

THE LAW OFFICE OF
MICHAEL J. HOWELL, P.A.

112 Executive Center
1 Corpus Christi Place, #112
Hilton Head Island, SC 29928

HiltonHeadEstatePlanning.com

Michael J. Howell
Licensed in Florida and South Carolina
Certified by the South Carolina
Supreme Court as a Specialist
In Estate Planning and Probate Law

Margaret Rhea Howell
Licensed
In
Florida and
South Carolina

Addendum to Representation Letter
Legal Fees for Probate, Trust and Non-Probate Assets

***Election to Be Charged Hourly, or on a Percentage Fee Basis, or
We Match the Published Fee Schedule of any Firm that Locally Employs a Certified Specialist in Estate
Planning and Probate Law, with an Additional 5% Discount***

Our Fee Match Guarantee

If elected by the client, we will match the published fee schedule of any other South Carolina law firm that locally employs an attorney who is certified by the South Carolina Supreme Court as a specialist in Estate Planning and Probate law, including the work that they agree to do. In addition, we will further reduce the fee by an additional 5%.

A published fee schedule is one that is published over the Internet and accessible to all members of the public. We hasten to add that we know of no such firms who have a published fee schedule in this area of South Carolina. We will also consider a fee schedule that is written and provided to the general public simply by calling the firm and asking for it. This includes fee schedules that are included in firm brochures. If you know of any, please let us know.

It should also be noted that a lawyer in South Carolina is not allowed to hold himself or herself out as a specialist, certified, an expert, or an authority in estate planning and probate matters, unless they are so certified by the South Carolina Supreme Court.

We will also consider matching the published fee schedule of any other local law firm, and the work that they agreed to do, even if they do not employ someone certified by the South Carolina Supreme Court as a Specialist in Estate Planning and Probate law, assuming the local attorney handling both probate and estate planning matters has comparable training, education, and experience. Again, we know of no such firms with published fee schedules. If you know of any such fee schedules, please let us know. If we agree to match the fee, we will also reduce it by 5%.

In order to be eligible, you must bring a copy of the internet page, or other written fee schedule, with you, to our office.

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Hourly Billing

If elected by the client, we will charge hourly for all services rendered, at our normal hourly rates, whether for probate assets, trust assets, or other non-probate assets. Our hourly rates are as follows:

Senior Attorney: \$295 per hour in increments of 6 minutes with a minimum of 6 minutes.

Associate Attorney: \$185 per hour in increments of 6 minutes with a minimum of 6 minutes.

Non-Attorney Staff: \$125 per hour in increments of 6 minutes with a minimum of 6 minutes.

All work on files is billed at our normal hourly rates, including but not limited to, emails, (whether sending, receiving, filing or reviewing), other filing, gathering information, interviews, research, office conferences, telephone conferences, drafting and correspondence.

Hourly rates can be changed at any time with 30 days notice. Provided, however, that any fee increase will be applied to all clients receiving hourly probate or trust representation services.

It is our policy to provide narrative descriptions in our billing statements for hourly billing. These narratives are designed to be similar to a diary of all of the work that we do on your behalf. You should always read the statements as though they are letters from us telling you all the work that we have done. We also use the billing statements as a communications tool to confirm any conversations and meetings that we have had with you, and any significant decisions that were made. The idea is to keep you informed.

Both my staff members and I are all very well trained and experienced in the administration of estates and trusts. Where we can, we will allow and also encourage you, or other family members, or other third parties, as you choose, to do the work, assuming no one is engaged in the unauthorized practice of law or violates some other statute, rule or regulation, and is otherwise qualified to do the work and the work is completed in a reasonably prompt manner. Before any work is undertaken by someone other than us, we need to know, to make sure that there is no duplication of effort.

With hourly billing, we can only estimate the cost. Depending upon how much work we do, over 95% of the cases we handle fall within a fee range of 1%, on the lower end, to 3%, on the higher end. In difficult or complex cases, it can be more or in some very simple cases, the fee can be less.

The percentage estimate applies to the gross value of the estate, as valued for federal estate tax purposes. This is whether or not a return is required, as it is merely a method of approximation used for purposes of estimating our fee.

Quite frankly, the larger the estate or trust, the lower the fees are, normally, as a percentage of value, since there is only so much work we can do, even in the administration of a normal but large estate. Conversely, the smaller the estate, the larger the expenses are, normally, as a percentage of value, because there are certain things that have to be done even in the smallest estate and this takes time and, consequently, fees.

Other factors include how much of the property is non-probate, how many different assets are involved, and the type of assets. For instance, the cost and effort of filling out paperwork to transfer a \$500 automobile can be as much as for a \$5,000,000 house. In addition, the cost and effort of filling out paperwork to transfer a bank account can be more than the paperwork for securities in a brokerage account. Naturally, there are other issues associated with valuable properties, but most of these have to do with tax considerations, which take up more time than the less valuable property.

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The more numerous the assets are, the more it can cost because each asset has to be gathered and accounted for, separately. On the other hand, fewer assets of greater value can generate a smaller charge when compared to the gross value of the assets.

When it comes to transferring bank and brokerage accounts and filing life insurance claims, these are normally matters that we let the Personal Representative or Trustee take care of. This helps substantially reduce the cost because they are labor intensive and can not be easily systematized due to the variety of policies and procedures of each institution.

Another factor in the ultimate cost is how well planned the estate was prior to death. For instance, if trusts were created and funded prior to death, or other measures were taken to avoid probate, this helps greatly. However, if the planning was more complex and involved Irrevocable Trusts designed to keep assets out of the taxable estate as opposed to the probate estate as well as closely held business interests, family limited partnerships and LLCs, then these can substantially increase the cost of administration. Notwithstanding the above, complex planning normally results in a much larger decrease in estate taxes than would occur without the planning.

Another factor that tends to increase or decrease the costs is the level of cooperation and work on the part of the client. Much of our work depends upon the timely receipt of requested information. In order to keep the case moving, we try to review each file every Monday morning or as soon thereafter as is reasonably possible, to determine where we are and what is needed in order to proceed. At the file review, we often prepare tentative drafts of letters and prepare file notes of work and information needed from our clients and others. If the client has not given us needed information, these weekly file reviews are not nearly as efficient as they can be and the inefficiency shows up on our bills.

If we reach a point where we reasonably believe that our work has become inefficient due to waiting for information from a client, we send out a letter letting you know that the file has been temporarily closed, and you will also be reminded of any pending deadlines in the letter. This does not mean that we have quit, it simply means that we stop the weekly file reviews and suspend work on the file unless or until you or some third party gets back to us with sufficient information for us to continue working on the file. This procedure can save a considerable amount of legal fees.

Still another factor that tends to increase or decrease the cost has to do with the expectation of the client. There are always clerical or similar errors in the administration of an estate. Normally our work meets or exceeds the expectations of our clients. Some clients have very high expectation levels for the work performed. Others have more modest requirements. If we have been placed on notice either directly or indirectly by the client that a higher level of service is expected, then this requires a greater amount of review of the work that is going out. The greater the review that is required, the greater the cost that is involved.

The speed with which we complete our work normally meets or exceeds the expectations of our clients. Some clients want work done more quickly than others do. If we have been placed on notice either directly or indirectly by the client that they want the work done more quickly, then we try to accommodate this. However, the quicker the work is needed, the higher the risk that mistakes will be made and the more we have to review our work; although, it is reviewed in a shorter period, by more staff members. The more we have to review our work, the more it costs.

Again, we encourage you to do as much of the work as is reasonably possible to help reduce our hourly charges. However, we are here to help or perform any work that is within the scope of our engagement. You

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should never feel like you are being left alone or given more responsibility than you actually want. Again, we are here to help.

Naturally, our fees can be higher if there are problems such as lawsuits, unpaid creditors, audits, or disagreements among the devisees, beneficiaries and/or fiduciaries. Keep in mind that under our hourly billing arrangement, we are not charging a percentage fee, and there is no minimum fee for services. We simply charge for our time. We only give you the estimated fee range based upon a percentage value, as it gives you something to go by. At this time, we have no reason to believe that the actual cost will be anywhere near the high end of the estimate.

As you can see, the estimate is quite broad. No two estates or trusts are identical and the actual cost depends upon numerous factors, some of which are discussed in this letter and the 21-page checklist that is enclosed with this letter.

If we have not held the meeting to assign duties and responsibilities, then we need to meet to assign duties between you, your CPA, and our office. As part of our services, we prepare any necessary estate tax returns and they are included in the estimate. *All other tax responsibilities are those of your CPA, whether our billing is hourly or on a percentage basis.*

We have found that if we do not review the 21-page checklist with our clients, it takes longer for us to do our work. The main reason is that the meeting covers the administration of the estate, the settlement of a trust, or both, if needed, and does so in good detail for a layperson. This helps the client understand the process better as the work progresses. Otherwise, clients do not realistically and adequately understand the process and have a hard time understanding what is going on. They are also much less inclined to provide prompt and complete information. We have also found that without the review, the client does not understand the urgency involved in giving us information so that we can more efficiently perform our job.

We also like to review the checklist with you because it more or less defines the scope of our work. Without the review, there may also be a lack of coordination and duplication of effort.

Also without the review of the 21-page checklist, the scope of our engagement, with respect to any *trust work*, will be limited to the initial UTC notice requirements and assistance coordinating with you and others you designate to distribute the assets to the beneficiaries, but only if the assets are to be distributed currently. This will also include necessary Receipt and Distribution Agreements and Receipt and Releases. With respect to *probate work*, without the review of the 21-page checklist, our engagement will be limited to filing the Last Will and Testament for probate, and also filing the necessary notices to the beneficiaries. In either case, we will also prepare any necessary estate tax returns. As stated above, all other tax responsibilities are those of the CPA.

Percentage Billing

If elected by the client, our legal fees for ordinary services for informal administration of an estate will be based on the gross date of death value of the probate assets for federal estate tax purposes and the income earned by the probate estate during the administration on a **percentage fee basis** as follows:

- (a) **3 % on the first \$1,000,000.**
- (b) **2.5% for all above \$1 million and not exceeding \$3 million.**

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- (c) 2 % for all above \$3 million and not exceeding \$5 million.
- (d) 1.5% for all above \$5 million and not exceeding \$10 million.
- (e) 1 % for all above \$10 million.
- (f) Notwithstanding the above, our minimum legal fee is \$3,500 for all work performed on a percentage fee basis. This minimum fee applies to all the work that we do, whether the assets are probate, in trust, or are other non-probate assets. There is only one minimum fee.

In addition to fees for ordinary services, we charge our normal hourly rates for any extraordinary services, but only if the extraordinary services exceed the lesser of \$1,000 or 1% of the value of the trust assets for federal estate tax purposes, and our fee is not otherwise the minimum fee. If we are charging our minimum fee, then we charge the extraordinary services, regardless of the \$1,000 or 1% limitation. If the limitation applies, there is only one \$1,000 limitation for all assets, whether the assets are probate assets, trust assets, or other non-probate assets.

What is an extraordinary service may vary depending on many factors, including the size of the estate. **Extraordinary services normally include, but are not limited to:**

- (a) Involvement in a will contest, will construction, a proceeding for determination of beneficiaries, a contested claim, arguments with beneficiaries, elective share proceeding, apportionment of estate taxes, or any adversarial matter or proceeding or litigation by or against the estate.
- (b) Representation of the personal representative in audit or any proceeding for adjustment, determination, or collection of any taxes.
- (c) Tax advice on postmortem tax planning, including, but not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse QTIP election, allocation of GST exemption, qualification for Internal Revenue Code Sections 6166 and 303 privileges, deduction of last illness expenses, fiscal year planning, distribution planning, asset basis considerations, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuation, handling or advice on handling employee benefit or retirement account proceeds, prompt assessment request, or request for release of personal liability for payment of tax.
- (d) Review of estate tax return and preparation or review of other tax returns required to be filed by the personal representative, but prepared by someone other than our firm.
- (e) Preparation of the estate's federal estate tax return. If this return is prepared by our firm and assuming we are not charging on an hourly fee basis, a fee of one-half of 1 percent up to a value of \$10 million and one-fourth of 1 percent on the value in excess of \$10 million of the gross estate as finally determined for federal estate tax purposes, will be charged for this service. Audits are not included in the percentage fee and are at our normal hourly rates.
- (f) Purchase, sale, lease, or encumbrance of real property by the personal representative or involvement in zoning, land use, environmental, or other similar matters.

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- (g) Legal advice regarding carrying on of the decedent's business or conducting other commercial activity by the personal representative.
- (h) Legal advice regarding claims for damage to the environment or related procedures.
- (i) Legal advice regarding homestead status of real property or proceedings involving that status and services related to a protected homestead, if any.
- (j) Involvement in fiduciary, employee, or attorney compensation disputes.
- (k) Proceedings involving ancillary administration of assets not subject to administration in this state.

Legal Fee for Trust Assets

The following provisions concern legal fees when representing a Trustee in the settlement of a trust, which is also sometimes called the “*initial administration*”, if it is after the Settlor of the trust dies. Normally, trusts are settled when someone’s death terminates the trust, but sometimes the trust is settled and then continues. In other cases, it can terminate by an event other than death, such as the beneficiary obtaining a certain age, or marrying.

As used in this section, the term "initial trust administration" means administration of a revocable trust during the period that begins with the death of the Settlor and ends on the final distribution of trust assets outright or to continuing trusts created under the trust agreement but, if an estate tax return is required, not until after issuance of an estate tax closing letter or other evidence of termination of the estate tax proceeding. This initial period is not intended to include continued regular administration of the trust.

Our percentage basis legal fee for ordinary services is 75% of our fee schedule for probate assets, but only with respect to the assets in trust, unless an hourly fee is elected, in which case, we will charge hourly for all work. Notwithstanding the above, our minimum legal fee is \$3,500 for percentage fee basis work. There is no minimum fee for hourly fee work.

Ordinary legal services in an initial trust administration on a percentage fee basis, include legal advice and representation concerning the Trustee's duties relating to:

- (a) Review of the trust instrument and each amendment, for legal sufficiency and interpretation.
- (b) Implementation of substitution of the successor Trustee.
- (c) Persons who must or should be served with required notices and the method and timing of such service.
- (d) The obligation of a successor to require a former Trustee to provide an accounting.
- (e) The Trustee's duty to protect, insure, and manage trust assets, and the Trustee's liability relating to these duties.
- (f) The Trustee's duty regarding investments imposed by the prudent investor rule.

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- (g) The Trustee's obligation to inform and account to beneficiaries and the method of satisfaction of such obligations, the liability of the trust and Trustee to the Settlor's creditors, and the advisability or necessity for probate proceedings to bar creditors.
- (h) Contributions due to the Personal Representative of the Settlor's estate for payment of expenses of administration and obligations of the Settlor's estate.
- (i) Identifying tax returns required to be filed by the Trustee, the Trustee's liability for payment of taxes, and the due date of returns.
- (j) Filing a nontaxable affidavit, if required, and not filed by a Personal Representative.
- (k) Order of payment of expenses of administration of the trust and order and priority of abatement of trust distributions.
- (l) Distribution of income or principal to beneficiaries or funding of further trusts provided in the governing instrument.
- (m) Preparation of any legal documents required to effect distribution of assets.
- (n) Fiduciary duties, avoidance of self-dealing, conflicts of interest, duty of impartiality, and obligations to beneficiaries.
- (o) If there is a conflict of interest between a Trustee who is a beneficiary and other beneficiaries of the trust, advice to the Trustee on limitations of certain authority of the Trustee regarding discretionary distributions or exercise of certain powers and alternatives for appointment of an independent Trustee and appropriate procedures.
- (p) Procedures for the Trustee's discharge from liability for administration of the trust on termination or resignation.

In addition to our legal fees for ordinary services in representing a Trustee, we charge further compensation, based upon our normal hourly fees, for any "extraordinary services," if a percentage fee has been elected, but only if the extraordinary services exceed the lesser of \$1,000 or 1% of the value of the trust assets for federal estate tax purposes and our fee is not otherwise the minimum fee. If we are charging our minimum fee, then we charge for extraordinary services, regardless of the \$1,000 or 1% limitation. If the limitation applies, there is only one \$1,000 limitation for all assets, whether the assets are probate assets, trust assets, or other non-probate assets.

What constitutes an extraordinary service may vary depending on many factors, including the size of the trust.
Extraordinary services normally include, but are not limited to:

- (a) Involvement in a trust contest, trust construction, a proceeding for determination of beneficiaries, a contested claim, arguments with beneficiaries, elective share proceedings, apportionment of estate taxes, or other adversary matter or proceedings or litigation by or against the trust.

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- (b) Representation of the Trustee in an audit or any proceeding for adjustment, determination, or collection of any taxes.
- (c) Tax advice on postmortem tax planning, including but not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse QTIP election, allocation of GST exemption, qualification for Internal Revenue Code Sections 303 and 6166 privileges, deduction of last illness expenses, distribution planning, asset basis considerations, throwback rules, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuations, handling employee benefit or retirement proceeds, prompt assessment requests, or requests for release from personal liability for payment of tax.
- (d) Review of an estate tax return and preparation or review of other tax returns required to be filed by the Trustee.
- (e) Preparation of a decedent's federal estate tax return. If we are to represent a Trustee or Personal Representative that has the responsibility to file an estate tax return, we prepare these. If an estate tax return is required, under our percentage fee schedule, we charge a fee of 1/2 of 1% up to a value of \$10 million and 1/4 of 1% on the value in excess of \$10 million, of the gross estate, as finally determined for federal estate tax purposes, will be charged for this service, unless we are charging hourly for all work. Audits are not included in the percentage fee and are at our normal hourly rates.
- (f) Purchase, sale, lease, or encumbrance of real property by the Trustee or involvement in zoning, land use, environmental, or other similar matters.
- (g) Legal advice regarding carrying on of decedent's business or conducting other commercial activity by the Trustee.
- (h) Legal advice regarding claims for damage to the environment or related procedures.
- (i) Legal advice regarding homestead status of trust real property or proceedings involving the status.
- (j) Involvement in fiduciary, employee, or attorney compensation disputes.
- (k) Considerations of special valuation of trust assets, including discounts for blockage, minority interests, lack of marketability, and environmental liability.

If court proceedings to determine compensation are required, the costs, including legal fees at our standard hourly rates, shall be paid from the assets of the trust.

Fee Schedule for Other Non-Probate Assets

The legal fee for all other assets that are neither probate assets nor assets in a trust that was revocable by the Settlor at the time of the Settlor's death, shall be 1.5% on a percentage fee basis, unless an hourly fee is elected for all work, whether the work is with respect to probate assets, trust assets, or other assets.

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Minimum Fee

Notwithstanding the above, our minimum legal fee is \$3,500. This minimum fee applies to all *percentage fee basis* work that we do, whether the assets are probate, in trust, or are other non-probate assets. There is only one minimum fee. The minimum fee will almost never apply.

Real Estate Transactions and Litigation or Other Adversarial Matters

It should be noted that we do not handle real estate transactions, such as transferring property out of a South Carolina trust. We let the attorney who represented the decedent, Settlor, or former Trustee, take care of such matters, and their fee is in addition to ours.

It should also be noted that if litigation is involved, we must agree to the additional representation, and in many cases, another law firm will have to be retained and their fees will be in addition to ours.

Out of Pocket Costs

In addition to our fees, there are out-of-pocket costs such as courier services, court fees, and sometimes appraisers and other third party services. Photocopies are charged at our normal hourly rates, if our hourly billing is used. Otherwise, they are \$.25 per copy, if we are charging a percentage fee, but only after the first 500 copies.

Often we have to obtain security appraisals and we purchase these from a company called EVP, which is used nationally by many other practitioners and the IRS. These charges, are \$4.00-\$5.00, or even less, per security, and are also charged as an out of pocket cost. Most out of pocket costs will be paid directly by you and not by us. Any out of pocket costs that we incur, such as for EVP reports, will be included on your bill.

\$3,500 Retainer Required in All Cases

In all cases, we require a retainer for our legal services in the amount of \$3,500. This amount will be held in escrow and applied against the final payment of our bill with any excess refunded.

Payment Due Dates for Percentage Fees

The minimum monthly payment is \$1,000 payable on the 1st of each month until \$3,000 has been paid. The actual fee is determined after the value of the assets have been determined, either finally or tentatively, with adjustments made after final determination of the values, if necessary.

At that time, 50% of the fee will be due, less the previous amounts paid, other than the amounts held in escrow. The remaining 50% fee will be due in equal monthly installments over the next 6 months, unless we substantially conclude our work sooner, in which case, the balance will be paid upon substantial completion of the work.

In all cases, a tentative determination of value will be made within 90 days of the beginning of our representation, and updated as and when needed. All other amounts, such as for out of pocket costs, are due when billed and not subject to any discounts.

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If there is no tentative determination, then we will continue to be paid, but at the rate of \$2,500 per month after the 90 day period, until the valuation is determined. At that time, 50% of the fee will be due, less the previous amounts paid, other than the amounts held in escrow. The remaining 50% fee will be due in equal monthly installments over the next 6 months, unless we substantially conclude our work sooner, in which case, the balance will be paid upon substantial completion of the work.

If the valuation is not made within a reasonable time, we reserve the right to withdraw from the case or be paid additional amounts for our work.

**2% Discount on Hourly Fee Amounts Paid Early,
If We Are Allowed to Use Email to Correspond With You**

If we are allowed to use email to correspond with you, and if you pay a bill within seven (7) days of the date that the bill is emailed to you, then you may deduct 2% of the amount due for hourly fees. This 2% discount does not apply to out of pocket costs.

1.5% Interest on Past Due Legal Fees and Costs

For hourly billing, we bill approximately monthly.

For our out of pocket costs, we also bill approximately monthly.

The amount of the bill is due and payable within ten (10) days of receipt of the bill, for hourly fee billing. Otherwise, the bill is due and payable on the due date as outlined under our percentage fee billing.

If the amount due is not paid within fifteen (15) days, then there is a monthly charge of 1½% of the balance due. This applies to all of our billing methods.

Suspension of Work

If all amounts due to us are not paid within ten (10) days of the due date, then we have the right to suspend all further work until we are paid in full.

Termination of Representation If Legal Fees Are Not Timely Paid

If we are not paid in full within thirty (30) days of the date of the bill for hourly billing and for out of pocket costs, or the due date under percentage fee billing, it is agreed that we will be allowed to withdraw from representation in this matter and you agree to sign a consent to our withdrawal, which will be filed with any court that we have made an appearance in or filed any documents with. If you refuse to sign a consent to our withdrawal, you also agree to pay all of our standard fees, interest, and costs, including legal fees and costs of firms hired by us to represent us in withdrawing, up to and including the court granting our withdrawal and the time necessary to comply with any court orders and close the file.

Legal Fees for Collection of Unpaid Legal Fees

If we have to institute a legal proceeding or hire another law firm to collect amounts due to us, you agree to pay all of the legal fees and costs, whether of an attorney that we hire, or our fees incurred in the collection of the debt. It also includes our time expended on the collection matter at our normal hour rates.

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Who Should Elect an Hourly Fee?

Those who may do better with an hourly fee, include professional fiduciaries for one, who know the process from A-Z and need minimal help. Also, individuals who are self-starters, have a lot of time on their hands or staff to devote to the task and want to reduce their costs by doing much of the work, themselves, as they can. All those looking to finish the work more quickly, may want an hourly fee. Lastly, someone wanting to reduce their costs and are willing to learn and cooperate. Quite frankly, all cases require cooperation.

It should be noted that although hourly fees are often less on an hourly basis, this is not always true. The facts and circumstances of each case are different.

Who Should Elect a Percentage Fee?

Conversely, those who do not believe that they have the time or inclination and are not in a hurry to have the work completed, may fare better under a percentage fee. However, if you are the fiduciary, you still have substantial responsibilities and work to do. Even with a percentage fee, your help and cooperation is required.

It should be noted that although percentage fees are often more than an hourly basis, this is not always true. The facts and circumstances of each case are different.

If you have any questions about our services or our fees, please do not hesitate to ask.

Sincerely,

Michael J. Howell
MJH:mh

Enclosure: 21 page Checklist Applicable to our Hourly Fee Basis

I have read the above fee schedule and services to be provided, agree to its terms and conditions and elect to be charged for services on the following basis (initial only one):

_____ **Percentage fee basis, as outlined above, subject to hourly fees for extraordinary services.**

_____ **Hourly fee basis, as outlined above.**

_____ **Match the Published Fee Schedule of _____, as outlined above, a copy of which is attached hereto.**

Name of Decedent, Estate and/or Trust

Name of Client

Date: _____

Rev. 8/11

Initial: _____

Initial: _____