

By: Harris

S.B. No. 286

A BILL TO BE ENTITLED

AN ACT

relating to attorney's fees and other amounts taxed as costs in guardianship proceedings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 665A, Texas Probate Code, is amended to read as follows:

Sec. 665A. PAYMENT FOR PROFESSIONAL SERVICES. The court shall order the payment of a fee in an amount set by the court that is fair and just as compensation to the attorneys, mental health professionals, and interpreters appointed under this chapter, as applicable, to be taxed as costs in the case. The court may allocate attorney's fees taxed as costs under this section among the parties as the court finds is fair and just. If after examining the proposed ward's assets the court determines the proposed ward is unable to pay for costs allocated to the proposed ward for services provided by an attorney, a mental health professional, or an interpreter appointed under this chapter, as applicable, the county is responsible for those costs [~~the cost of those services~~].

SECTION 2. Section 665B, Texas Probate Code, as amended by Chapters 314 (H.B. 587) and 930 (H.B. 3080), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

Sec. 665B. PAYMENT OF ATTORNEY'S FEES TO CERTAIN ATTORNEYS.

(a) A court that creates a guardianship or creates a management

1 trust under Section 867 of this code for a ward under this chapter,  
2 on request of a person who filed an application to be appointed  
3 guardian of the proposed ward, an application for the appointment  
4 of another suitable person as guardian of the proposed ward, or an  
5 application for the creation of the management trust, may authorize  
6 the payment of reasonable and necessary attorney's fees, as  
7 determined by the court, in amounts the court considers fair and  
8 just, to an attorney who represents the person who filed the  
9 application at the application hearing, regardless of whether the  
10 person is appointed the ward's guardian or whether a management  
11 trust is created, from:

12           (1) subject to Subsection (a-1) of this section, the  
13 parties to the guardianship proceeding, allocated as the court  
14 finds is fair and just; or

15           (2) subject to Subsection (a-1) of this section,  
16 available funds of the [~~ward's estate or~~] management trust, if  
17 created.

18           (a-1) The court may authorize amounts allocated to the  
19 ward's estate under Subsection (a)(1) of this section or amounts to  
20 be paid from available funds of the management trust as provided by  
21 Subsection (a)(2) of this section to instead be paid from the county  
22 treasury, [~~or~~

23           [~~(2)~~] subject to Subsection (c) of this section, [~~the~~  
24 ~~county treasury~~] if:

25           (1) [~~(A)~~] the ward's estate or [~~if created,~~]  
26 management trust[~~or~~] is insufficient to pay [~~for~~] the amounts  
27 [~~services provided by the attorney~~]; and

1           (2) [~~(B)~~] funds in the county treasury are budgeted  
2 for that purpose.

3           (b) The court may not authorize attorney's fees under this  
4 section unless the court finds that the applicant acted in good  
5 faith and for just cause in the filing and prosecution of the  
6 application.

7           (c) The court may authorize the payment of attorney's fees  
8 from the county treasury under Subsection (a-1) [~~(a)~~] of this  
9 section only if the court is satisfied that the attorney to whom the  
10 fees will be paid has not received, and is not seeking, payment for  
11 the services described by that subsection from any other source.

12           SECTION 3. Section 669(a), Texas Probate Code, is amended  
13 to read as follows:

14           (a) Except as provided by Subsection (b) of this section or  
15 Section 665A or 665B(a) of this code, in a guardianship matter, the  
16 cost of the proceeding, including the cost of the guardian ad litem  
17 or court visitor, shall be set in an amount the court considers fair  
18 and just and shall be paid out of the guardianship estate, or, if  
19 the estate is insufficient to pay for the cost of the proceeding,  
20 the cost of the proceeding shall be paid out of the county treasury,  
21 and the judgment of the court shall be issued accordingly.

22           SECTION 4. The changes in law made by this Act apply to a  
23 guardianship created before, on, or after the effective date of  
24 this Act.

25           SECTION 5. This Act takes effect immediately if it receives  
26 a vote of two-thirds of all the members elected to each house, as  
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2011.