

SIXTH CIRCUIT GUARDIAN FEE ISSUES

Billing to leave/receive messages, then billing again when they connect with the person – Reductions may be recommended if there are an extraordinary number of such billing entries. Most guardians do *not* bill for messages. However, if a guardian believes that certain messages should be billed, the guardian should, whenever possible, group such messages with the time billed for when they actually connect with the other party. A separate billing entry for a message alone raises a “red flag” and in most instances would not be appropriate without a reasonable explanation in writing. Most phone messages are less than a minute long and, in general, it would be inappropriate to bill the minimum billing increment (0.1 – representing 6 minutes) for something that only took less than 1 minute. Instead of billing for playing “phone tag”, the guardian could round a billing up, when appropriate, for a conversation that lasted for an amount of time that falls between two billing increments. By rounding up in such instances, the guardian will, more often than not, be reasonably compensated for those brief messages.

Bill Paying – While almost every professional guardian in this Circuit only bills 0.1 per bill for paying the ward’s bills, it has been recommended cutting of fees for bill paying when a guardian charged 0.2 per bill and also charged an additional 0.1 just to receive and review the bill. In general, the Court does believe that the compensation for payment of most ordinary and regular bills should be limited to 0.1 per bill, but the Court understands that there may be times when a payment of a bill may justify a higher amount of billed time. For instance, where the payment is of a medical bill that was partially covered by insurance and the guardian must look to the Explanation of Benefits (EOB) provided by the insurance company to make sure that the amount being paid is appropriate, *if there was some sort of problem or confusion in regard to the amount billed that required additional time to resolve the bill issue*, then more than 0.1 may be appropriate. The review of an EOB when paying a bill would *not, in and of itself*, warrant more than 0.1 per bill. But, if there were a billing or insurance *problem*, that is clearly conveyed in the billing description, that could warrant the billing of more than 0.1. Please note that any time that more than 0.1 per bill is charged, the guardian should ensure that the description demonstrates why. Under no circumstances, however, should the guardian exceed the 2 hour per month cap (set forth in the Guardian Fee Guidelines) without providing a written explanation of the *extraordinary* circumstances that they may have experienced in that particular month.

Billing time for billing and paying guardian fees – Both the Sixth Circuit and the Thirteenth Circuit have not been permitting any guardian fee billing related to the billing and payment of guardian fees and orders reducing have been entered at the Court’s request. However, upon request for reconsideration in that regard, by a guardian and a guardianship attorney, and in consideration of the 2003 amendment to Florida Statute §744.108(8) and current case law, the Court has adjusted its position in this regard. The Court will allow a guardian to bill for a review of the detailed billing for the standard six-month reporting period, for sending it to his or her attorney to prepare the petition, and for their payment upon receipt of the order approving fees. However, in general, the time billed in this regard should not exceed 0.2 in any given six-month billing. If extraordinary circumstances exist, the guardian must provide a written explanation justifying any amount more than 0.2. Professional guardians should be utilizing a billing system that compiles billing entries for them, which are noted at the time that the service is performed. Such programs are readily available and are a reasonable cost of doing business as a professional guardian.

If the Court requires additional information from a guardian, which the guardian was not obligated to include in the detailed billing statement in the first place (as determined by the Court), then the guardian would likely be permitted to bill time spent responding to the Court’s request. If a hearing is necessary to resolve a fee petition issue and the guardian prevails and the information provided at the hearing was information that would not normally be required to be included in a fee petition in the first place, then the guardian’s time and their attorney’s time, in connection with that hearing, would be considered part of the

administration of the guardianship and would be payable from guardianship assets. However, if the guardian does not prevail at the fee hearing, the court may not allow the guardian to bill any time or costs in connection with the preparation for and attendance at that hearing. Such determinations will be made on a case by case basis. Additionally, while the attorney for the guardian is entitled to compensation for services rendered at such hearing, the Court may not authorize that compensation to come from guardianship assets, if it is not clear that the services benefited the ward. Such services in instances where the guardian did not prevail may be deemed to be services that benefited the guardian and the attorney for the guardian may need to look to the guardian for payment in that regard.

Further, if a guardian repeatedly fails to provide sufficient itemized descriptions to allow the Court to determine fees without a hearing, then that professional guardian's fee rate may, after warning, be reduced across the board for a period of time specified by the Court. This is an important issue; and, if a particular professional guardian or guardianship agency can not perform his/her/its job in regard to fees to the same standard that all other guardians with the same number of years of experience manage to provide, then that particular guardian's rate will be reduced until the Court sees that the problem has been remedied and the guardian is complying on a consistent basis. Any changes in the guardian's rate will be made by the Administrative Judge for the Division.

Billing for conferences with the guardian's own staff – While it is certainly reasonable for an agency guardian or a guardian with non-clerical support staff to bill 0.1 per month for “monthly staff conferences”, other billing during the month relating to in-house collaboration is being scrutinized more carefully. Of course consulting with an “on-call manager” in an agency or with the guardian himself/herself may be appropriate in many instances when adequately described and supported by an explanation; however, there are times when no explanation is provided or the billing statements clearly demonstrate that a new staff member is consulting with the guardian more than in an average case, mostly because of the learning curve involved for that new staff member. That learning curve is part of the guardian's cost of doing business and not something that the wards should be paying for. Most guardians in the Sixth Circuit do not bill this type of time and most Thirteenth Circuit guardians do not bill it either.

Internal paperwork for agency guardians – There will be no recommended cuts or reductions for internal visit reports, so long as they are not duplicative or unreasonably high (for instance, most monthly visit reports billed are for no more than 0.1), but the Court does consider the completion of *internal payment request forms* as one of the guardian's costs of doing business and not something that the Ward should necessarily pay for.

Billing for scheduling appointments, arranging for companion and transportation and notifying facility, etc. – Most guardians are great about this and only bill the actual time it took to get the job done and group these entries together. However, a few guardians are billing separately (multiple entries) for each part of this process at 0.1 or 0.2 and it sometimes results in a bill for more time than it actually took to handle the issue. For instance, a guardian billed 6 phone calls made just to set everything up for one appointment, and the guardian billed 0.1 for each call, resulting in the guardian seeking payment for 36 minutes of time. When that guardian was asked to think about how long the entire process actually took, in total, it turned out to be one-half the time billed. The Court is obligated to act in the best interest of the ward and having our guardians group related items most often works out to be in the best interest of the ward.

Additionally, many times the ward's living facility can assist with these things, such as setting up transportation. Such services are typically covered by what the wards pay for their residential care. The guardian should not resist such assistance and the ward should not have to pay the guardian to do something that the facility is essentially already being paid to do. Inappropriate billing in this regard will be “red-flagged” by Magistrates and addressed with the individual guardians on a case-by-case basis.

When it is more than an occasional occurrence, the guardian will be warned about it verbally and that will be documented in the guardian's Professional Guardianship file maintained by the Clerk. Where the problem continues after a verbal warning, the guardian will receive a written letter from the Court warning him or her that continued problems in that regard may result in an across-the-board reduction in the guardian's hourly rate, which will be applicable in all of the professional guardian's cases for a period of time specified by the Court.

Charging guardian time for waiting in a doctor's office –The Court understands that there is no way to predict when a patient will actually be called in to see the doctor. Nevertheless, the waiting time for appointments presents a special problem. There will be no recommendations of reductions if the guardians appear to be complying with the following: Guardians, in most cases, are not needed at every medical/dental/health-related appointment that a ward has; and, as a result, the billing statements should not reflect guardian time at every appointment. In general, the ward should not be paying for both a companion at such appointment and the guardian. If the guardian needs to go to the appointment, then a companion should not usually be necessary. Anytime the ward is paying for a companion at such an appointment and is being asked to pay for the guardian to be there as well, the guardian's billing description should demonstrate the extraordinary circumstances that justify both of these expenses. If the guardian needs to be at the appointment (and many times he or she will), then the description should indicate why that is the case and the guardian will be compensated for his or her time.

Reductions for "excessive" time for non-substantive duties (faxing, filing, completing data sheets, etc.) – This has not been a problem with most of our guardians. However, one or two have seen these reductions more than once. We encourage guardians to group these activities when possible. The Magistrates will recommend such reductions where the majority of such non-substantive entries appear excessive in a billing period. If it is only one or two that appear excessive, but the overwhelming majority of such entries are reasonable, the Court will give the guardian the benefit of the doubt. Under no circumstances, however, should the guardian exceed the Clerical Cap set forth in the Guardian Fee Guidelines without providing a written explanation of the *extraordinary* circumstances that they may have experienced in that particular month.

Agency guardians charging for two staff members to do an inventory – One agency guardian often charges for two staff members to do an inventory (2 separate billing entries at their hourly guardian rate). Where the combined amount of the billing would be the reasonable amount for one guardian to conduct the inventory, Magistrates will not recommend any reductions. (So, for example, if two staff members complete the inventory in ½ the time that it would reasonably have taken one guardian to do the job, then the billing would not be cut.) However, if the additional staff person's involvement only costs the ward more money and did not enhance the benefit to the ward, then Magistrates will recommend reductions. The best practice would be to include an explanation as to the time saved by having two staff members complete the task together.

Charging time to speak with court staff (Magistrates) or the Clerk's case examiners – Absent the guardian describing exceptional circumstances in the detailed billing entry, the Court in both the Sixth and Thirteenth Circuits cuts such entries. The Guardian Fee Guidelines specify that calls to and from the clerk, the administrative staff of the court, the general magistrate's assistant or the judicial assistant for issues relating to guardian error should not be billed. Most of these calls relate to errors that have already been made or involve finding out how to avoid errors. In such instances the court-related staff persons are providing a service to the guardians and the guardians are not directly providing service to the wards. Such activity is not, therefore, normally billable to the wards. The magistrates will continue to identify such entries for proposed reduction, unless there is a satisfactory written explanation as to why the ward should pay.

Charging excessive time to file or pick things up at the Clerk's Office (0.3 – 0.4), not inclusive of travel time – The Court's position is that a reduction will depend on whether it was something that could be mailed or faxed. The ward should not pay the guardian's hourly rate to pick things up from the Clerk's Office unless it is actually necessary. For instance, if the guardian needs to come by to pick up the letters of guardianship, because they are needed right away, the time may be billed if determined to be necessary and needed right away. Magistrates will not recommend reduction if the time billed unless it is extraordinarily high or unless it is routinely higher than what any other guardian bills for such activity. If there is a particular reason for an unusually high amount of time billed, the guardian should provide that in the description.

Charging time to hand-deliver documents – Many times we see guardians billing his or her hourly rate to hand-deliver documents or items when a less expensive courier could be used. Reductions will depend on whether this is the result of guardian error or not. For instance, if a guardian hand-delivered documents to the attorney's office because an annual report was due the next day, then that would likely be subject to a reduction – absent a reasonable explanation. The average cost of courier delivery in this area is about \$15.00 – which, in almost all circumstances, would be less expensive than charging the guardian's rate to make personal deliveries.

Excessive time for billing to complete Inventory & Initial Plan or Annual Accounting & Plan – Magistrates add up all billing entries that relate to these tasks and to take a look at the total. The more assets and the more complicated the reports, the more billing the Court will deem reasonable. Grouping these entries would be very helpful. If they are not grouped, a reduction may be taken from the time actually billed to prepare the accounting or plan documents, when it actually related to the total amount of time involved in preparation (gathering bank records, physician's statements, etc.). Please keep this in mind if a reduction is noted. Also, some guardians have billed more time than usual for standard, not out of the ordinary annual reports, without any explanation at all. The Court has noted this to occur most often when a new staff person is preparing the annual reports. As indicated above, in regard to the conferences with the guardian's own staff, if the extraordinary time is the result of a new staff member's learning curve, that extra time is part of the guardian's cost of doing business and should not be billed to a ward. If the guardian wants to report the total time it took that staff member, for record-keeping purposes, then an adjustment or credit must be noted to ensure that the ward is not improperly absorbing this cost of doing business of the guardian.

Billing to review Orders Disapproving and to correct specified errors on plans and accountings – The Magistrates will recommend reductions after looking at the guardian's response and if the guardian should reasonably been able to prevent the disapproval in the first place. For instance, guardians should know to file the bank statement with the annual accountings and guardians should know to include the certificate of service to the ward in a limited guardianship or to the Department of Revenue for the inventory. Where the guardian should have reasonably been able to prevent disapproval, charges will be cut for the guardian's time reviewing the Order Disapproving and filing a response, gathering the information for a response, and preparing amended reports. However, if the Court is requesting more information about something that the guardian may not necessarily have been able to anticipate (perhaps requesting a receipt), the Magistrates will not recommend cutting the time for the guardian's review of the order disapproving or for the guardian's response.

Shopping (over the phone or online & shopping-related travel) – A few guardians are forgetting to designate online shopping as "Shopping" time on the month-end summaries. Both the Sixth Circuit and the Thirteenth Circuit count that activity in the Shopping category. Also, please remember that travel related to shopping should also be designated as "Shopping" time for purposes of the month-end summaries.

Excessive time billed for standard, non-substantive letters – Both Circuits routinely reduce the amount of time for such billing, as is common throughout the State. The Guardian Fee Guidelines indicate that “Non-substantive cover letters to the clerk should *not* be billed.” In keeping with that thinking, simple standard forms (such as completing a change of address form) should either be grouped, whenever possible, with other activities on a particular date to ensure that only the actual time taken is billed or, if unavoidable, only the minimum billing increment of 0.1 should be charged. Some guardians note the form cover letters in their billing, but reflect the item as “NC” or “No charge”.

Time billed to deposit IRS tax refunds – Such refunds should be direct deposited whenever possible. If direct deposit is not being utilized the Magistrates will recommend a reduction unless there was a sufficient written explanation provided with the petition/billing statement.

Time billed to request extensions of time to file reports – Magistrates will recommend cutting or reducing this time, unless the guardian has demonstrated through their billing entry that the reason for needing an extension was beyond their control. The Court will allow some slack in regard to inventories, but not as much in regard to annual reports. The guardian should have all the bank statements needed to file an annual accounting on a timely basis and should have started the process of getting the physician’s statement sufficiently far in advance that a doctor’s delay does would not result in the need for an extension. Also, when the ward resides in a facility, guardians should keep in mind that the facility staff or social worker can be very helpful in that regard.

Billing for photocopies and for time spent photocopying – Occasionally, the Court sees the billing of a “per page” cost for photocopies *and* billing for photocopying time. In general, paying a guardian to make copies is not a reasonable proposition for a ward, especially when it is a guardian with over ten years of experience that is authorized to bill at the rate of \$70.00 per hour. The guardian should utilize copying services whenever it is reasonably available and would benefit the ward. The “per page” cost approach to billing for photocopies should be the normal method of billing for photocopying. However, if a guardian believes that extraordinary circumstances justify billing guardian time for copying, then a written explanation should be provided and the guardian should not bill a “per copy” charge for those photocopies.

Billing time after appointment of successor guardian – A guardian is entitled to bill for all time related to filing the final report and getting discharged. However, once a successor guardian is appointed, ongoing, routine guardian services are to be provided by the successor guardian and not billed by the guardian who resigned. The magistrates will scrutinize billing in these circumstances to avoid two guardians charging a ward for the same services.

Billing for visiting the ward – A guardian is, of course, entitled to bill for visiting a ward. In general a monthly visit is necessary. However, if more frequent visits are needed, the guardian should note that in the guardian fee petition or in the detailed billing - elaborating as to the reason. More often than not, weekly visits to the ward will be considered excessive - absent a reasonable explanation. In certain circumstances, it might be beneficial for the guardian to pay for a companion (available at hourly rate’s considerably less than a professional guardian’s) to visit the ward.

The entry for the visit should state the time of the visit as a single entry and the travel time to the ward’s residence as a single entry.

Hourly reduction - If the guardian is removed as a registered guardian from the Statewide Public Guardianship Office, the guardian’s hourly rate for the time periods in which he/she is not registered will be reduced to the non-professional hourly rate which is currently \$20.00 per hour.

ADDITIONAL CASE SPECIFIC REDUCTIONS –

The Joint Circuit Workgroup on Guardian Fees recommended that the Court consider additional guardian fee reductions due to a guardian's individual failures to meet his/her statutory or court-ordered responsibilities. It was even suggested that a history of repeated non-compliance could result in a reduction of the guardian's fee rate. Examples of the non-compliance they were referring to were specified, as follows:

- late filings
- failure to notify the Court of the ward's relocation
- failure to notify the Court of the current address and telephone number of the guardian
- failure to provide required copies of documents/pleadings to all interested parties, including the ward, when applicable
- failure to timely close the guardianship
- failure to properly transfer the guardianship to the appropriate jurisdiction

The application of these additional reductions has now been more specifically considered by the Court. Many of those reductions are now being adjusted in accordance with the Court's more detailed directives in that regard. So that our guardians will have a better idea of what to expect, we have been asked to elaborate the considerations for you. Reductions will be recommended as follows:

Non-egregious issues of non-compliance (such as one-time, non-habitual late filings or filing only a few days late or a single occasion of forgetting to file bank statements or forgetting to include the Department of Revenue on the inventory's certificate of service) during a typical six month billing period will not automatically result in a recommendation for a reduction. A late filing, missing bank statements, deficient certificate of service or similar instance of non-compliance or combination of such deficiencies (during a billing period) *coupled with a history of prior non-compliance* (in previous billing periods), will result in a *recommendation* of one 5% reduction. Where, in the past year, you may have seen one 5% reduction for a late plan and another 5% reduction for a late accounting, you now may not see any reduction (if there is no history of similar non-compliance) or you may see only one 5% reduction. However, if the same non-compliance issues are repeated in consecutive billing periods, the Magistrates will calculate and recommend an even higher reduction of 10%. Additionally, if the Court conducts an actual hearing as a result of the non-compliance issue, the Magistrates will recommend an additional 5% reduction. **Whether any of these reductions will ultimately be contained in the order on fees will be determined on a case by case basis by the Judges. Additionally, all guardians will start with "a clean slate" in regard to compliance issues. Only fee petitions submitted after May 15, 2007 will be considered when determining issues of repeated non-compliance.**

That judges have indicated that the time spent by the Clerk's Office, the Magistrates and the Court in dealing with such non-compliance issues is a serious matter and must be considered in determining the guardian's appropriate fees. PLEASE NOTE, HOWEVER, THAT THE ORDERS REDUCING ARE NOT INTENDED, IN ANY WAY, SHAPE OR FORM, TO DENY A GUARDIAN DUE PROCESS IN BEING HEARD ON HIS OR HER FEE PETITION. A GUARDIAN IS ALWAYS ENTITLED TO A COURT HEARING ON THE FEE PETITION AND THE ORDERS REDUCING GIVE THE GUARDIAN TWENTY (20) DAYS TO FILE AN OBJECTION TO THE REDUCTIONS SET FORTH IN THE ORDER AND REQUEST A HEARING. THE REASON WHY AN ORDER IS BEING ISSUED FIRST IS TO AUTHORIZE THE GUARDIAN TO TAKE THE AMOUNT OF FEES THAT IS NOT AT ISSUE WITH THE COURT. IF THIS WERE DONE IN A LETTER FORMAT FIRST, THE GUARDIAN MAY NEEDLESSLY END UP WAITING A LONG TIME (UNTIL AFTER A HEARING COULD BE HELD) TO TAKE FEES THAT HE OR SHE IS ENTITLED TO AND THAT ARE NOT

BEING QUESTIONED BY THE COURT. MORE OFTEN THAN NOT, HEARINGS ARE NOT NECESSARY ON GUARDIAN FEE PETITIONS AND THE ADDITIONAL EXPENSE OF AN UNNECESSARY HEARING WOULD NOT BE IN THE BEST INTEREST OF THE WARDS. UNNECESSARY HEARINGS MAY ULTIMATELY COST THE GUARDIAN MONEY, BECAUSE THEY ARE NOT IN ALL INSTANCES ENTITLED TO BE COMPENSATED FOR THOSE HEARINGS AND THEY MAY ALSO BE RESPONSIBLE FOR THE ATTORNEY'S FEES FOR ATTENDANCE AT THE HEARING IN CERTAIN INSTANCES.