

**STATE OF MICHIGAN
OAKLAND COUNTY PROBATE COURT**

**In the Matter of Irrevocable Special Needs
Trust f/b/o [REDACTED]**

**File No: [REDACTED]
Honorable Eugene Arthur Moore**

**Patricia E. Kefalas Dudek,
Former Co-Trustee**

Petitioner

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**PETITIONER'S BRIEF REGARDING APPROVAL OF
CO-TRUSTEE AND ATTORNEY FEES**

Petitioner Patricia E. Kefalas Dudek submits this Brief in support of her Petition requesting that this Honorable Court award and approve Co-Trustee and attorney fees of Petitioner, Dudek and/or her office (collectively referred to herein as "Dudek") for services provided to and for the benefit of the Irrevocable Special Needs Trust f/b/o [REDACTED] and in support thereof states as follows:

PROCEDURAL AND FACTUAL HISTORY

1. Dudek began providing services to [REDACTED] and [REDACTED] (Co-Trustee and mother of [REDACTED]) in 2001 when Dudek was retained to establish a conservatorship for [REDACTED] as a protected individual, coordinate the legal action filed on [REDACTED]'s behalf under the National Childhood Vaccine Injury Act, and the custody dispute between [REDACTED] and her ex-husband [REDACTED] (see Trust Retainer Agreement attached as Exhibit A).
2. Following the settlement of the vaccine injury act suit, Dudek drafted and petitioned the court to create the Irrevocable Special Needs Trust f/b/o [REDACTED] (the "Trust") to be funded with the settlement proceeds (Order attached as Exhibit B).
3. Dudek and [REDACTED] were appointed by the Court to serve as Co-Trustees of the Trust.
4. Over a year into the Trust's administration, the Co-Trustee relationship between Dudek and [REDACTED] proved untenable. [REDACTED] refused to accept Dudek's advice and recommendations on how to manage the Trust for [REDACTED]'s sole benefit.
5. Dudek filed a "Petition for Approval to Withdraw as Co-Trustee; Appointment of New Trustee; Approval of First Annual Accounting of Co-Trustees and Appointment of Guardian ad Litem" on May 3, 2006. (Exhibit H).
6. Over [REDACTED]'s objections, this Honorable Court granted Dudek's Petition and entered an "Order Allowing Withdrawal of Co-Trustee, Patricia E. Kefalas Dudek, Appointment of New Co-Trustee, and Approval of First Annual Accounting of Co-Trustees" on August 15, 2006. (Exhibit I).

7. Dudek filed a "Petition for Approval of Final Account of Co-Trustees for the Period January 1, 2006 Through August 31, 2006, Approval of Legal and Trustee Fees and Discharge Co-Trustee, Patricia E. Kefalas Dudek" on October 17, 2006.
8. A motion for Summary Disposition was filed by Dudek on January 10, 2007.
9. The current Co-Trustees of the Trust, Lauren M. Underwood and [REDACTED] (hereinafter "Co-Trustees") filed a Response to Petitioner's Motion for Summary Disposition on January 29, 2007.
10. Dudek filed an Answer to Co-Trustee's Response to Motion for Summary Disposition on March 5, 2007.
11. A hearing was held on Dudek's Motion for Summary Disposition, during which this Honorable Court denied Dudek's prayer for Summary Disposition, determining that "reasonableness" of fees was a factual inquiry.

ISSUES

1. Did Dudek render Co-Trustee services during the establishment and administration of the Trust, are the fiduciary fees charged by Dudek reasonable, and is she entitled to compensation?
2. Did Dudek render Attorney services during the establishment and administration of the Trust, are the attorney fees charged by Dudek reasonable, and is she entitled to compensation?

ARGUMENT

- I. DUDEK RENDERED CO-TRUSTEE SERVICES DURING THE ESTABLISHMENT AND ADMINISTRATION OF THE TRUST, THE FIDUCIARY FEES CHARGED BY DUDEK ARE REASONABLE, AND SHE IS ENTITLED TO COMPENSATION.

The Estate and Protected Individuals Code provides that a Trustee shall receive just and reasonable compensation for services provided to a Trust. In *Comerica Bank v City of Adrian (In re Estate of Fee)*, 179 Mich App 712, 724; 446 NW2d 553 (1989), the Michigan Court of Appeals set forth twelve factors to be considered in determining the reasonableness of a Trustee's fee:

(1) the size of the trust, (2) the responsibility involved, (3) the character of the work involved, (4) the results achieved, (5) the knowledge, skill, and judgment required and used, (6) the time and the services required, (7) the manner and promptness in performing its duties and responsibilities, (8) any unusual skill or experience of the trustee, (9) the fidelity or disloyalty of the trustee, (10) the amount of risk, (11) the custom in the community for allowances, and (12) any estimate of the trustee of the value of his services. *Id.*

When determining which factors are to be given weight, the probate court is required to consider the circumstances of the case. *Id.* The determination of reasonable compensation is within the probate court's discretion. *Id.*

Dudek was hired by [REDACTED] to provide legal services in establishing a conservatorship, with [REDACTED] serving as conservator, for [REDACTED] as a protected individual. Dudek began her representation in May of 2001. The conservatorship was established in late 2002 and was terminated following the creation of the present Special Needs Trust in the fall of 2004. The Trust was established by the Oakland County Probate Court, the Honorable Eugene A. Moore. The Trust was established with a lump sum payment of

\$332,617.26 and funded with continuing payments from an annuity purchased with an additional \$704,776.18 received from the resolution of a National Childhood Vaccine Injury Act claim filed on behalf of [REDACTED]. The Trust was established with Co-Trustees: Dudek and [REDACTED]

During the first year of the establishment of the Trust, Dudek's Co-Trustee duties were extensive. Dudek initially drafted and established the Trust. As Co-Trustee Dudek was responsible to review, advise, and make a determination on disbursement requests from [REDACTED]. Dudek met directly, in writing, and telephonically with [REDACTED] to explain the Trust provisions, and was often required to clarify [REDACTED]'s misconceptions as to the purpose of the Trust and the proper use of Trust funds. Dudek provided numerous funding options to [REDACTED] with regards to the Trust, provided assistance with mortgage options and provided assistance in obtaining a loan for the purchase of a new home.

Dudek established a bank account for the Trust, made arrangements for an investment account, provided payment to numerous creditors that were entitled to reimbursement prior to the establishment of the Trust, and made extensive disbursements in the first year of the Trust. Many of the disbursements were reimbursements to [REDACTED] for items that had previously been purchased, which required verification of the purchase price and substantiation that the purchase was for [REDACTED]'s sole benefit.

As Co-Trustee, Dudek provided [REDACTED] with long-term plans pursuant to the terms of the Trust, but had to repeatedly counter [REDACTED]'s resistance to the proper use of the Trust funds for the sole benefit of [REDACTED]. Understandably, due to [REDACTED]'s unstable personal financial situation, she became dependent on the Trust's income, even though Dudek had arranged for her to be paid as Co-Trustee and Care Coordinator for [REDACTED]. This led to

█████'s attempts to misuse the Trust's funds for improper purchases, which hindered, to a degree, the security and independence afforded to █████. During this time, Dudek had numerous discussions with █████ as to the disbursements made by the Trust account.

For example:

1. █████ argued about mortgage terms, but failed to secure any lender to loan money to the Trust for the purchase of a home. It was solely through a contact of Dudek that a mortgage was secured (see emails attached as Exhibit C);
2. █████ insisted that the Trust pay for a boat and the marina slip fee, notwithstanding it was not for █████'s sole use (see emails attached as Exhibit C);
3. █████ argued about █████'s father being paid for working on the home (see emails attached as Exhibit C) when he has never provided legal child support for Owen.
4. █████ argued about purchasing █████'s father's house as an investment for the Trust, as well as building and selling houses as an investment and employing █████'s father as the contractor (Exhibit C);
5. █████ argued about the purchase of a treadmill for █████ who uses a wheelchair and, when asked by Dudek, failed to provide a doctor's prescription indicating that this would be for the sole benefit for █████ (Exhibit C);
6. █████ argued about Trustee fees being too high to safeguard █████'s interest, in spite of the fact that the Trust paid █████ a salary to support her living expenses and from which she purchased a Jaguar automobile for herself (Exhibit C); and
7. █████ refused to follow Dudek's advice to invest the Trust money in an investment management program thus failing to provide proper management and security of the Trust assets (Exhibit C).

8. [REDACTED] unilaterally made purchases without the approval or agreement of Dudek, including taking her boyfriend on vacation with her and [REDACTED] at [REDACTED]'s expense.

All of Dudek's actions as Co-Trustee were provided in detailed invoices submitted to [REDACTED] as Co-Trustee on a monthly basis. As detailed in the invoices, the services provided by Dudek were necessary for the efficient administration of the Trust and the resultant fees charged were reasonable (Exhibit D). The time and expenses listed in the invoices, which were previously consented to by [REDACTED] illustrate the reasonableness of Dudek's fiduciary acts and justify the fees for the time, effort, and expense spent in the administration of the Trust.

In accordance with the twelve *Comerica Bank* factors listed *supra*, Dudek's fiduciary fees are reasonable, were for [REDACTED]'s best interests, and she is entitled to compensation. First, the Trust is large; it was established with a lump sum payment of \$332,617.26 and funded with continuing payments from an annuity purchased with an additional \$704,776.18. Second, Dudek was charged with the responsibility of not only protecting the Trust assets from being spent on items not for [REDACTED]'s sole benefit, but Dudek was responsible for complying with the Prudent Investor Rule, and for obtaining government benefits for [REDACTED]. Third, as has been illustrated by the pleadings filed by both parties, the character of the work involved was not only difficult, but was highly contentious. Fourth, during her time as Co-Trustee, Dudek's fiduciary services resulted in the establishment of not only the Trust itself, the purchase and modification of a home for [REDACTED] a bank account, the payment of creditors, the visualization of a long-term plan for the Trust, and protection of the Trust assets from attempts by [REDACTED] to use the assets in

ways that were not for the sole benefit of [REDACTED]. Fifth, the level of knowledge, skill, and judgment required to create and administer a Special Needs Trust, especially when there is an inexperienced Co-Trustee involved, is unquestionably high and time consuming. Sixth, as evidenced by the invoices attached as Exhibit D, a large amount of time and services were required to administer this Trust and protect the assets of the Trust from being used for purposes that were not for [REDACTED]'s sole benefit. Seventh, Dudek provided services to the Trust in a prompt and efficient manner; at times, the most prompt and efficient manner of providing services required the coordination of support staff services. Eighth, as discussed at length below, Dudek is an attorney who possesses an extraordinary amount of skill and expertise and is a nationally recognized leader in the area of estate planning for persons with disabilities and parents of children with disabilities. Ninth, Dudek was never disloyal to the Trust or [REDACTED], and Dudek only motioned this Honorable Court to be removed as Co-Trustee when her discourse with [REDACTED] ceased being beneficial to the Trust and [REDACTED] began to use Trust assets unilaterally. Exhibit H. Tenth, a Trustee of a Special Needs Trust always faces a certain amount of risk due to the extensive tax, Medicaid, and SSI regulations concerning Special Needs Trusts, and coordination of same with the Federal Vaccine Compensation Act. Eleven, it is customary for Co-Trustees to be paid for their services. Lastly, Dudek has estimated the value of the services she rendered as Co-Trustee as being worth \$250 (or more). This estimation is based upon her own experience as well as the expert opinions of other well-known and highly respected attorneys in this field. For example, Attorney Elizabeth Luckenbach Brown, of Jaffe Raitt Heuer & Weiss, P.C., believes that other Trustees of Special Needs Trust charge between \$200.00 and \$300.00 an hour; Attorney Sanford

Mall, of the Mall Malisow Firm, PC, charges \$275.00 per hour when acting as the Trustee of a Special Needs Trust, and believes that other attorneys in this field charge between \$200.00 and \$300.00 an hour; and Attorney Don Rosenberg of Barron Rosenberg Mayoras & Mayoras charges \$250.00 per hour when acting as the Trustee of a Special Needs Trust, and believes that other attorneys in this field charge between \$200.00 and \$300.00 per hour. Exhibit F.

Under the circumstances of this case, the services Dudek provided as Co-Trustee were rendered necessary; and as determined under the *Comerica Bank* factors, *supra*, the Co-Trustee fees charged by Dudek are reasonable. All of Dudek's charged activities were set forth in the first, second, and final accountings prepared by Dudek and provided to [REDACTED]. The services performed were in the best interests of [REDACTED] and the Trust and benefited both the Trust and [REDACTED]. The accountings are true and accurate. There is no wrongdoing on the part of Dudek as Co-Trustee and there is no viable objection to her performance as Co-Trustee or the fees charged for her service. As such, Dudek is entitled to compensation for Trustee fees in the amount \$8,686.71 (\$5,386.70 outstanding) for the period covered by the second and final accounting.

II. DUDEK RENDERED ATTORNEY SERVICES DURING THE ESTABLISHMENT AND ADMINISTRATION OF THE TRUST, THE ATTORNEY FEES CHARGED BY DUDEK ARE REASONABLE, AND SHE IS ENTITLED TO COMPENSATION.

An attorney is entitled to recover reasonable compensation for her services. MCL 700.5413; *In re Estate of Esther Benfer*, Michigan Court of Appeals, per curium decision, No. 262895 (Nov 21, 2006). "To be chargeable against the estate, the attorney fees must

be for services rendered on behalf and befitting the estate.” *In re Prichard Estate*, 164 Mich App 82, 86 (2987).

Michigan Rule of Professional Conduct 1.5(a) states that

A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, 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.
- emphasis added.*

In addition to the clear statutory authority for this Honorable Court to approve the Co-Trustee and Attorney fees of Dudek, case law supports the application of *quantum meruit*. *Quantum meruit* is literally translated as “as much as he as deserved” and is defined as “a claim or right of action for the reasonable value of services rendered.” *Black's Law Dictionary* 1255 (Bryan A. Garner ed., 7th ed, West, 1990). The Court of Appeals in *Reynolds v Polen*, 222 Mich App 20; 564 NW2d 467 (1997) stated “A clear line of authority indicates that when an attorney rightfully withdraws from a matter, recovery of attorney fees on a *quantum meruit* basis is appropriate.”

Michigan case law has established a test to determine the reasonableness of challenged attorney’s fees. A probate court has broad discretion in determining what

amount constitutes reasonable compensation for attorney services, *In re Estate of L'Esperance*, 131 Mich App 496 (1994); *In re Krueger Estate*, 176 Mich App 241, 248 (1989), and where the amount of attorney's fees is in dispute, each case must be reviewed in light of its own particular facts. *In re Martin*, 205 Mich App 96, 109-110 (1994), rev'd on other grounds, 450 Mich 204 (1995). In making this determination, the probate court has directed that it should adhere to the guidelines for determining "reasonableness" set forth in *Crawley v Schick*, 48 Mich App 728, 737 (1973). *L'Esperance, supra*, at 501.

The Court in *Crawley* stated:

There is no precise formula for computing the reasonableness of an attorney's fee. However, among the facts to be taken into consideration in determining the reasonableness of a fee include, but are not limited to, the following: (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client.

48 Mich App at 737. The Michigan Supreme Court adopted the *Crawley* standards in *Wood v DAHE*, 413 Mich 573, 588 (1982).

Although there is no universal yardstick which can be used to measure the reasonableness of charges for services of all attorneys, it may be generally stated that among the principal elements or factors to be considered in determining the fair and reasonable value of an attorney's services are the skill and experience called for, the character of the services, the importance of the case, the time spent, the expenses incurred, the difficulty of the case, the professional standing of the attorney, and the results accomplished. A particular charge or allowance for legal services rendered will be sustained if, on a consideration of all the facts and circumstances, in accordance with

the rules stated above, the amount thereof is determined to be sufficient, reasonable, and proper.

In *Crawley*, the Court adopted several of the general standards of the Code of Professional Responsibility and Ethics, Disciplinary Rule 2-106, for determining reasonable attorney fees. Although Disciplinary Rule 2-106(B) relied on in *Crawley* has been repealed, its successor, MRPC 1.5(a), is substantially the same. That rule parrots the *Crawley* factors with the addition of one supplementary relevant factor--that the fee charged is in line with fees customarily charged in the locality for similar legal services. MRPC 1.5(a)(3).

Pursuant to these factors there is no question that the attorney fees Dudek charged for legal services rendered to the Trust are reasonable for the time period in question. Based on the difficulty of the matter, the appropriateness of the time allocated to the services listed in the invoices, the reasonable hourly rate charged, and Dudek's expertise in the administration of special needs trusts, the hourly rate and amount of time expended constitute an appropriate amount of attorney's fees charged. The Trust (and [REDACTED]) was well served and received value and protection from Dudek's legal representation.

First and foremost, the hourly rate charged by Dudek for legal services was reasonable and customary, and was clearly known to [REDACTED]. Pursuant to the Trust Retainer Agreement (Exhibit A) [REDACTED] entered with Dudek in 2002, Dudek initially charged the Trust \$200 per hour for her attorney services.¹ The hourly rate was later increased to \$250 per hour as authorized by the retainer agreement. The Trust Retainer Agreement provides in pertinent part:

¹ It is without question that [REDACTED] was aware and agreed to the initial hourly rate of \$200 per hour. While Dudek maintains that the increased rate of \$250 per hour is reasonable and should be approved, it is clear that the rate amount cannot be below \$200 per hour.

[T]he attorneys shall be paid at the rate of Two Hundred (\$200.00) Dollars per hour....These hourly rates may increase during a lengthy representation and you will be charged accordingly.

* * *

We will send you monthly statements to you detailing the services provided. In addition to the fees, our firm will advance costs as may be needed on your behalf. Typical costs include such items as filing fees for petitions and delivery to the court, express mail charges and any out of pocket costs. ...

* * *

...All accounts not paid in full are subject to seven (7) percent interest annually.

██████ was provided copies of the legal services invoices which clearly reflected the work provided by Dudek, the costs forwarded and the increased \$250 hourly rate. The increase in the hourly rate was clearly detailed in the Trust Retainer Agreement that Rice agreed to (Exhibit A).

The increase in the hourly rate was not an indiscriminate change, rather it came after Dudek had provided legal services to ██████ and the conservatorship created to manage ██████'s estate. This interaction with ██████ and ██████ predates the creation of and services provided to the Trust. As stated *supra*, Dudek was hired by ██████ to provide legal services in establishing a conservatorship, with ██████ serving as conservator, for ██████ as a protected individual. Dudek began her representation in May of 2001. The conservatorship was established in late 2002 and was terminated following the creation of the present Special Needs Trust in the fall of 2004. During this period Dudek successfully defended against an attempt by ██████'s father to be appointed co-conservator and co-trustee, maintained Supplemental Security Income ("SSI"), Medicaid, and Community Mental Health Services through MORC, Inc.

Dudek charged \$200 per hour for this multitude of services, but because [REDACTED] and [REDACTED]'s conservatorship did not have the assets to pay the legal fees, Dudek's bills were not paid during this **three and one half year period**. Not until the vaccine injury settlement had been paid to [REDACTED]'s estate did Dudek receive any compensation for services provided and even then Dudek voluntarily waived the imposition of the seven percent interest she was contractually entitled to under the retainer agreement. This Court authorized a payment to Dudek to be made from the Trust (Exhibit B). By that time Dudek's legal services bill had grown to \$10,908.17.

It was only after this extended period of unpaid representation that Dudek increased the hourly rate to \$250--a rate that is reasonable and customary for attorneys of Dudek's experience and expertise. The \$250 hourly rate is within the range of expected and accepted rates charged by attorneys in Southeast Michigan and in particular attorneys that practice in the area of estate planning for persons with disabilities.²

As stated in Dudek's Motion for Summary Disposition, Dudek has practiced in the area of probate and special needs estate planning for over 14 years. She is a nationally recognized leader in the area of estate planning for persons with disabilities and parents of children with disabilities. She is the former chairwoman of the Elder Law and Advocacy Section of the State Bar of Michigan, and a member of the Probate and Estate Planning Section. Dudek is the immediate past chair of the National Academy of Elder Law Attorneys' (NAELA) Trust Special Interest Group. Dudek is a frequent

² By way of comparison, the hourly rate is the same charged by [REDACTED]'s personal attorney, Kenneth Hardin, an attorney with limited to no experience in protecting the rights of people with disabilities or the administration of special needs trusts. Hardin's fees were paid unilaterally by [REDACTED] to object to supervision of this Trust and the appointment of a GAL to protect Owen's best interests. If any fees are unreasonable, Dudek contends they are Hardin's legal fees.

lecturer on the topic of special needs trusts and is a distinguished presenter and recent key-note speaker at NAELA conferences, and the 2005 NAELA Pawley Award Winner.

The skill, time, and labor required in administering a Special Needs Trust in general is considerable; and this effort was only exacerbated by the difficult interaction with Co-Trustee [REDACTED]. Dudek drafted and established the Special Needs Trust for the benefit of [REDACTED]. Through Dudek's efforts the Trust has been managed to assist [REDACTED]'s financial affairs in order to provide him with the greatest degree of security and independence and serve his best interests. The nature and the length of Dudek's professional relationship with [REDACTED] and the Trust justifies the fees charged by Dudek, and thus the fees are not excessive under MRPC 1.5(a)(6) and the factors enumerated in *Crawley, supra*. Further, the unpaid fees were required for Dudek to act in [REDACTED]'s best interests, to disallow these fees now serves to punish Dudek for Petitioning for Supervision of the Trust and the appointment of a GAL to protect [REDACTED].

Dudek charged \$200-250.00 per hour for her specialized services. Other similarly situated attorneys, who specialize in Probate, Estate, and Trust Administration, in Michigan, charge amounts similar to or higher than Dudek. For example, Attorney Doug Chalgian of Chalgian & Tripp Law Offices, PLLC, Lansing, Michigan, charges \$250.00 per hour, and Attorney Norman Harrison, of Saginaw, Michigan charges \$200.00 to \$250.00 per hour for attorney services. Exhibit E. Attorneys who are similarly situated, and are in Dudek's locality, also charge an hourly rate that is similar to that charged by Dudek. For example, Attorney Josh Ard, J.D., M.B.A., Ph.D., of Williamston, Michigan, charges \$275.00 to \$300.00 per hour when providing attorney services, Attorney Elizabeth Luckenbach Brown of Jaffe Raitt Heuer & Weiss, P.C., Southfield, Michigan,

charges \$225.00 per hour, Professor George A. Cooney of the Law Offices of George A. Cooney, Jr., Farmington Hills, Michigan, charges \$300.00 per hour, Attorney Michele P. Fuller, of Fuller & Stubbs, PLLC, Shelby Township, Michigan, charges \$225.00 per hour, Attorney Sanford Mall, of the Mall Malisow Firm, PC, Farmington Hills, Michigan, charges \$275.00 per hour, and Attorney Don Rosenberg of Barron Rosenberg Mayoras & Mayoras, Troy, Michigan, charges \$250.00 per hour for attorney services. Exhibit F. If other attorneys in the locality charge fees that are approximately the same fees or higher fees for similar legal services, then Dudek's fees are neither excessive or unreasonable under MRPC 1.5(a)(3). [REDACTED] objects to Dudek's fees because she is angry Dudek petitioned for Supervision of the Trust and appointment of a GAL for [REDACTED]. [REDACTED] also threatened Dudek with a malpractice suit.

In the Response of Co-Trustees to Motion for Summary Disposition of Patricia E. Kefalas Dudek, Co-Trustees unsoundly relied on outdated surveys from 2000 and 2003 concerning the hourly rates of attorneys specializing in Probate, Estate, and Trust Administration. During the winter of 2006, an extensive survey was conducted by the Probate and Estate Planning Section of the Michigan Bar which led to the publication of the *2006 Desktop Reference on the Economics of Probate and Estate Planning Practice in Michigan*, made available in the Winter 2006 Michigan Probate and Estate Planning Journal. The *2006 Desktop Reference* provides separate tables and reference materials concerning the hourly billing practices for attorneys by office locale, degree of specialization, firm size, classification of services rendered, and number of years in practice. Relevant portions of the *2006 Desktop Reference* are attached as Exhibit G.

According to the *2006 Desktop Reference*, the range of hourly rates for Trust Administration of an office located in Oakland County, south of highway M-59, is between \$100 and \$410. The range of hourly billing rates for an attorney who spends 100% of her time in Probate and Estate practice is \$100 and \$495 per hour, with a mean average of \$224 and the upper quartile charging \$251. A partner in a firm with two to seven partners will typically charge between \$135 and \$300 hourly, with a mean average of \$206 and the upper quartile charging \$228 per hour. Additionally, an attorney who has eleven to fifteen years of experience in this niche of the law will typically charge between \$175 and \$385 per hour, with a mean average of \$203 and the upper quartile charging \$225.

According to the *2006 Desktop Reference*, the highest hourly rates are above \$400, sometimes nearing \$500. Even if this court were to ignore Dudek's uniquely high degree of expertise in the field of special needs estate planning, simply being an attorney who practices in Oakland County, spends 100% of her time specializing in Probate and Estate matters, is a partner in a firm with five partners and has fourteen years of experience, the hourly rates that Dudek charged were in conformance with the hourly rates charged by similarly situated attorneys. Taking her level of expertise into consideration, Dudek's billing practices should be compared to attorneys who are charging the maximum rates. As such, Dudek's rate of \$250 was drastically beneath the reported amounts that reached as high as \$495 for Trust Administration and \$410 for Conservatorships. While Dudek is not petitioning this court to retroactively increase the hourly billing rate charged to the Trust, it is important to note that the fees sought by

Dudek are radically below what the Trust could have been charged. Further, Dudek has been forced to spend considerable time and energy to defend these fees.

Providing legal services to a Special Needs Trust is a cumbersome task, which requires a large amount of skill and experience. [REDACTED] and the Trust benefited from Dudek's fourteen years of experience as a Probate and Estate Planning attorney, and Dudek spent a large amount of time protecting the Trust from [REDACTED]'s attempts to misuse the assets. Considering the lengthy nature of her relationship with [REDACTED] and the Trust, and the statements provided by other highly esteemed attorneys in this field which unanimously support the conclusion that Dudek's fees are reasonable, this Honorable Court should approve the requested attorney fees in the amount of \$9,234.78 (\$6,636.78 outstanding) for the period covered by the second and final accounting of the Trust.

RELIEF REQUESTED

Dudek respectfully requests that this Honorable Court enter an order approving the payment of:

- A. Trustee fees in the amount of \$13,764.86, and attorney fees in the amount \$19,222.54 for the period covered by the first accounting;
- B. Trustee fees in the amount \$8,686.71 (\$5,386.70 outstanding) for the period covered by the second and final accounting;
- C. Attorney fees in the amount \$9,234.78 (\$6,636.78 outstanding) for the period covered by the second and final accounting;
- D. Annual interest in the amount of 7% accrued on the unpaid attorney and co-trustee fees, as agreed to in the written retainer agreement.
- E. All legal and trustee fees incurred by Dudek to transition Trust funds to the new co-trustee; and
- F. Directing the new co-trustee to pay Dudek all unpaid fees immediately.

Respectfully submitted,

HAFELI STARAN HALLAHAN
CHRIST & DUDEK, P.C.

Date: _____

By: _____
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