

**JUDICIAL DISCRETION WITHIN THE FLORIDA PROBATE  
FIELD: GUIDING JUDGES TO FIND THE PROPER BALANCE  
BETWEEN UPHOLDING ATTORNEYS’ FEES AND  
MAINTAINING THE INTERESTS OF THE CLIENT**

NATALIE OWCHARIW\*

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\* Natalie Mae Owchariw earned a Bachelor of Arts degree in Criminal Justice and a Master of Science degree in Criminology at Florida Atlantic University, graduating *summa cum laude*. Natalie is currently a Juris Doctor candidate for May 2025 at Nova Southeastern University, Shepard Broad College of Law. Natalie would first like to express that she would not have been able to write this Comment without her faith in God. Her faith is one of the main influences that has encouraged her to pursue a legal career. Second, she would like to thank her parents, Nancy Garcia and Theodor Owchariw II, for their sacrifice, faith, unwavering support, unconditional love, and for teaching her to dream big. Lastly, Natalie extends her gratitude to the executive and editorial board members and her colleagues of *Nova Law Review*, Volume 48, for their hard work and dedication in perfecting this Comment. Natalie was inspired to write this Comment while interning for two probate judges after her first year of law school.

## I. INTRODUCTION

The proper function of our legal system relies on the essential role of attorneys' fees.<sup>1</sup> Failure to manage these fees appropriately can undermine the entire legal system.<sup>2</sup> In the realm of probate law, attorneys' fees are unique because probate courts are courts of equity.<sup>3</sup> This grants probate judges the authority to uphold or reduce attorneys' fees when necessary to safeguard client interests.<sup>4</sup> However, because probate judges possess this broad discretion over fees, preventing abuse of this discretion is crucial.<sup>5</sup> In Florida, when probate trial judges are alleged to have abused their discretion, the appellate court steps in to determine whether their decisions were "arbitrary, fanciful, or unreasonable."<sup>6</sup> To further understand attorneys' fees and judicial discretion within the probate field, Part II of this Comment will provide a background on probate law.<sup>7</sup> This Comment will focus specifically on the administration of estates and guardianship, which will be discussed in Parts II, IV, and V of this Comment.<sup>8</sup> Parts III and IV will analyze the cost of estates, the duration of the probate process, and the type of demographics of probate clients.<sup>9</sup> Next, attorneys' fees in Florida will be discussed in Part IV.<sup>10</sup> Part IV will then center on the origin and nature of the Model Rules of Professional Conduct, the Florida Probate Code, and Florida Statutes.<sup>11</sup> For a better understanding of judicial discretion, Part V will explore Florida appellate case law, providing an analysis on the current approach employed by probate judges when reducing attorneys' fees.<sup>12</sup> Part VI will delve into future

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1. See Fla. Bar v. Richardson, 574 So. 2d 60, 62 (Fla. 1990) (per curiam).

2. See *id.*; John R. Bradwell, *Excessive Fees in Probate Matters*, 12 J. LEGAL PRO. 161, 161 (1987) (explaining that the legal field cannot properly function in society if attorneys' fees are not reasonable and if clients are unable to pay attorneys' fees).

3. See *Townsend v. Mansfield*, 329 So. 3d 174, 175 (Fla. 1st Dist. Ct. App. 2021) (per curiam); Jeffrey Skatoff, *Power to Award Appellate Attorney's Fees for Services Rendered to an Estate Belongs Exclusively to Florida Probate Court*, PROB. STARS, <http://probatestars.com/power-to-award-appellate-attorneys-fees-for-services-rendered-to-an-estate-belongs-exclusively-to-florida-probate-court/> (last visited Dec. 20, 2023).

4. Bradwell, *supra* note 2, at 161.

5. See Jack R. Reiter, *Judging Your Appeal: A Practitioner's Perspective*, FLA. BAR J., May 2010, at 34, 35; Skatoff, *supra* note 3 (explaining that the probate court has exclusive jurisdiction to use its discretion to award and reduce attorneys' fees); *Townsend*, 329 So. 3d at 175; *Cournand v. Lucor Corp.*, 114 So. 2d 733, 736 (Fla. 2d Dist. Ct. App. 1959).

6. Reiter, *supra* note 5, at 34.

7. See discussion *infra* Part II.

8. See discussion *infra* Parts II, IV, V.

9. See discussion *infra* Parts III, IV.

10. See discussion *infra* Part IV.

11. See discussion *infra* Part IV.

12. See discussion *infra* Part V.

implications, suggesting the implementation of a two-step balancing test at the trial and appellate court level to effectively safeguard attorneys' fees and prioritize the interests of the client.<sup>13</sup> Part VII will conclude with a summary of the issues and implications explored in this Comment.<sup>14</sup>

## II. BACKGROUND ON PROBATE LAW

Probate is said to come in “two flavors”: living probate and death probate.<sup>15</sup> Living probate deals with the legal process when an individual is alive but disabled or mentally incapacitated.<sup>16</sup> Death probate, on the other hand, deals with the legal process when the person is deceased.<sup>17</sup> Death probate involves gathering and distributing a decedent's assets to beneficiaries, as outlined in a valid will.<sup>18</sup> The probate process can also involve paying off the decedent's debts.<sup>19</sup> In the absence of a valid will, the probate process becomes more complex because courts will need to apply relevant Florida Statutes.<sup>20</sup> A will is a document that provides the “last testament” of the decedent.<sup>21</sup>

This Comment specifically delves into two pivotal branches within probate law: the administration of estates and guardianship.<sup>22</sup> Administration of estates hinges on whether there is a will.<sup>23</sup> If a will exists, a personal representative or executor oversees the handling of the decedent's assets in accordance with the will.<sup>24</sup> In the absence of a will, an administrator will

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13. See discussion *infra* Part VI.

14. See discussion *infra* Part VII.

15. *What Every Senior Should Know About Probate*, ANDERSON DORN & RADER, LTD., <http://wealth-counselors.com/reports/what-every-senior-should-know-about-probate/> (last visited Dec. 20, 2023).

16. *Id.*

17. *Id.*

18. *Consumer Pamphlet: Probate in Florida*, THE FLA. BAR, <http://www.floridabar.org/public/consumer/pamphlet026/> (Jan. 2021).

19. *Id.*

20. See *id.*

21. See *Using a Will to Pass on Your Estate*, GETLEGAL, <http://www.getlegal.com/legal-info-center/wills-trusts-estates/wills-law/> (last visited Dec. 20, 2023).

22. See *Consumer Pamphlet: Probate in Florida*, *supra* note 18; discussion *infra* Part II.

23. See *Consumer Pamphlet: Probate in Florida*, *supra* note 18.

24. See *id.* (explaining that “[i]n a Will, the decedent can name the beneficiaries whom the decedent wants to receive the decedent's probate assets” and “designate a personal representative (Florida's term for an executor) to administer the probate estate”) (defining a personal representative as an individual, bank, or trust company); *Executor*, BLACK'S LAW

handle the decedent's assets.<sup>25</sup> Guardianship, on the other hand, deals with the court's appointment of a guardian over a living person.<sup>26</sup> Typically, guardians are appointed for children or mentally incapacitated individuals.<sup>27</sup> Guardians may take on responsibilities that span education, medical care, safety, food, and even financial matters on behalf of the individual.<sup>28</sup>

### III. UNIQUENESS OF PROBATE LAW

Probate stands out as a unique field for several reasons: the substantial financial stakes involved, the often lengthy process, and a predominantly elder client base.<sup>29</sup> Nationally, approximately two billion dollars a year are spent on probate.<sup>30</sup> The probate process can potentially be a “costly trap for consumers.”<sup>31</sup> The probate process can also be a very lengthy process.<sup>32</sup> The process typically lasts for more than a year.<sup>33</sup> Third, probate clients are typically older people.<sup>34</sup> Ninety percent of probate cases involve property disposition for people aged sixty or older.<sup>35</sup> This demographic is likely due to the nature of the probate process, which administers the assets of either deceased or mentally incapacitated individuals, as the likelihood of death or mental incapacity increasing with age.<sup>36</sup>

Those three factors—expenses, duration, and populace—have an impact on attorneys' fees.<sup>37</sup> Attorneys can “build lucrative practices [based] solely on probate.”<sup>38</sup> In probate, attorneys' fees can “consume as much as [twenty percent] of small estates, and as much as [ten percent] of even

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DICTIONARY (11th ed. 2019) (defining an executor as “[a] person named by a testator to carry out the provisions in the testator's will.”).

25. *Administrator*, BLACK'S LAW DICTIONARY (11th ed. 2019).

26. Mitch Mitchell, *How Does Guardianship Work?*, TR. & WILL, <http://trustandwill.com/learn/probate-guardianship> (last visited Dec. 20, 2023); *Administrator*, *supra* note 25.

27. Mitchell, *supra* note 26.

28. *See id.*

29. *What Every Senior Should Know About Probate*, *supra* note 15.

30. *Id.*

31. *See id.*; Eric Millhorn, *Is the Florida Probate Process Expensive?*, MILLHORN ELDER L. PLAN. GRP. (Aug. 9, 2022), <http://www.millhorn.com/is-the-florida-probate-process-expensive/>.

32. *See What Every Senior Should Know About Probate*, *supra* note 15; Millhorn, *supra* note 32.

33. *What Every Senior Should Know About Probate*, *supra* note 15.

34. *Id.*

35. *Id.*

36. *See id.*

37. *See id.*

38. *What Every Senior Should Know About Probate*, *supra* note 15.

uncomplicated estates.”<sup>39</sup> The duration of the probate process significantly influences attorneys’ fees, as prolonged proceedings result in higher costs.<sup>40</sup> Considering that the senior population, typically involved in probate matters, often possesses more wealth than their younger counterparts, attorneys can command a greater percentage in fees.<sup>41</sup>

Despite the lucrative nature of the probate field, it is important that attorneys avoid excessively charging their clients.<sup>42</sup> Attorneys must strike a balance between their own interests and the interests of their clients.<sup>43</sup> In situations where finding this balance proves difficult, Florida courts should intervene to “assure the efficient performance of judicial functions.”<sup>44</sup> The inherent powers of the Florida courts dictate that judicial functions must be maintained with “dignity and integrity.”<sup>45</sup> This empowers the courts to construe and limit attorneys’ fees as necessary.<sup>46</sup>

#### IV. HOW PROBATE ATTORNEYS’ FEES ARE ASSESSED IN FLORIDA

Florida courts must uphold attorneys’ fees while safeguarding the client’s interests.<sup>47</sup> Currently, judges lack a clear standard to determine reasonable attorneys’ fees.<sup>48</sup> Some courts have turned to the Model Rules of Professional Conduct as a benchmark for assessing the reasonableness of attorneys’ fees.<sup>49</sup> The Model Rules of Professional Conduct were created by the American Bar Association in 1983.<sup>50</sup> These rules serve as a set of guidelines and standards in this regard.<sup>51</sup> However, the Model Rules of

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39. *Id.*

40. *See id.*

41. *See id.*; Millhorn, *supra* note 31.

42. *See* Bradwell, *supra* note 2, at 161, 167.

43. *Id.* at 161 (demonstrating that attorneys should receive reasonable compensation for their services while also maintaining the integrity of the client).

44. *See* Roger A. Silver, *The Inherent Power of the Florida Courts*, 39 U. MIA. L. REV. 257, 286 (1985).

45. *Id.*

46. *See id.* at 268.

47. *See id.* at 263, 265, 286, 288–289 (indicating that Florida courts have the inherent power to protect parties’ interests and assess attorneys’ fees in certain circumstances and the exercise of those inherent powers must be reasonable); Glantz & Glantz, P.A. v. Chinchilla, 17 So. 3d 711, 713 (Fla. 4th Dist. Ct. App. 2009).

48. Bradwell, *supra* note 2, at 161.

49. *Id.*

50. *Model Rules of Professional Conduct*, CORNELL L. SCH.: LEGAL INFO. INST., [http://www.law.cornell.edu/wex/model\\_rules\\_of\\_professional\\_conduct](http://www.law.cornell.edu/wex/model_rules_of_professional_conduct) (last visited Dec. 20, 2023).

51. *Id.*

Professional Conduct are not binding.<sup>52</sup> Thus, courts have the discretion to adopt the Model Rules of Professional Conduct.<sup>53</sup> It is unclear whether Florida courts have fully adopted the Model Rules of Professional Conduct when it comes to determining reasonable attorneys' fees because the Florida Probate Code is similar—but not identical—to the Model Rules of Professional Conduct.<sup>54</sup> Nevertheless, when discussing attorneys' fees, it is imperative to understand the similarities between the Model Rules of Professional Conduct and the Florida Probate Code.<sup>55</sup>

A. *Rule 1.5 of the Model Rules of Professional Conduct*

Under Rule 1.5 of the Model Rules of Professional Conduct, attorneys may only charge and collect a fee that is reasonable.<sup>56</sup> Rule 1.5 outlines various factors to consider when determining reasonableness of attorneys' fees.<sup>57</sup> These factors encompass the time and effort invested by the attorney and the complexity of the issue.<sup>58</sup> Further, the preclusion of other employment by the attorney can also be considered.<sup>59</sup> The third factor is the average rate of the fee in the jurisdiction.<sup>60</sup> The fourth factor examines “the amount [of money] involved and the results obtained” from the case.<sup>61</sup> The fifth factor considers the circumstances of the case and the potential time limitations the client may have put on the attorney.<sup>62</sup> The sixth factor is the relationship between the attorney and the client.<sup>63</sup> The seventh factor considers the ability of the attorney to properly handle the client's case based on both experience and reputation, and the last factor considers “whether the fee is fixed or contingent.”<sup>64</sup>

These factors are a non-exhaustive list of considerations.<sup>65</sup> In fact, it is suggested that probate courts broaden their considerations to include

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52. *Id.*

53. *See* Bradwell, *supra* note 2, at 161.

54. *See* Mary Sue Donohue, *Probate and Trust Law: 1993 Survey of Florida Law*, 18 NOVA L. REV. 355, 356 (1993).

55. *See id.*

56. MODEL RULES OF PRO. CONDUCT r. 1.5(a) (AM. BAR ASS'N 2023); Bradwell, *supra* note 2, at 161–62.

57. *See* MODEL RULES OF PRO. CONDUCT r. 5.080.

58. *Id.* r. 1.5(a)(1).

59. *Id.* r. 1.5(a)(2).

60. *Id.* r. 1.5(a)(3).

61. *Id.* r. 1.5(a)(4).

62. MODEL RULES OF PRO. CONDUCT r. 1.5(a)(5).

63. *Id.* r. 1.5(a)(6).

64. *Id.* r. 1.5(a)(7)–(8).

65. *See* Bradwell, *supra* note 2, at 162.

additional factors.<sup>66</sup> For instance, factors such as good faith, diligence, and reasonable prudence are sometimes taken into account by probate courts.<sup>67</sup>

## B. *Florida Probate Code*

It is also important to understand how the Florida Probate Code guides courts to evaluate attorneys' fees.<sup>68</sup> The Florida Probate Code was developed in 1933 and later revised in 1945.<sup>69</sup> It outlines rules 5.010–5.530, which govern probate proceedings in Florida.<sup>70</sup> Further, in Florida, Chapters 731–735 encompass the statutes related to probate.<sup>71</sup>

This section will analyze the Florida Probate Code statutes and rules pertinent to understanding how courts are directed to assess attorneys' fees within the administration of estates and guardianship.<sup>72</sup> Under Florida Probate Rule 5.080, courts have “broad discretion” to assess attorneys' fees.<sup>73</sup> This discretion is underscored by Chapter 733, Florida Statutes which further demonstrates the extensive discretion courts have when evaluating attorneys' fees.<sup>74</sup>

### 1. Florida Statute § 733.106

Section 733.106 of the Florida Statutes falls under the “Administration of Estates” chapter of the Florida Probate Code and discusses costs and attorneys' fees.<sup>75</sup> Under section 733.106, attorneys who perform services for an estate can receive “reasonable compensation from the estate.”<sup>76</sup> Florida courts, however, have the power to decide what is reasonable based on

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66. *See id.* at 162–63.

67. *See id.*

68. *See* Donohue, *supra* note 54, at 356.

69. *See How Probate in Florida Differs from Other States*, 1800 PROB., <http://www.1800probate.com/differences-in-florida/> (last visited Dec. 20, 2023).

70. *See Consumer Pamphlet: Probate in Florida*, *supra* note 18.

71. *See id.*; FLA. STAT. § 731–735 (2023).

72. *See* discussion *infra* Sections IV.1.a–d.

73. FLA. PROB. R. 5.080(b).

74. FLA. STAT. § 733.106(4) (2023).

75. *See id.* § 733.106.

76. *Id.* § 733.106(3).

the estate in the case.<sup>77</sup> This gives Florida courts “sound discretion” when it comes to attorneys’ fees.<sup>78</sup>

## 2. Florida Statute § 733.6171

In addition, section 733.6171 of the Florida Statutes falls under the Administration of Estates chapter of the Florida Probate Code, specifically addressing the compensation of attorneys representing personal representatives.<sup>79</sup> According to this statute, attorneys for personal representatives may receive reasonable compensation.<sup>80</sup> The section also lists the compensation that attorneys can receive for conducting ordinary services.<sup>81</sup> Presumably, the listed compensation is reasonable.<sup>82</sup> This section also requires that attorneys for personal representatives receive reasonable compensation for extraordinary services.<sup>83</sup> The statute goes on to enumerate the factors that categorize attorney services as extraordinary.<sup>84</sup> For example, representation may be considered extraordinary depending on the “size and complexity of the estate.”<sup>85</sup>

## 3. Florida Statute § 733.6175

Section 733.6175 of the Florida Statutes also falls under the Administration of Estates chapter of the Florida Probate Code.<sup>86</sup> This pertains to the “compensation of personal representatives and employees of [an] estate.”<sup>87</sup> According to this section, attorneys’ fees must be reasonable.<sup>88</sup> Further, the Florida probate court has the discretion to decide when attorneys’ fees are reasonable.<sup>89</sup>

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77. *Id.* § 733.106(4).

78. *Probate Attorney’s Fees Petitions*, ADRIAN PHILIP THOMAS, P.A. (Oct. 9, 2008), <http://www.florida-probate-lawyer.com/blog/2008/october/probate-attorney-s-fee-petitions/>.

79. FLA. STAT. § 733.6171 (2023).

80. *Id.* § 733.6171(1).

81. *Id.* § 733.6171(3).

82. *Id.*

83. *Id.* § 733.6171(4).

84. FLA. STAT. § 733.6171(4).

85. *Id.*

86. FLA. STAT. § 733.6175 (2023).

87. *Id.*

88. *See id.* § 733.6175(1)–(4).

89. *Id.* § 733.6175(1).



## 4. Florida Statute § 744.108

Section 744.108 falls within the Guardianship chapter of the Florida Statutes.<sup>90</sup> This section addresses attorneys' fees and guardians.<sup>91</sup> Under this statute, attorneys providing legal services to the guardian are permitted to receive reasonable fees.<sup>92</sup> The court, as provided in the statute, has the discretion to determine whether attorneys' fees are reasonable based on several factors.<sup>93</sup> The first factor considers the time and labor invested by the attorney.<sup>94</sup> The second factor considers the novelty and skill involved in the case.<sup>95</sup> The third factor considers the preclusion of other employment by the attorney.<sup>96</sup> The fourth factor considers the typical fee rates in that jurisdiction.<sup>97</sup> The fifth factor takes into account the nature and value of the client's estate, the responsibilities of the attorney, and the "amount of income earned by the estate."<sup>98</sup> The sixth factor considers the results of the case.<sup>99</sup> The seventh factor considers time constraints.<sup>100</sup> The eighth factor considers the relationship between the attorney and the client.<sup>101</sup> The last factor takes into account the attorney's ability to perform the required services, their experience, and reputation.<sup>102</sup>

There are striking similarities between the nine factors under section 744.108 and the eight factors under Rule 1.5 of the Model Rules of Professional Conduct.<sup>103</sup> For instance, under Rule 1.5, the time and work put into a case as well as the complexity of the case is considered,<sup>104</sup> and the same applies under the first factor of section 744.108.<sup>105</sup> Additionally, under Rule 1.5, the second factor considers the preclusion of other employment by the attorney,<sup>106</sup> and section 744.108 also considers the preclusion of other

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90. FLA. STAT. § 744.108 (2023).

91. *Id.*

92. *Id.* § 744.108(1).

93. *See id.* § 744.108(2).

94. *Id.* § 744.108(2)(a).

95. FLA. STAT. § 744.108(2)(b).

96. *Id.* § 744.108(2)(c).

97. *Id.* § 744.108(2)(d).

98. *Id.* § 744.108(2)(e).

99. *Id.* § 744.108(2)(f).

100. FLA. STAT. § 744.108(2)(g).

101. *Id.* § 744.108(2)(h).

102. *Id.* § 744.108(2)(i).

103. *Compare id.* § 744.108, with MODEL RULES OF PRO. CONDUCT r. 1.5 (AM. BAR ASS'N 2023).

104. MODEL RULES OF PRO. CONDUCT r. 1.5(a)(1).

105. FLA. STAT. § 744.108(2)(a).

106. MODEL RULES OF PRO. CONDUCT r. 1.5(a)(2).

employment by the attorney under the third factor.<sup>107</sup> Under Rule 1.5, the seventh factor considers the ability of the attorney to properly handle the client’s case, their experience, and their reputation,<sup>108</sup> with section 744.108 taking into account the ability of the attorney to perform the required services, their experience, and reputation.<sup>109</sup> Due to the parallels between Rule 1.5 and Florida Statute section 744.108, it is evident that there is a close alignment between the Florida Probate Code and the principles outlined in the Model Rules of Professional Conduct.<sup>110</sup>

## V. UNDERSTANDING JUDICIAL DISCRETION IN FLORIDA

Although Rule 1.5 of the Model Rules of Professional Conduct, Florida Probate Rule 5.080, and sections 733.106, 733.6175, and 744.108 of the Florida Probate Code dictate that judges have the discretion to discern reasonable attorneys’ fees, these rules do not define “reasonable.”<sup>111</sup> Case law demonstrates that Florida courts have the inherent power to assess attorneys’ fees.<sup>112</sup> Unlike statutory law, case law is often considered to offer more efficient and predictable principles and rules of law<sup>113</sup> because case law evolves through the rulings of different appellate judges.<sup>114</sup>

### A. *Florida Appellate Case Law: Administration of Estates and Guardianship*

This section analyzes case law to provide insight into judicial discretion when assessing reasonable attorneys’ fees in the probate field.<sup>115</sup> More specifically, this section will delve into appellate cases that analyze Florida Probate Rule 5.080, along with multiple statutes from the Administration of Estates chapter of the Florida Probate Code and the Guardianship chapter of the Florida Statutes.<sup>116</sup> This analysis is crucial for a

107. FLA. STAT. § 744.108(2)(c).

108. MODEL RULES OF PRO. CONDUCT r. 1.5(a)(7).

109. See FLA. STAT. § 744.108(2)(i).

110. See *id.* § 744.108; MODEL RULES OF PRO. CONDUCT r. 1.5; Donohue, *supra* note 54, at 356.

111. See FLA. PROB. R. 5.080; FLA. STAT. § 733.106(4) (2023); FLA. STAT. § 733.6171(5) (2023); FLA. STAT. § 733.6175(2) (2023); FLA. STAT. § 744.108(8); Bradwell, *supra* note 2, at 161; MODEL RULES OF PRO. CONDUCT r. 1.5(a).

112. See Silver, *supra* note 44, at 265.

113. Giacomo A. M. Ponzetto & Patricio A. Fernandez, *Case Law Versus Statute Law: An Evolutionary Comparison*, 37 J. LEGAL STUD. 379, 379 (2008).

114. See *id.*

115. See discussion *infra* Section V.A.

116. See discussion *infra* Section V.A.

comprehensive understanding of judicial discretion, as appellate courts review trial and circuit court decisions and determine whether judges abused their discretion.<sup>117</sup>

In *Bishop v. Estate of Rossi*,<sup>118</sup> the appellant appealed a trial court's decision.<sup>119</sup> The Fifth District Court of Appeal of Florida reversed and remanded the case for the trial court to determine a reasonable amount of attorneys' fees pursuant to Florida Probate Rule 5.080.<sup>120</sup> The Court reasoned that attorneys' fees must be substantiated by evidence.<sup>121</sup> Further, for attorneys' fees to be supported by evidence, there must be a reasonable number of hours worked and a reasonable hourly rate.<sup>122</sup> Both the hours worked and the hourly rate charged should be based on the nature of the probate litigation.<sup>123</sup>

In *In re Estate of Udell*,<sup>124</sup> the appellant appealed a trial court decision.<sup>125</sup> The Florida Fourth District Court of Appeal affirmed in part and reversed in part the trial court's decision, prompting the trial court to reassess attorneys' fees for the services provided.<sup>126</sup> The appellate Court reasoned that the trial court has sole province to exercise its discretion in determining attorneys' fees.<sup>127</sup>

In *Glantz & Glantz, P.A. v. Chinchilla*,<sup>128</sup> the appellant sought review of a trial court decision.<sup>129</sup> The Florida Fourth District Court of Appeal reversed the trial court's ruling to reduce attorneys' fees by fifty-one percent.<sup>130</sup> The Court reasoned that attorneys are required to receive reasonable compensation.<sup>131</sup> The Court also reasoned that the attorneys' fees

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117. See Reiter, *supra* note 5, at 34; *About the U.S. Courts of Appeals*, U.S. CTS., <http://www.uscourts.gov/about-federal-courts/court-role-and-structure/about-us-courts-appeals> (last visited Dec. 20, 2023); *District Courts of Appeal*, FLA. CTS., <http://www.flcourts.gov/Florida-Courts/District-Courts-of-Appeal> (Oct. 10, 2023).

118. 114 So. 3d 235 (Fla. 5th Dist. Ct. App. 2013).

119. *Id.* at 236.

120. See *id.* Attorneys' fees should be reasonable and adequate. *In re Cobb's Estate*, 26 So. 2d 442, 443 (Fla. 1946) (per curiam).

121. *Bishop*, 114 So. 3d at 237 (quoting *Simhoni v. Chambliss*, 842 So. 2d 1036, 1037 (Fla. 4th Dist. Ct. App. 2003) (per curiam)).

122. See *id.*

123. See *id.*

124. 501 So. 2d 1286 (Fla. 4th Dist. Ct. App. 1986).

125. See *id.* at 1287.

126. See *id.* at 1287–88.

127. See *id.* at 1288–89.

128. 17 So. 3d 711 (Fla. 4th Dist. Ct. App. 2009).

129. *Id.* at 712.

130. See *id.* at 713.

131. *Id.*

in this case were reasonable, emphasizing that the trial court abused its discretion in making such a determination.<sup>132</sup>

In *Sheffield v. Dallas*,<sup>133</sup> the appellant appealed a trial court ruling.<sup>134</sup> The Florida Fifth District Court of Appeal affirmed the trial court's decision to reduce attorneys' fees.<sup>135</sup> The Court reasoned that the trial court properly used its discretion to discern excessive attorneys' fees from reasonable attorneys' fees.<sup>136</sup> Further, the Court explained that a trial court's decision to reduce excessive attorneys' fees would not be disturbed by an appellate court unless there is a "manifest weight of the evidence," suggesting that the trial court erred in discerning reasonable attorneys' fees.<sup>137</sup>

In *Faulkner v. Woodruff*,<sup>138</sup> the appellant appealed an order imposed by the trial court.<sup>139</sup> The Florida Second District Court of Appeal reversed the trial court's order, dismissing the petitioners request to have his attorneys' fees reviewed by the court.<sup>140</sup> The Court reasoned that the appellant had a right to have his attorney's fees assessed by the probate court.<sup>141</sup> The Court further reasoned that the "[a]ppellees have the burden of proof to [prove] that their fees are reasonable."<sup>142</sup>

In *Mitchell v. Mitchell*,<sup>143</sup> the appellant appealed an order reducing attorneys' fees in a guardianship proceeding.<sup>144</sup> In response, the Florida Fourth District Court of Appeal reversed the trial court's order reducing attorney's fees.<sup>145</sup> At the trial court level, their reasoning was based on the fact that the case required the work of multiple lawyers, finding the work completed to be duplicative.<sup>146</sup> At the appellate level, the Court reasoned that just because a partner and associate appear at the same proceeding together does not mean their work is duplicative.<sup>147</sup>

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132. *See id.*  
 133. 417 So. 2d 796 (Fla. 5th Dist. Ct. App. 1982).  
 134. *See id.* at 796.  
 135. *See id.* at 798.  
 136. *See id.* at 798.  
 137. *See id.*  
 138. 159 So. 3d 319 (Fla. 2d Dist. Ct. App. 2015).  
 139. *See id.* at 320.  
 140. *See id.* at 323.  
 141. *See id.*  
 142. *Id.*  
 143. 94 So. 3d 706 (Fla. 4th Dist. Ct. App. 2012).  
 144. *Id.* at 707.  
 145. *See id.* at 708.  
 146. *See id.*  
 147. *Id.*

Attorneys' fees can become questionable when attorneys do "duplicative, routine, or administrative" work.<sup>148</sup> If attorneys' fees are based on "duplicative, routine, or administrative" work, the court may deem the fees unreasonable.<sup>149</sup> Work becomes duplicative when one attorney completes the same work as another attorney on the same case.<sup>150</sup> Generally, clients cannot be billed for duplicative work.<sup>151</sup> When the attorney charges the client based on duplicative efforts the court will either order a refund for the client or reduce the attorney fees.<sup>152</sup>

Routine work is defined as work that does not require an attorney's expertise.<sup>153</sup> This is the type of work that is too simple for an experienced probate attorney.<sup>154</sup> In some cases, attorneys will excessively charge a client for simple work.<sup>155</sup> In probate, certain cases require attorneys to complete routine or simple tasks and the court may allow attorneys to bill for this work.<sup>156</sup> However, if an attorney charges excessively for cases that are routine for an experienced probate attorney, the court will reduce fees.<sup>157</sup>

Further, administrative work is considered the "leg work" of an executor of an estate.<sup>158</sup> As discussed previously, the executor is the one who has the legal power to convey the estate of a decedent in the manner which they have described in their will.<sup>159</sup> Thus, if attorneys are carrying out tasks that are actually the executor's responsibility, the court will deem their fees unreasonable.<sup>160</sup> Attorneys who act as an executor must also be careful not to bill the work they perform while acting as the executor.<sup>161</sup> In either of the two above listed incidents, the court will reduce the attorneys' fees.<sup>162</sup>

Finally, in *Schacter v. Guardianship of Schacter*,<sup>163</sup> an attorney appealed an order by the trial court to reduce their fees.<sup>164</sup> The Florida Fourth District Court of Appeal reversed and remanded the trial court's order and

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148. Bradwell, *supra* note 2, at 163.

149. *See id.*

150. *See id.* at 164.

151. *Id.*

152. *Id.* at 164, 166.

153. *See* Bradwell, *supra* note 2, at 165.

154. *See id.*

155. *See id.* at 164–65.

156. *Id.* at 165.

157. *See id.* at 164–65.

158. Bradwell, *supra* note 2, at 163.

159. *Executor*, *supra* note 24.

160. Bradwell, *supra* note 2, at 163.

161. *Id.*

162. *See id.*

163. 765 So. 2d 1075 (Fla. 4th Dist. Ct. App. 2000).

164. *See id.* at 1076.

reduced the attorney's fees pursuant to section 744.108 of the Florida Statutes.<sup>165</sup> The Court reasoned that there must be enough evidence for the trial court to reduce attorney fees.<sup>166</sup> Absent such evidence, the trial court abused its discretion.<sup>167</sup>

B. *Connection: The Reasonableness and Abuse of Judicial Discretion*

As demonstrated by the case law discussed above, probate courts have broad discretion to set reasonable attorney fees.<sup>168</sup> The case law presented here demonstrates the legal concept of reasonableness,<sup>169</sup> a term that has been mentioned several times in this Comment, but has not yet been truly explained.<sup>170</sup> Reasonableness largely depends on the court's interpretation.<sup>171</sup> While cases would ideally be assessed by the court objectively, assessing reasonableness requires the court to use its own discretion.<sup>172</sup> This means that each court uses its own perspective to decipher reasonableness.<sup>173</sup>

Variations in judicial perception of reasonableness can be seen in the cases previously discussed.<sup>174</sup> For example, while one case affirms a trial court's ruling, another reverses and remands.<sup>175</sup> These differing appellate court rulings show how different judges may produce different outcomes.<sup>176</sup>

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165. *See id.*; FLA. STAT. § 744.108 (2023).

166. *Schacter*, 756 So. 2d at 1076.

167. *Id.*

168. *See Sheffield v. Dallas*, 417 So. 2d 796, 798 (Fla. 5th Dist. Ct. App. 1982); *McDaniel v. County of Schenectady*, 595 F.3d 411, 414 (2d Cir. 2010) (demonstrating that the probate court has "sound discretion" to discern reasonable attorney fees); *see also* discussion *supra* Section V.A.

169. *See The Last Word*, AM. BAR ASS'N, [http://www.americanbar.org/groups/real\\_property\\_trust\\_estate/publications/probate-property-magazine/2017/november\\_december\\_2017/the-last-word-reasonable-elastic-word-that-can-make-deal/](http://www.americanbar.org/groups/real_property_trust_estate/publications/probate-property-magazine/2017/november_december_2017/the-last-word-reasonable-elastic-word-that-can-make-deal/) (last visited Dec. 20, 2023) (demonstrating that reasonableness "depends on the perception of . . . the court"); *see also* discussion *supra* Section V.A.

170. *See* discussion *supra* Parts I, IV–V.

171. *The Last Word*, *supra* note 169.

172. *See id.*

173. *See id.*

174. *See* discussion *supra* Section V.A.

175. *See* discussion *supra* Section V.A.; *see e.g.*, *Sheffield v. Dallas*, 417 So. 2d 796, 798 (Fla. 5th Dist. Ct. App. 1982); *Bishop v. Estate of Rossi*, 114 So. 3d 235, 236 (Fla. 5th Dist. Ct. App. 2013).

176. *See Judicial Interpretation*, BALLOTEDIA, [http://ballotpedia.org/Judicial\\_interpretation](http://ballotpedia.org/Judicial_interpretation) (last visited Dec. 20, 2023).

The previous cases also help show how judicial discretion comes into play in probate court.<sup>177</sup> For example, many of the rulings in the previous cases remanded the cases back to the trial court so that probate courts could use their discretion and assess attorneys' fees.<sup>178</sup> These previous cases also demonstrate how broad judicial deference can sometimes lead to abuse of discretion.<sup>179</sup> For example, in *Glantz & Glantz, P.A. v. Chinchilla*, the appellate Court found that the trial court abused its discretion by reducing attorneys' fees by fifty-one percent.<sup>180</sup> This reduction of fees is common in attorneys' fees cases.<sup>181</sup> It is, however, rare for a trial court judge to be reversed by an appellate court on these matters.<sup>182</sup> In the aforementioned cases, there were only a few examples where the appellate court reversed and found that the trial court abused its discretion.<sup>183</sup> The cases where the appellate court found that the trial court abused its discretion were those where the trial court either reduced or upheld attorney fees.<sup>184</sup> Despite the existence of statutes meant to guide judges when assessing the reasonableness of attorney fees, judicial discretion can lead to inconsistent holdings.<sup>185</sup> Further, these cases show how trial court judges must use discretion to reduce or uphold attorneys' fees.<sup>186</sup> Although judicial discretion exists to increase fairness and

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177. See *Faulkner v. Woodruff*, 159 So. 3d 319, 323 (Fla. 2d Dist. Ct. App. 2015); *Glantz & Glantz, P.A. v. Chinchilla*, 17 So. 3d 711, 713 (Fla. 4th Dist. Ct. App. 2009); Bradwell, *supra* note 2, at 162–63.

178. See *Faulkner*, 159 So. 3d at 323; *Glantz & Glantz*, 17 So. 3d at 713.

179. Joseph T. Sneed, *Trial-Court Discretion: Its Exercise by Trial Courts and Its Review by Appellate Courts*, 13 J. APP. PRAC. & PROCESS 201, 207 (2012); see Bradwell, *supra* note 2, at 164; *Glantz & Glantz, P.A.*, 17 So. 3d at 713.

180. *Glantz & Glantz, P.A.*, 17 So. 3d at 712.

181. See Gilbert M. Román, *Avoid These Five Mistakes to “Keep the Crown on” and Avoid Abuse of Discretion Reversals*, THE NAT'L JUD. COLL. (Jan. 18, 2018), <http://www.judges.org/news-and-info/abuse-discretion-mistakes-often-lead-reversal/>.

182. See Christopher Holinger, *Abuse of Discretion: The Toughest Standard of Review to Overcome*, GOLIGHTLY MULLIGAN & MORGAN (Feb. 3, 2022), <http://golightlylaw.com/abuse-of-discretion/>.

183. *Bishop v. Estate of Rossi*, 114 So. 3d 235, 237 (Fla. 5th Dist. Ct. App. 2013); *Mitchell v. Mitchell*, 94 So. 3d 706, 708 (Fla. 4th Dist. Ct. App. 2012); *Glantz & Glantz, P.A.*, 17 So. 3d at 713.

184. See *Mitchell*, 94 So. 3d at 708; *Glantz & Glantz*, 17 So. 3d at 712.

185. FLA. STAT. §§ 744.108(2), 733.6175(1)–(4), 733.6171(3)–(5), 733.106(4) (2023); see John C. McCoid, II, *Inconsistent Judgments*, 48 WASH. & LEE. L. REV. 487, 490 (1991); see e.g., *Sheffield v. Dallas*, 417 So. 2d 796, 798 (Fla. 5th Dist. Ct. App. 1982); *Bishop*, 114 So. 3d at 236.

186. See *Sheffield*, 417 So. 2d at 798; Bradwell, *supra* note 2, at 163; see also discussion *supra* Section V.A.

promote an equitable legal process, abuse of judicial discretion can lead to gross injustice.<sup>187</sup>

## VI. FUTURE IMPLICATIONS

The *In re Hutton*<sup>188</sup> Court declared that there must be judicial balancing when judges uphold attorneys' fees.<sup>189</sup> Under the doctrine of balance, it is imperative that "instruction provide due consideration of varying views of any subject matter."<sup>190</sup> Further, the doctrine of balance demonstrates that when practitioners of a given field are divided on proper approaches, all the approaches should be considered and analyzed.<sup>191</sup> Thus, this section will explore the implications of imposing a two-step balancing test as a form of guidance for probate judges using their judicial discretion to uphold attorney fees and maintain the client's interests.<sup>192</sup>

### A. *Balancing Test: Upholding Attorneys' Fees v. Interests of the Client*

When applying a balancing test to judicial discretion, judges must provide due consideration to upholding attorneys' fees while also maintaining the client's interests.<sup>193</sup> This type of due consideration requires judges to balance the work attorneys complete for their clients with the interest of the client to not get overcharged by their attorneys.<sup>194</sup>

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187. Thomas A. Zonay, *Judicial Discretion: 10 Guidelines for Its Use*, THE NAT'L JUD. COLL. (May 21, 2015), <http://www.judges.org/news-and-info/judicial-news-judicial-discretion-guidelines/>; see D. Michael Fisher, *Striking a Balance: The Need to Temper Judicial Discretion Against a Background of Legislative Interest in Federal Sentencing*, 46 DUQ. L. REV. 65, 85 (2007) ("[F]ailure to balance discretion with guidance results in disparity . . .").

188. 463 B.R. 819 (Bankr. W.D. Tex. 2011).

189. *Id.* at 829 (citing *Thielenhaus v. Thielenhaus*, 890 P.2d 925, 935 (Okla. 1995)).

190. Kenneth L. Marcus, *The Doctrine of Balance*, 9 FIU L. REV. 59, 59 (2013).

191. *Id.*; see *Balancing Test*, BLACK'S LAW DICTIONARY (11th ed. 2019).

192. See Bradwell, *supra* note 2, at 161; discussion *supra* Section V.A.

193. See Marcus, *supra* note 190, at 59; Bradwell, *supra* note 2, at 161 (demonstrating that attorneys must balance their interests with the interests of their own client when determining reasonable attorneys' fees).

194. See *McDaniel v. County of Schenectady*, 595 F.3d 411, 414 (2d Cir. 2010) (explaining that reasonable clients want to spend the least amount of money on attorneys' fees, while attorneys want to maintain their reputation while charging reasonable attorneys' fees); Bradwell, *supra* note 2, at 161.



### 1. “Balance” at the Trial Court Level

This section suggests a balance at the trial court level in efforts to uphold the interests of the attorney and those of the client.<sup>195</sup> At the front lines of assessing attorney fees is the trial court.<sup>196</sup> For probate judges to balance the interests of the attorney and the client at the trial court level, this section suggests that trial court judges use all the factors set forth in the Model Rules of Professional Conduct.<sup>197</sup>

As mentioned previously, under Rule 1.5, trial court judges must consider the time and work put in and the complexity of the issue.<sup>198</sup> Second, trial court judges must consider the preclusion of other employment by the attorney.<sup>199</sup> Third, trial court judges must factor in the typical rate of the fee in that jurisdiction.<sup>200</sup> Fourth, trial court judges must examine the amount of money involved and the results obtained from the case.<sup>201</sup> Fifth, trial court judges must consider the circumstances of the case and the potential time limitations the client may have put on the attorney.<sup>202</sup> Sixth, trial court judges must weigh the relationship between the attorney and the client.<sup>203</sup> Seventh, trial court judges must consider the ability of the attorney to properly handle the client’s case based on both experience and reputation.<sup>204</sup> Lastly, trial court judges must consider “whether the fee is fixed or contingent.”<sup>205</sup>

Part IV of this Comment discusses the Florida Statutes on attorneys’ fees in probate.<sup>206</sup> The only statute discussed in Part IV that incorporated the Model Rules of Professional Conduct was section 744.108 of the Florida

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195. See discussion *infra* Section VI.A.1.

196. See Fla. Patient’s Comp. Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985); GINA BEVIDES & JAMES NUTT, 2023 FLA. JUD. COLL. CIR. CIV. FUNDAMENTALS, MANAGING THE CONTESTED ATTORNEYS’ FEE HEARING IN FLORIDA 3 (2023), <http://www.flcourts.gov/content/download/862345/file/Attorney.pdf>.

197. See MODEL RULES OF PRO. CONDUCT r. 1.5(a) (AM. BAR ASS’N 2023); Bradwell, *supra* note 2, at 161; discussion *infra* Section VI.A.1.

198. MODEL RULES OF PRO. CONDUCT r. 1.5(a)(1).

199. *Id.* r. 1.5(a)(2).

200. *Id.* r. 1.5(a)(3).

201. *Id.* r. 1.5(a)(4).

202. *Id.* r. 1.5(a)(5).

203. MODEL RULES OF PRO. CONDUCT r. 1.5(a)(6).

204. *Id.* r. 1.5(a)(7).

205. *Id.* r. 1.5(a)(8); see also *Fees and Expenses*, AM. BAR ASS’N (Dec. 3, 2020), [http://www.americanbar.org/groups/legal\\_services/milvets/aba\\_home\\_front/information\\_center/working\\_with\\_lawyer/fees\\_and\\_expenses/](http://www.americanbar.org/groups/legal_services/milvets/aba_home_front/information_center/working_with_lawyer/fees_and_expenses/) (explaining that a fixed fee is a flat fee that is usually used in cases that are “straightforward” and “routine,” whereas a contingent fee is a fixed percentage based on the success of the case).

206. See FLA. STAT. § 744.108 (2023); FLA. STAT. § 733.106 (2023); discussion *supra* Part IV.

Statutes.<sup>207</sup> Because of this, in Part V of this Comment, each case deals with a different statute and has different rulings when assessing attorneys' fees.<sup>208</sup> This shows a lack of consistency, making clear the necessity to provide trial and appellate court judges with clear guidelines when assessing attorneys' fees.<sup>209</sup>

## 2. "Balance" at the Appellate Court Level

The trial court is one of many stages where there should be a proper balance between the interests of the attorney and the client.<sup>210</sup> As discussed in Part V of this Comment, in order to truly understand judicial discretion, it is important to analyze case law at the appellate level because appellate courts review the decisions made in trial courts, circuit courts, and even district courts of appeals to determine whether judges abuse their discretion.<sup>211</sup> Further, it is imperative to have a balance at the appellate court level because appellate courts can award appellate attorney's fees.<sup>212</sup>

For probate judges to reasonably balance both the interests of the attorneys and the clients at the appellate court level, this section suggests that appellate court judges require lower courts to adopt the Lodestar Method.<sup>213</sup> The Lodestar Method is a method used in the legal field to compute reasonable attorneys' fees.<sup>214</sup> This method requires trial court judges to multiply the hours reasonably spent on a case by a reasonable hourly rate.<sup>215</sup> The fee obtained from this calculation can then be adjusted based on varying factors, such as the quality of the work, time, and labor.<sup>216</sup>

In *Florida Patient's Compensation Fund v. Rowe*,<sup>217</sup> the Florida Supreme Court adopted the Lodestar Method as a guideline for trial courts to

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207. See FLA. STAT. § 744.108; discussion *supra* Part IV.

208. See *Glantz & Glantz, P.A. v. Chinchilla*, 17 So. 3d 711, 713 (Fla. 4th Dist. Ct. App. 2009); *Sheffield v. Dallas*, 417 So. 2d 796, 798 (Fla. 5th Dist. Ct. App. 1982) (showing that on appeal, the appellate courts differed in interpretation of attorney fees); discussion *supra* Part V.

209. See *Bradwell*, *supra* note 2, at 161–63.

210. See *id.* at 161; *About the U.S. Courts of Appeals*, *supra* note 117.

211. See discussion *supra* Part V; *Reiter*, *supra* note 5, at 34; *About the U.S. Court of Appeals*, *supra* note 117; *District Courts of Appeal*, *supra* note 117.

212. See *Fisher*, *supra* note 187, at 96; *Bretton C. Albrecht, Fee Simple: A Procedural Primer on Appellate Attorneys' Fees and Costs*, FLA. BAR J., Feb. 2013, at 24, 24.

213. See discussion *supra* Section VI.A.2; *Fla. Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145, 1146 (Fla. 1985).

214. See *Lodestar*, BLACK'S LAW DICTIONARY (11th ed. 2019).

215. *Id.*

216. See *id.*

217. 472 So. 2d 1145 (Fla. 1985).

assess and compute reasonable attorneys' fees.<sup>218</sup> Although this case deals with medical malpractice, the Florida Supreme Court set the stage for the Lodestar Method to be applied to all types of cases.<sup>219</sup> Further, in *Standard Guaranty Insurance v. Quanstrom*,<sup>220</sup> the Florida Supreme Court continued to use the Lodestar Method.<sup>221</sup> Thus, with the Florida Supreme Court's use of the Lodestar Method, probate courts should follow suit.<sup>222</sup>

In probate, the Lodestar Method has been utilized in the past.<sup>223</sup> In *In re Estate of Platt*,<sup>224</sup> the Lodestar Method was applied to real property, probate, and trust law cases.<sup>225</sup> However, *In re Estate of Platt* is an older case that has now been superseded by statute.<sup>226</sup> The statute that superseded *In re Estate of Platt* was section 736.0708 of the Florida Statutes.<sup>227</sup> Section 736.0708 can be found in the Florida Trust Code chapter of the Florida Probate Code.<sup>228</sup> This Comment, however, analyzes only two chapters from the Florida Probate Code: Administration of Estates and Guardianship.<sup>229</sup> Thus, this section suggests that probate judges adopt and apply the Lodestar Method only to the administration of estates and guardianship cases.<sup>230</sup>

The Lodestar Method requires trial court judges to multiply the hours reasonably spent on a case by a reasonable hourly rate, requiring appellate court judges to allow for judicial discretion at the trial court level.<sup>231</sup> Although this can be argued to make the Lodestar Method less credible, judicial

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218. *Id.* at 1150.

219. *See id.* at 1146.

220. 555 So. 2d 828 (Fla. 1990).

221. *See id.* at 829; Donohue, *supra* note 54, at 356.

222. *See Fla. Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145, 1146 (Fla. 1985); Donohue, *supra* note 54, at 355–5

223. *See In re Estate of Platt*, 586 So. 2d 328, 333 (Fla. 1991), *superseded by statute*, Fla. Stat. § 736.0708 (2007).

224. 586 So. 2d 328 (Fla. 1991), *superseded by statute*, Fla. Stat. § 736.0708 (2007).

225. *See id.* at 333.

226. *See Robert Rauschenberg Found. v. Grutman*, 198 So. 3d 685, 687 (Fla. 2d Dist. Ct. App. 2016).

227. *See id.*; FLA. STAT. § 736.0708(1).

228. *See* FLA. STAT. § 736.0708.

229. *See* discussion *supra* Parts II–V.

230. *See* discussion *supra* Section V.A.

231. *See* Neil Pedersen, *Attorney Fee Awards in FEHA Claims: The Lodestar Analysis*, PEDERSEN L. (Feb. 27, 2018), <http://pedersenlaw.com/lodestar-analysis/> (explaining that when it comes to the Lodestar Method, appellate opinions have held that experienced trial judges are best suited to judge the work performed by attorneys in their designated field of law); *Lodestar*, *supra* note 214; Sneed, *supra* note 179, at 208 (“Trial courts must recognize that their discretion has limits and appellate courts must recognize that trial-court discretion serves useful purposes and should be respected.”).

discretion in some degree is practically inevitable at the trial court level.<sup>232</sup> There is a clear difference between allowing trial court judges to have discretion versus allowing judges to have broad discretion; the latter can more easily lead to abuse.<sup>233</sup> Thus, the goal of this Comment is to provide guidance to both trial court and appellate court judges when it comes to assessing attorneys' fees.<sup>234</sup> This section suggests that appellate court judges adopt the Lodestar Method to provide balance at the appellate level.<sup>235</sup>

### B. *Importance of Improving Judicial Discretion*

It is imperative that judicial discretion be standardized to reduce human error on part of the judges.<sup>236</sup> Currently, “there is a lot of intuitive decision making going on in the judicial system.”<sup>237</sup> When it comes to judges making decisions intuitively, they must not abuse their discretion.<sup>238</sup>

Judges serve a vital role in our society because they help analyze the law and apply it freely and fairly.<sup>239</sup> However, it is essential that judges are prevented from abusing their power.<sup>240</sup> When judges abuse their power, they hinder the proper functioning of the legal system that is guaranteed in the Constitution.<sup>241</sup> This Comment thus emphasizes the importance of providing probate judges with a clear guide to determine the reasonableness of attorneys' fees.<sup>242</sup>

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232. See Pauline T. Kim, *Lower Court Decision*, 82 N.Y.U. L. REV., 383, 388 (2007) (explaining that judicial discretion is unavoidable).

233. See *id.* at 412 (explaining that discretion is when judges “anticipat[e] future scenarios in which a rule of decision might be required”); Sneed, *supra* note 179, at 207 (explaining that broad discretion leads to an abuse of discretion when judges' actions are arbitrary, fanciful, or unreasonable).

234. See discussion *supra* Part VI.

235. See discussion *supra* Section VI.A.2.

236. See Jackie Swift, *Investigating Judicial Decision Making*, MEDIUM: CORNELL RSCH. & INNOVATION (Nov. 27, 2017), <http://cornellresearch.medium.com/investigating-judicial-decision-making-cb6c494f93fc>.

237. *Id.*

238. See *id.*; Sneed, *supra* note 179, at 208 (demonstrating that an abuse of discretion is when judges misuse their power and thus make mistakes in their rulings).

239. See *Judicial Independence*, JUD. LEARNING CTR., <http://judiciallearningcenter.org/judicial-independence/> (last visited Dec. 20, 2023).

240. See *id.*

241. See *id.*; Fla. Bar v. Richardson, 574 So. 2d 60, 62 (Fla. 1990) (per curiam).

242. See discussion *supra* Part VI.

## VII. CONCLUSION

Attorneys' fees are crucial for the proper functioning of our legal system.<sup>243</sup> Attorneys' fees are especially unique to the probate field because the probate court is an equity court given great discretion in deciding whether to uphold attorneys' fees.<sup>244</sup> Attorneys' fees are also unique to the probate field because of three factors:<sup>245</sup> probate is a very expensive field, the process is very time-consuming, and the client base consists mostly of individuals over the age of sixty.<sup>246</sup> These three factors impact attorneys' fees in the probate field.<sup>247</sup> And as previously discussed, these factors contribute to the lucrative nature of the probate field.<sup>248</sup>

Due to its lucrative nature, it is essential that attorneys refrain from overcharging their clients.<sup>249</sup> Thus, Florida probate courts must assess attorneys' fees reasonably.<sup>250</sup> A clear rule for probate courts to follow in discerning reasonable attorneys' fees would help achieve this.<sup>251</sup> To truly understand what reasonable attorneys' fees should consist of, Rule 1.5 of the Model Rules of Professional Conduct, statutory law, and case law were analyzed within this Comment.<sup>252</sup> Despite the numerous resources available, determinations of reasonable attorneys' fees in probate courts are often guided by broad judicial discretion.<sup>253</sup> This broad judicial discretion leaves open the possibility that judges will abuse their discretion.<sup>254</sup> As a result, it is important to provide probate judges with clearer standards to assess attorneys' fees.<sup>255</sup>

Courts should adopt the balance doctrine and require probate judges to "provide due consideration of varying views [on the] subject matter."<sup>256</sup> More specifically, this means that judges must provide due consideration to

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243. See *Richardson*, 574 So. 2d at 62; discussion *supra* Part I.

244. See *Skatoff*, *supra* note 3; discussion *supra* Part I.

245. See *What Every Senior Should Know About Probate*, *supra* note 15.

246. *Id.*

247. See *id.*

248. See *What Every Senior Should Know About Probate*, *supra* note 15.

249. See *Bradwell*, *supra* note 2, at 161.

250. See *Silver*, *supra* note 44, at 263.

251. See *Bradwell*, *supra* note 2, at 161.

252. See MODEL RULES OF PRO. CONDUCT r. 1.5(a) (AM. BAR ASS'N 2023); FLA. PROB. R. 5.080(b); *Sheffield v. Dallas*, 417 So. 2d 796, 798. (Fla. 5th Dist. Ct. App. 1982).

253. See MODEL RULES OF PRO. CONDUCT r. 1.5; FLA. PROB. R. 5.080(b); *Sheffield*, 417 So. 2d at 798.

254. See *Sneed*, *supra* note 179, at 207.

255. See *Zonay*, *supra* note 187.

256. See *Marcus*, *supra* note 190, at 59.

upholding attorneys' fees and maintaining the interests of the client.<sup>257</sup> To do this, a two-step approach must be adopted at both the trial and appellate court level.<sup>258</sup> At the trial court level, this would require utilizing all the factors set forth in the Model Rules of Professional Conduct.<sup>259</sup> At the appellate court level, the district courts of appeal should require the lower courts to implement the Lodestar Method.<sup>260</sup> Although implementing the Lodestar Method would require the use of judicial discretion, judicial discretion is ultimately inevitable at the trial court level.<sup>261</sup> Regardless, it is imperative that judicial discretion be improved because judges serve a vital role in applying the law freely and fairly in our society.<sup>262</sup> Thus, this Comment calls for implementing a balancing test to provide probate judges with a clearer guide when it comes to upholding attorneys' fees and maintaining the interests of the client to prevent the abuse of judicial discretion.<sup>263</sup>

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257. See *McDaniel v. County of Schenectady*, 595 F.3d 411, 415 (2d Cir. 2010); *Hutton v. Ferguson (In re Hutton)*, 463 B.R. 819, 830 (Bankr. W.D. Tex. 2011); *Bradwell*, *supra* note 2, at 161.

258. See *Bradwell*, *supra* note 2, at 161, 165; *Pedersen*, *supra* note 231.

259. See MODEL RULES OF PRO. CONDUCT r.1.5 (AM. BAR ASS'N 2023); *Bradwell*, *supra* note 2, at 161.

260. See *Fla. Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145, 1146 (1985).

261. *Id.*

262. See *Judicial Independence*, *supra* note 239; discussion *supra* Section

VI.B.

263. See discussion *supra* Section VI.B.