

# **Extraordinary Fees... and More**

**Probate Section of the  
SBCBA**

**Wed. Aug. 23, 2023**

**R. Sam Price, J.D., LL.M.**



# Speaker



R. Sam Price, J.D., LL.M.

Certified as a Specialist in Estate Planning, Trust and Probate Law by the State Bar of California Board of Legal Specialization

Admitted to Practice Law:  
November 20, 2000

R. Sam Price is an experienced and highly educated attorney who's passionate about helping others. Sam's exceptional talent is to make complicated legal jargon and court procedures, simple and easy for his clients to comprehend.

Sam is Certified as a Specialist in Estate Planning, Trust & Probate Law by The State Bar of California Board of Legal Specialization. He is the managing attorney of the growing boutique law practice, Price Law Firm, APC, which focuses on probate, estate planning, and trust administration. He made such an impression on an author client that she based a character of a probate attorney on him, in her real-life novel entitled, "Battle of the Wills." He assists clients with protecting their family through estate planning. Sam helps successor trustees administer trusts after the passing of the settlor.

Sam chairs the Estate Planning and Probate Section of the San Bernardino County Bar Association where he organizes monthly educational presentations and an annual Probate Symposium. Sam is also a member of the Executive Committee of the Trusts & Estates Section of the California Lawyers Association.

When he's not working on a legal matter, Sam values time spent with his family; his British TV reporter wife, Tiffany, their six-year-old son; and their beagle, Poppy.

# Agenda



- Statutory Fees
- Extraordinary Fees
- Town Hall and More

# Statutory Commissions



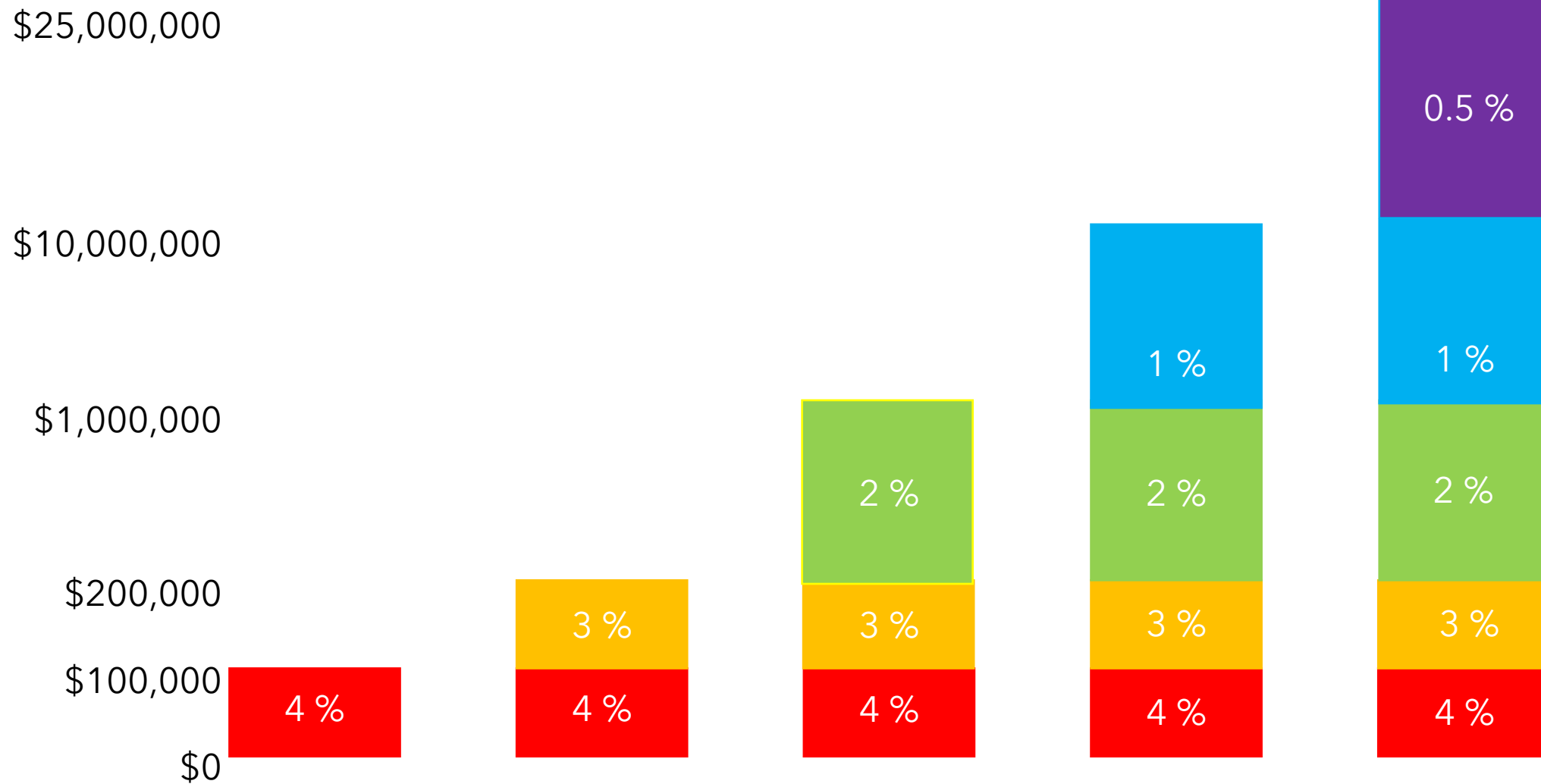
# Statutory Commissions for Attorneys

- For ordinary services the attorney for the personal representative SHALL receive compensation based on the value of the estate (Probate Code §10810(a))
- Shall is mandatory (Probate Code §12)
- The court does not have discretion to decrease the statutory commissions (*Estate of Getty* (1983) 143 Cal.App.3d455, 465-466, 191 Cal.Rptr. 897)
- However, the court may reduce statutory commissions by an amount the court determines is appropriate if the court makes all the following determinations (Probate Code §12205(a); see *Estate of Heller* (1992) 7 Cal.App.4<sup>th</sup> 862, 866 –867, Cal.Rptr.2d 274):
- The time taken for administration exceeds the time required by statute or prescribed by the court.
- The time taken was within the control of the personal representative or attorney whose compensation is being reduced.
- The delay was not in the best interest of the estate or interested persons.

# Value of the Estate

- The value of the estate (Probate Code §10810(b)) =
  - The total amount of the appraisal of property in the inventory (without reference to encumbrances or other obligations on estate property)
  - Plus gains on sales
  - Plus receipts
  - Less losses on sales

# Statutory Commissions for Attorneys



# "Ordinary" Attorney Services

- Ordinary services is not defined in the Probate Code
- Include everything in an ordinary probate case that is not extraordinary services
- Ordinary services should include:
  - Meeting with the client to review and discuss procedures, assets/liabilities, heirs, notices
  - Preparing the petition for probate
  - Ordering publication and mailing notices
  - Preparing required supplements and declarations
  - Preparing inventory and appraisal
  - Handling debts and creditor claims, acceptance or rejection, and payment (unless litigated)
  - Preparing an account or status report
  - Preparing a final account and report, petition for compensation, and final distribution
  - Supervising distribution, preparing receipts, and discharge of the representative



# Extraordinary Fees



# Extraordinary Fees

- An award of extraordinary compensation which is “just and reasonable” for extraordinary services as the attorney for the personal representative of the estate is at the discretion of the court. ([Probate Code §10811\(a\)](#); [Cal. Rules of Ct. Rule 7.703\(a\)](#); [Estate of Gilkison \(1998\) 65 Cal.App.4<sup>th</sup> 1443, 77 Cal.Rptr.2d 463.](#))
- Regardless of the extraordinary services performed, the attorney may be fully compensated for in the statutory commissions for ordinary services. ([Estate of Hilton \(1996\) 44 Cal.App.4<sup>th</sup> 890, 52 Cal.Rptr.2d 491.](#))

# Examples of Extraordinary Services

Some examples of a nonexclusive list of activities for which attorney extraordinary compensation may be awarded are as follows ([Cal. Rules of Ct. Rule 7.703\(c\)](#)):

- (1) Legal services in connection with the sale of property held in the estate;
- (2) Services to secure a loan to pay estate debts;
- (3) Litigation undertaken to benefit the estate or to protect its interests;
- (4) Defense of the personal representative's account;
- (5) Defense of a will contested after its admission to probate;
- (6) Successful defense of a will contested before its admission to probate;
- (7) Successful defense of a personal representative in a removal proceeding;
- (8) Extraordinary efforts to locate estate assets;
- (9) Litigation in support of attorney's request for extraordinary compensation, where prior compensation awards are not adequate compensation under all the circumstances;
- (10) Coordination of ancillary administration; and
- (11) Accounting for a deceased, incapacitated, or absconded personal representative under [Probate Code §10953](#).

# Petition Requirements

A petition for extraordinary compensation must include, or be accompanied by, a statement of the facts upon which the petition is based. The statement of facts must ([Cal. Rules of Ct. Rule 7.702](#)):

- (1) Show the nature and difficulty of the tasks performed;
- (2) Show the results achieved;
- (3) Show the benefit of the services to the estate;
- (4) Specify the amount requested for each category of service performed;
- (5) State the hourly rate of each person who performed services and the hours spent by each of them;
- (6) Describe the services rendered in sufficient detail to demonstrate the productivity of the time spent; and
- (7) State the estimated amount of statutory compensation to be paid by the estate, if the petition is not part of a final account or report.

# San Bernardino Local Rule Requirements

- Applications for extraordinary compensation will not be considered unless both the caption and prayer of the petition, and the notice of hearing of the petition, contain a reference to the application for extraordinary compensation. ([San Bernardino County Superior Court, Local Rules of Court Rule 20-904.](#))
- The application for extraordinary fees must contain an itemized description of services rendered, time expended, and hourly rate. (*Ibid.*)
- All requests for fees shall include separate subtotals setting forth the number of hours charged at each different hourly rate for which payment is requested. (*Id.*)

# Attorney Extraordinary Fees

- Hourly Fees. Usually, extraordinary fees are charged on an hourly basis
- Contingency Fees. An attorney may agree to perform extraordinary services for a personal representative on a contingent-fee basis on the following conditions ([Cal. Rules of Ct. Rule 7.703\(d\)](#)):
  - (1) The agreement must be in writing and must comply with [Business and Professions Code §6147](#);
  - (2) The court must approve the agreement in the manner provided in [Probate Code §10811\(c\)](#), based on findings that the compensation under the agreement is just and reasonable, that the agreement is to the advantage of the estate, and that the agreement is in the best interest of the persons interested in the estate; and
  - (3) In the absence of an emergency or other unusual circumstances, the personal representative must obtain the court's approval of the contingency fee agreement before services are performed under it.

# Paralegal Extraordinary Fees

- Extraordinary services include services by a paralegal performing the extraordinary services under the direction and supervision of an attorney. ([Probate Code §10811\(b\)](#).) The petition for compensation shall set forth the hours spent, and services performed by the paralegal. (*Ibid.*)
- Extraordinary legal services may include the services of a paralegal as defined in Business and Professions Code §6450(a) only if the request for extraordinary legal fees for the paralegal's services ([Cal. Rules of Ct. Rule 7.703\(e\)](#)):
  - (1) Describes the qualifications of the paralegal (including education, certification, continuing education, and experience). The description must state that the paralegal:
    - (A) Acted under the direction and supervision of an attorney;
    - (B) Satisfies one or more of the minimum qualifications specified in [Business and Professions Code §6450\(c\)](#); and
    - (C) Has completed mandatory continuing education required by [Business and Professions Code §6450\(d\)](#) for the last two-year certification period ending before the year during which any part of the paralegal's services were performed.
  - (2) States the hours spent by the paralegal and the hourly rate requested for the paralegal's services;
  - (3) Describes the services performed by the paralegal;
  - (4) States why it was appropriate to use the paralegal's services in the particular case; and
  - (5) Demonstrates that the total amount requested for the extraordinary services of the attorney and the paralegal does not exceed the amount appropriate if the attorney had performed the services without the paralegal's assistance.

# Riverside Extraordinary Fees

- Probate Notes in Riverside County that says “Estate of Hilton/Estate of Walker”
- Tom Dominick provided a great declaration that I will include in the materials on our website.



A glowing yellow tent is pitched on a rocky, snow-dusted mountain peak at night. The tent is illuminated from within, casting a warm yellow light. The background features dark, jagged mountain ranges under a deep blue night sky with a bright star or moon in the upper right. The overall scene conveys a sense of isolation and resilience.

**She works hard for the money.  
So hard for it, honey.**

**Donna Summer**

# Issues with Billing



# Denial of Extraordinary Fees

Some common reasons for why extraordinary fees may be reduced or rejected include:

- You didn't justify why you are able to charge your hourly rate
- The amount of time billed is excessive (you spent more time on the matter than is reasonable)
- The task is unnecessary or is not extraordinary services
- An attorney billed for paralegal tasks (the time entry should be performed by someone other than the attorney at a lower hourly rate)
- The task was not adequately explained (you didn't explain what you did, why you did it, or how it benefits the case)
- The time was double billed by two persons
- The description includes block billing (you combined multiple tasks in a single time entry that makes it impossible to determine how much time was spent on each discrete task)

# Block Billing

- There is a sliding scale to block billing. Although any conjunction or punctuate may be a flag that the narrative describes block billing, that is not always the case. It depends on how related the tasks are to one another. Compare the following two narratives for which is block billing and which is a continuation of the same task:
  - Draft an objection to a petition for probate and evaluate appropriate exhibits for same.
  - Draft an objection to a petition for probate and telephone call to the client regarding what exhibits to include.
- Make a separate entry for meetings and conversation before and after the court appearance. Separate an entry for the evaluation of the file in preparation for a court appearance. Bill separately for your preparation and report afterward: draft outline for use at appearance; draft memorandum to file after hearing; draft client status letter. Bill for travel time separately from the appearance.

# Best Practices for Billing



# Submitting Your Billing

It is important to not only provide an itemization of your services (don't just submit a copy of your invoice), but your declaration should summarize what you did so the judge doesn't have to spend a lot of time going through the invoice.

Give the court enough information to rule in your favor.

# Hourly Billing Practices

There are three elements to every time entry:

1. Hourly rate
  - a. Who did the work?
  - b. What type of work was done?
2. Time element
  - a. Quantify the time spent
  - b. Actual time spend and value added
3. Narrative element
  - a. Specify what you did
  - b. Qualify why you did it
  - c. Qualify how it adds value to the case

# Hourly Rate

- Charging a lower or community standard rate is typically not a problem. It's charging a high hourly rate that may be reduced. Your hourly rate is dependent on your credentials and what type of work is being done. If you want to charge a higher hourly rate, you must explain in your moving papers exactly what qualifications you have to charge that rate. This is the time to brag a little about your education, experience, specialization, etc. Put a little more time in the beginning to get a good narrative of your qualifications and *include it every time* that you are charging your hourly rate.
- The community standard for San Bernardino County is about \$400 per hour. And the highest hourly rate allowed is \$450 per hour. To get the highest hourly rate, you must have the credentials to justify that rate and do work worthy of that rate.
- Just because you have the right credentials does not mean that you can charge the highest rate for all work that you do. The hourly rate that you can charge is also going to be dependent on the work that is performed. Routine or simple work that can be (or should be) done at a lower rate may not get the highest rate. Work that is done by another professional, such as a realtor or title officer, also may not be allowed at all or at a lower rate.



# Time Element

- Quantify the time you spend on a task in 1/10<sup>th</sup> (0.10) of an hour increments. Round up or down when reasonable. Use discretion when billing for quick tasks.
- Keep in mind that the amount of time that you spend on a task must be reasonable. If you spend a lot of time on a task, you may have to justify why you spent so much time. Explain the difficulty or the reason to spend more time. Otherwise, the court may reduce the amount of time for a time entry.
- Watch for double billing of the same time. If you have an attorney and a paralegal on the same phone call, you may not be able to bill for both times. Just bill for the attorney's time, and don't bill for the lower paralegal time, to avoid double billing for the same time.

# Narrative Element

- The more time you spend, the more detailed that your narrative should be. When drafting the narrative description of each task, use this Mad-Libs for Lawyers simple formula:

**[Verb] the [Noun] because of [Basis for Doing So] [With an Optional Kicker].**

- The verb is the action of what you did to the noun that adds value. Each major verb should be a separate time entry to avoid block billing.

# Narrative Element

Use the 5 key verbs of T.R.E.A.D.:

- Telephone call (to/from) (example: Telephone call to opposing counsel regarding...)
- Review (example: Review Competing Petitioner's Objection to Petition for Probate (13 pages plus 8 pages of exhibits))
- Evaluate (strategize) (example: Evaluate strategy of filing Reply to Objection to Petition for Probate based on revelations from the Client)
- Attend (appear, meeting, conference) (example: Attend Remotely Court Hearing on Competing Petition for Probate)
- Draft (example: Draft reply in support of Petition for Probate per the Client's authorization)

# Narrative Element

Next, give the basis for doing what you did. Describe how the task you performed adds value to the case:

- ... to confirm compliance with statutes and rules of court
- ... to achieve prompt resolution of the matter
- ... in preparation for the court hearing/trial/deposition

# Narrative Element

Justify why each task was required:

- ... as authorized by the Client
- ... as ordered by the Court
- ... as required by local custom and procedure
- ... to ensure compliance with statutes and rules of court
- ... to facilitate early resolution of the contested matter

# Narrative Element

Narrative kickers justify the time spent on longer tasks. Some examples include:

- ... and related tasks
- ... and related issues
- ... and prepare same for filing
- ... and appropriate timing of same
- ... and evaluate propriety of same
- ... and evaluate further handling in light of same
- ... and evaluate appropriate response for same

# Narrative Element

You should justify the work performed and how it adds value to the case.

- Authority / Required
- Purpose / Goal Oriented (move case forward)
  - Justify the Amount billed
- Specify / Length (40 pages)
- Results / Necessity

Use adjectives and prepositions that add value:

- ... attend lengthy court hearing on competing petition for probate
- ... review Objectors recently produced copy of birth certificate
- ... attend court ordered mediation conference
- ... draft demurer based on lack of standing
- Specify page counts for large documents. Example: Review objection to petition for probate (9 pages) with voluminous (80 pages) exhibits.

# Narrative Element

Don't just review (read) a document. No one wants to pay you just to read. Justify why you read the document and what action or process you completed from the reading.

After reviewing a document, but before drafting a response, evaluate or strategize your response.

Examples:

- Evaluate propriety of...
- Evaluate appropriate response to...
- Evaluate potential strategy...



# Narrative Element

Use “regarding” to add specificity to your narrative. Regarding can be anything that adds value to the case by moving it forward towards resolution. Examples:

- ... regarding outstanding discovery responses
- ... regarding resolution of the matter
- ... regarding the sale of real property
- ... regarding proposed changes to the terms of the settlement agreement

# Narrative Element

Sometimes, people add value. Name drop to add value:

- Probate Referee
- Expert A. Jones
- Opposing Counsel B. Smith

Avoid sounding secretarial:

- Opposing paralegal is “opposing counsel’s office”
- Runner is “attorney service”
-

# Narrative Examples

## Narrative Examples:

- Review of the purchase agreement (15 pages) on the sale of the estate's real property to ensure compliance with statutes and rules of court and in preparation of drafting a Report of Sale and Petition for Order Confirming Sale of Real Property.
- Drafted a Report of Sale and Petition for Order Confirming Sale of Real Property to request court confirmation of the purchase agreement for the Personal Representative with Limited Authority under the IAEA to sell the estate's real property.
- Telephone call to opposing counsel regarding proposed changes to the terms of the settlement agreement and related issues.

# Questions and Town Hall





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**Thank you**