor forms | \$ 500.00 |
| AFFIDAVIT OF CHANGE OF TRUSTEE w/ assessor forms | \$ 250.00 |
| QUITCLAIM DEED TO KIDS w/Prop 58 | \$ 500.00 |
| POST-EA EP | |
| LPA EXERCISE (over PAT)* | \$500 (if same as trust) - \$2,500 (if essentially whole new trust) |
| TRUSTEE CHANGE (PAT)* | \$500 |
| *If client retains KMO to do own EP > waive fee | |

Let's Take a Look at Our Fee Schedule

EXHIBIT 38

| GIFT TAX RETURNS | |
|--|-------------|
| SINGLE - MINIMUM FEE | \$ 750.00 |
| MARRIED - MINIMUM FEE | \$ 1,000.00 |
| NEED: | |
| GIFT DEED + APPRAISAL OF R/P OR EVIDENCE OF CASH GIFT, ETC | |
| IF R/P-COST BASIS LESS ADJUSTMENTS FOR DEPRECIATION - if rental property | |
| IF GIFT TO ILIT - NEED TRUST IF NOT KMO | |
| IF GIFT OF LIFE INSURANCE - NEED INTERPOLATED TERMINAL RESERVE | |
| SS#'s of DONORS | |
| NAMES & ADDRESSES OF DONEES | |



QUOTING FIXED FEES FOR EA

Ways to “Hedge Your Bet” When Quoting a Fixed Fee for Estate Administration

- **BIGGEST AREA OF CONCERN (UNCERTAINTY):** Time needed for client phone calls, emails and meetings
- Use your Fee Agreement carefully to provide yourself some latitude
 - Permit your firm to charge more (hourly or fixed) if client exceeds a total number of hours stated in the Fee Agreement
 - Can also be used if requested items from client are not provided in a timely fashion
 - We rarely have ever had to bill this extra time (the potential “threat” typically results in client compliance)
- You also have the right to terminate an uncooperative client and bill for all the time and work up to that point!

Ways to “Hedge Your Bet” When Quoting a Fixed Fee for Estate Administration

- You want to be clear with the client about what services are NOT covered
 - Our Fee Agreement (**EXHIBIT 32**) is very clear about what services for which we are being engaged
 - Our Estate Administration Disclosure (**EXHIBIT 33**) is very clear about what services for which we are not being engaged

Let's Take a Look at Our Fee Agreement

EXHIBIT 32

- Simple, one-page Engagement Letter
 - SAVE TIME: Avoid a lot of unnecessary time drafting a lengthy Engagement Letter and then sending to the client
 - CLOSE MORE MATTERS: Get them to engage right at the first meeting and avoid any unnecessary wavering, back-and-forth and chasing down signed engagement letters and payment!

Let's Take a Look at Our Fee Agreement

EXHIBIT 32

FEE AGREEMENT

ESTATE OF _____

CLIENT NAME(S) _____

SERVICES TO BE RENDERED:

- ☐ SMALL ESTATE PACKAGE (TRUST CERTIFICATION, AFFIDAVIT OF DEATH OR DEED)*
- ☐ AB OR ABC ALLOCATION & FUNDING* **
- ☐ DISTRIBUTION TO BENEFICIARIES* ** (TRUSTEE NOTICE, INFORMAL INVENTORY, SETTLEMENT & RELEASE AGREEMENT)
- ☐ PROBATE (Statutory fees plus court costs)
- ☐ AFFIDAVIT OF SMALL ESTATE
- ☐ FEDERAL ESTATE TAX RETURN (706)
- ☐ COURT PETITION AND OTHER SERVICES (OR OTHER INSTRUCTIONS): _____

* Includes Trustee Manual

** Includes affidavit of death and deeds for real estate & instruction letters for non-real estate assets

Let's Take a Look at Our Fee Agreement

EXHIBIT 32

- ☐ A. **FIXED FEE:** _____ **DEPOSIT REQUIRED** _____
This fee includes _____ hours of time for meetings and phone calls. Any additional time will be billed at our normal hourly rates, and you will be notified in advance before you are being billed.

☐ B. In addition to the above, you will be billed at our normal hourly rates (\$85 an hour for a legal assistant, \$250 an hour for an associate), depending upon person performing work to assist you in collection of asset information.

- Typically get a 50% deposit at the initial meeting (time of engagement)
- Notice the line where you fill in the number of hours for meetings, phone calls, and emails
 - Intentionally left blank to give you discretion to provide some level of flexibility

Let's Take a Look at Our Fee Agreement

EXHIBIT 32

The balance of your fee will be due upon our completion of the work. Our firm may terminate this engagement if you are uncooperative, unresponsive to our requests, or issues arise which were not anticipated at the time of engagement. If this engagement is terminated for any reason, by either party, then whether or not the services have been completed, the fee shall be due for all time and work involved to that point.

The fee under paragraph A. is based upon your providing the requested asset information in a timely manner. It is your duty as trustee(s) to do so. If you fail to do so, you may choose to have us do this for you under paragraph B. or we may have to terminate our representation.

The fee under paragraph A. does not include any time for *phone calls, gathering of asset information and/or correspondence with legal counsel of any beneficiaries*. You acknowledge that you have received and read the "Estate Administration Disclosure" (and, if you are Co-Trustees, the "Conflict of Interest Disclosure"), which is hereby made part of this agreement.

This engagement is strictly for the legal services above. We do not provide income tax, investment, insurance or other financial planning services and products which may be obtained through our Affiliated Companies, or any other sources.

- **EXHIBIT 33** – Estate Administration Disclosure
- **EXHIBIT 31** – Conflict of Interest Disclosure

Let's Take a Look at Our Disclosure

EXHIBIT 33

ESTATE ADMINISTRATION DISCLOSURE

You, the client, can assist us by keeping accurate records of transactions, income and expenses and submitting them (and any other requested items) to us in an orderly and prompt fashion when we request them. We will not audit the information you submit and will rely on you for its accuracy and completeness.

It is understood that our fee will be payable whether or not the fee is approved by the beneficiaries of the estate and/or trust or any court. Although you will look to the estate and trust property in the first instance as the source of funds to pay us, and may seek approval of the beneficiaries and/or the court to pay us from the estate or trust, you will, in your individual capacity, be responsible for paying us from your own funds for any part of our fee not paid from the estate or trust property. This in no way implies that you have any personal liability beyond the fee balance agreed upon. This applies regardless of the reason we are not paid from the estate and/or trust.

In a very few isolated cases, the IRS has attempted to disallow counsel fees as a deduction on the federal estate tax return and/or the income tax returns. Although we have not experienced such a challenge and do not anticipate one in this estate, it may be possible that the IRS will try to disallow a portion (or possibly all) of our legal fee as a deduction. In such a case, the fee would still be payable and the decision would be yours as to whether you would wish to protest the IRS disallowance of a deduction for a portion of the fee. Depending upon the circumstances, we might or might not be able to represent you in that matter.

Let's Take a Look at Our Disclosure

EXHIBIT 33

Our experience indicates that from time to time beneficiaries of estates and trusts will turn to us for assistance and information. Generally, we will be able to accommodate them and we will expect to be paid for any such work by them. On the other hand, conflicts among beneficiaries or between the beneficiaries and the Executor or Trustee may arise. Our intention, if such a conflict should arise, would be to cease representing the beneficiary and to continue to represent you as Executor and Trustee. However, circumstances could arise which would force us to end our representation of you as well, and we would then assist you in an orderly transition to a new attorney.

Our engagement does not include:

- Income tax planning or preparation of income tax returns for the estate, trust or beneficiaries:
- Representing you in the event of audit of the federal tax return or any income tax returns; nor
- Investment, insurance or other financial planning services, which you may obtain through our Affiliated Professionals or any other source.

If you desire to obtain any of these services, you must do so by a separate written agreement.

Consider Combining Other Services Into Your Fee Quote

- Consider proposing discounted fees for estate planning work for the surviving spouse, Trustee or beneficiaries with your fee
 - Requires a separate Engagement Letter



GETTING MORE CLIENTS TO ENGAGE YOU

Benefits vs. Cost Analysis

- Most people making a purchase decision are weighing the benefits vs. the cost
- While meeting with the client to explain what needs to be done, you should be identifying benefits to the client for moving forward

Benefits of Your Services

- Peace of mind knowing that the work is being done by a qualified professional
- Reducing their personal liability, as well as the time and headaches of figuring out what to do
- No surprise billings
- The law firm is incentivized to complete the matter quickly
- Most clients have never done this on their own and don't really know what's involved (or have the time)

Move Right to the Close Once You've Shown the Benefits

- *“Let’s start to take this burden off of you right away...”*
- Presenting the simple, pre-formatted Fee Agreement makes it easier to review what’s involved, the cost, and get it signed right at the meeting
- Remind them of other benefits of moving forward today
 - They will receive a Trust Certification before they leave (to help them gain access to certain assets and accounts)
 - This may also be helpful for paying for this out of the estate/trust

IF THEY DO NOT ENGAGE YOU:

Send a Follow-Up Letter

- We send a follow-up letter when not retained within 7 days from the first EA meeting (EXHIBIT 40)
- We stress the importance of administering the Living Trust and extend offer for our firm to help
- We conclude by stating:
 - *“If we do not hear from you within 10 days, we will assume that you have retained other counsel to assist you with respect to this matter. Please be assured this does not impact our continuing representation of you personally with respect to your estate planning matters, if you have so engaged us. We wish you and your family the very best.”*



ADDITIONAL BONUS TIPS

BONUS TIP:

Start Higher than You Initially Determine

- Adapt our Fee Schedule (EXHIBIT 38), Fee Agreement (EXHIBIT 32) and Disclosure (EXHIBIT 33) to your practice
- When first starting out with fixed fees, quote 20% higher than your initial fee you determine
 - Or possibly start out quoting hourly while you get enough data to feel comfortable to quote a fixed fee
 - You can always go back to the client and reduce the fee if initial fee isn't justified (they won't object! 😊)

BONUS TIP:

Periodically Review Your Pricing

- At least once per year
- Help you determine your profitability
- Do an internal audit by tracking hours and doing a matter on fixed fee while putting together a “fake bill” for hourly structure to see how it matches up
- Keep in mind, you may close more matters on a fixed fee pricing structure (so you may make it up in volume)

BONUS TIP:

Keeping Good Time Records

- You want enough backup regarding time spent on matters in case fees are later questioned or you terminate the client (or they cancel their engagement) and you need to bill them for any services already rendered
- Another benefit is to determine your firm's efficiency on the EA process

BONUS TIP:

Consider Utilizing Outside Paralegals and/or Staff Members

- Better leverage attorney time to meeting with clients and doing marketing (as attorney business owner)
- Especially with Probate matters
- Find a way to delegate administrative work down to staff and non-attorneys
- If just starting out, an outside Paralegal may be able to help provide valuable training and set up your internal systems (and help you implement this training!)

The background of the slide is white and filled with numerous blue question marks of varying sizes and orientations, creating a theme of inquiry.

ANY QUESTIONS?

**SEND IN YOUR QUESTIONS TO
EVENTS@ULTIMATEESTATEPLANNER.COM**