

THE LAW OFFICE OF
MICHAEL J. HOWELL, P.A.
A TRUSTS AND ESTATES LAW FIRM

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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

Certified Mediator in South Carolina
Probate and Circuit Courts

Margaret Howell Up De Graff
Licensed in
Florida and
South Carolina

Certified Mediator in South Carolina
Probate and Circuit Courts

Free Initial Consultation for Ancillary Probate Administration
By a Credit of up to \$395 for the First Conference
Please Read, Sign, and Return this Memorandum with the Requested Information
Also, Please Call to Set up a Time and Date to Meet

If you need help with the ancillary probate administration of property located in South Carolina, we may be able to help. An ancillary probate administration presupposes that you are already administering the estate of the decedent in his or her primary domiciliary state and county.

For purposes of this memorandum, we also assume the decedent was domiciled in and was a citizen of the United States. This also assumes that the Personal Representative in the domiciliary proceeding is either a licensed attorney in that jurisdiction, or is represented by a licensed attorney.

In order for us to be of assistance, we will ultimately need the following information from you, or your attorney, to begin our work:

1. Check payable to the Beaufort County Register of Deeds Office in the amount of \$10.00 for filing fees.
2. Check payable to the Beaufort County Probate Court in the amount of \$25.00 for filing fees.
3. Two certified copies of the decedent's death certificate.
4. Exemplified (Authenticated) copy of the domiciliary probate proceedings from the decedent's domiciliary jurisdiction.
5. Copy of contract of sale signed by all parties, if the South Carolina property is under a contract of sale.

6. Check payable to The Law Office of Michael J. Howell, P.A. in the amount of \$3,500. We charge \$395 per hour for Michael J. Howell's time, \$350 per hour for Margaret H. Up De Graff's time, and \$155 per hour for non-attorney staff members *with a minimum fee of \$3,500*. In addition, we charge for out-of-pocket costs such as courier services, appraisal services, and Court costs, just to name a few.

Notwithstanding the above, we do not need the checks for the initial consultation. Only after we agree to represent you will the checks be needed.

For the initial consultation we will need copies only of the domiciliary probate proceedings, a death certificate, and if applicable, the contract of sale for South Carolina real estate. However, as discussed later, if you elect not to provide this information, then there is a charge in the amount of \$350 or \$395 toward the initial consultation, which must be paid in advance either by cash, check, or credit card. The charge depends upon which lawyer conducts the consultation.

With respect to our hourly fees, they may be increased in the future. However, all clients for whom we are doing work at the time will be notified at least 30 days prior to the increase. The increase will apply to all clients similarly situated. This basically means that the fees for probate work will be increased for all probate clients, and not just for you.

Our fees will be no less than the \$3,500 that you pay to us as outlined above. However, it can be more, depending upon what we find after we begin the process. If the hourly charges exceed the minimum \$3,500 fee, then there will be additional charges.

As you may or may not know, our staff members are all very well trained and experienced in the administration of estates and trusts. Also, where we can, we will allow you, or others, as you choose, to do work, assuming no one is engaged in the unauthorized practice of law, or violates some other statute, rule, or regulation. Before anyone does any such work, we should be informed to make sure that there is no duplication of effort.

It is our policy to provide narrative descriptions in our billing statements. 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 and to confirm any conversations or meetings that we have had with you and any significant decisions that were made. The idea is to keep you informed.

Depending upon how much work we do, over 95% of the cases we handle fall within a fee range of 1% or less on, the low end, to 3% on the high end. In difficult or complex cases, it can be higher. The percentage estimate applies to the gross value of the South Carolina assets, as valued for Federal estate tax purposes.

Keep in mind, these are only rough estimates and you are not being charged a percentage fee. You are only being charged hourly, but with the \$3,500 minimum.

Quite frankly, the larger the estate, the lower the fees are, as a percentage of value, since there is only so much work we can do, even in the administration of a large estate. Conversely, the smaller the estate, the larger the expenses are 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.

As you can see, the estimate is quite broad. No two estates are identical, and the actual costs depend upon numerous factors, some of which are discussed in this letter and a 21-page checklist. A copy of the checklist can be found on our website. If you did not find this memorandum on our website and do not have access to the Internet, then we can provide it to you, if you would like.

Normally, we only insist on our reviewing the 21 page checklist with you if there is a full probate proceeding and/or we are responsible for the preparation of one or more estate tax returns. It can easily take 2-3 hours to review the checklist. The record for us was two days on a very complex estate. The record before that was 6 hours, but these were very unusual cases.

In addition, as outlined above, there are out-of-pocket costs for items such as courier services, Court fees, and sometimes appraisers and other third party services.

Naturally, the fees can be higher if there are problems such as lawsuits, unpaid creditors, or audits. **As stated above, keep in mind that we are not charging a percentage fee, but there is a minimum fee of \$3,500** in this case. Otherwise, we 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, but again, may not be valid in every case, and it is quite broad. However, it has proved over the years to be a good rule of thumb.

For most domiciliary administrations, there is only one property located in South Carolina. If there is any other property, then there will be additional charges at the hourly rates outlined above, assuming the total hourly fees exceed the \$3,500. There is only one \$3,500 minimum fee, regardless of whether there are multiple properties.

We try to bill every month when there is a balance due. It can also be less often if the bill is relatively low. However, you also agree that we are allowed to bill twice a month when there is a balance due.

We also charge 1 1/2% per month on all amounts not paid within 30 days. Also, we have the right to suspend all work for all amounts not paid within 10 days. For all amounts in excess of the \$3,500 deposit that are paid within 7 days of the date of the bill, you can take a 2% discount. You may also pay by credit card, assuming we accept your particular card, *but you will not also receive the 2% discount.*

If for any reason after you receive a bill, you disagree with it, then you should only pay the amount that you believe is due. You also agree that if you do not contest a bill within 30 days after it is mailed or emailed to you, then you waive your right to contest it at a later time.

To contest a bill, you must give specific information as to what you dispute and why, rather than a general belief that the charge is too high. We will then let you know within 7 days whether we agree or disagree. During this 7-day period, no interest will be charged.

If you fail to pay for services rendered, you also agree to pay legal fees that we incur to hire a lawyer to collect the amount due. You also agree to pay any out-of-pocket costs, including but not limited to Court costs, discovery costs, and expert witness fees incurred as a result of having to collect the amount due. During the time of collection, up until the amount is paid, you agree to pay interest at 1 1/2% per month on the amount due.

Once we receive the items listed in the first portion of this memorandum and agree, in writing, to represent you, we will prepare and send to you the papers for the Informal Probate of the Will in South Carolina, and a Deed of Distribution, if this is the procedure that we decide to follow. Simultaneously, we will copy your local attorney and ask that you have the documents witnessed and notarized by someone in your local attorney's office.

Once we receive the fully signed and executed papers, we will file them with the Beaufort County Probate Court. Next, we will send the required notices to heirs and devisees. Assuming all goes well, we will then be able to conclude our representation. We may be finished in as little as 60 – 120 days, but it can take longer.

Under this procedure, our duties will be more or less limited to probating the Will with the Probate Court, but not appointing a Personal Representative. In such a case, we will also be filing the necessary Information to Heirs and Devisees and Proofs of Delivery with our Probate Court, as required by South Carolina statute. All other matters will be taken care of by the attorney for the domiciliary administration. This procedure can save substantial costs over appointing a Personal Representative in South Carolina.

If there is a Personal Representative appointed in the domiciliary jurisdiction, the appointment of a Personal Representative in South Carolina is not necessarily required and we can utilize your domiciliary appointment, instead, as allowed by South Carolina statute. This allows us to limit the scope of our engagement with our work being to complete an ancillary procedure without having a Personal Representative appointed by our local Probate Court and not having to apply for probate of the Will, locally.

With this procedure, it is much less likely that the cost will be on the high end of the estimated percentage fee range. For the most part, the high end would be a case where both your appointment as Personal Representative and/or the preparation of an estate tax return is required, or there are creditor claim issues or beneficiaries or family who do not get along or agree.

If neither your appointment as Personal Representative nor an estate tax return is required, and there are no creditor issues, then our job may be finished even earlier, at which time we will send you a closing letter telling you that our job is finished. Even in a longer case, we provide such a closing letter.

If an estate tax return is required, then its preparation will be the responsibility of your local attorney for the estate or the CPA for the estate, unless we specifically agree, in writing, to do assume this responsibility.

If you would like our assistance in an ancillary probate matter, please call our office to set up a time for a telephone or office conference. During the conference, we will explain what we can do and answer any questions that you may have. The conference will be less than an hour. The exact time depends on any questions that you may have. It may only last 15 minutes due to the limited scope of our engagement.

If you provide the requested information from the first portion of this memo or photocopies, then we will credit \$395 to your first bill, which is the equivalent of 1 hour of Michael J. Howell's time.

Without the requested information, you are charged for all work and a credit card payment of \$395 or equivalent check or cash is required in advance of the conference. Keep in mind that we do not need the \$3,500 check or the checks for the Probate Court or Register of Deeds Office, unless or until we agree to represent you.

Under South Carolina statutory law, if we represent you, then we only represent you in your capacity as a fiduciary. Under our statute, we do not represent any beneficiary, absent a written agreement to the contrary.

Assuming we accept your case, this memorandum is to serve as our agreement to represent you only as Personal Representative up until we complete our work and we close the file. At that time, we will send you a letter letting you know that our representation has ceased and the next bill on or after the date of the letter will be your final one.

Notwithstanding the above, you may also terminate our representation at anytime. We also reserve the right to withdraw from the case or quit at anytime. To the extent reasonably possible, in such a case, we will give you 30 days written notice. We would then turn the files over to any lawyer that you designate.

However, in such a case, we will be allowed to wrap up anything we are then currently working on and charge for the work. In addition, we may also have to notify the Probate Court and the Court has to approve before we can be terminated or quit, if we have made an appearance or filed documents on your behalf. In such a case, we bill for and are paid for all charges necessary to wind up our representation, obtain Court approval, and to transfer a copy of the file, if necessary.

You also agree to pay us prior to our turning over the file, or applying to the Court for approval, unless there is substantial prejudice involved and you are not reasonably able to make the payment. Also keep in mind that you will already have a complete copy of the file in your possession, as further outlined below.

Please keep in mind that we do not handle any litigation or real estate matters. If there are adversarial or real estate matters, you must hire a litigator and/or a real estate attorney. There

are also other matters that we do not handle, but they are not likely to be relevant in most ancillary probates. However, if they do become an issue, you will be advised.

In all cases, you will be kept informed of what is going on and will be copied on all correspondence going out of our office and related to this matter. While all information is confidential, we may divulge information to third parties, and do any work that is reasonably necessary to perform our representation in this matter.

Divulging information includes matters that may come up in the future after this case is closed and that are related to this case. For instance, occasionally disputes arise or information is needed by third parties after a case is closed.

Some of the issues and information needed may relate to what was done in this case. In such a situation, you are authorizing our firm to disclose information, which is reasonably necessary for us to carry out our representation in the case. Naturally, if you are alive, competent, and we have your current address and telephone number, we will contact you before we give out any such information.

We will also try to assist if needed on other non-related matters or on matters that we were not originally asked to do, as you may request. However, one of our attorneys has to approve any and all requests for additional work, in writing.

With respect to files, we do not keep any original documents in our files. We give these to you and they are your responsibility to be kept in your permanent files. We only retain electronic or digital copies of the files. We no longer keep any paper files. You agree that any such electronic or digital files in our possession are our property.

You also understand and agree that we charge for scanning copies of documents into our files at our normally hourly rates. The same applies to copies that we provide to you and to third parties and to emails and telephone conferences. As a practical matter, we charge for all the work that we do on a file.

We retain our electronic or digital copy of our file for 6 years after our representation terminates. At all times during the representation period, you will be provided with substantially all copies of any relevant information that we receive for our files. If you do not believe you received copies of any documents or correspondence, please let us know and we will send you a copy during our period of representation.

If after the representation terminates, you need additional copies, we will make them for you and charge our normal hourly rates. At our option, we may provide you with electronic copies, if you need copies during the 6-year period after our representation terminates. Often, this is much less expensive and easier to research.

If you use email, we prefer to use it to PDF copies of papers and documents to you and vice versa. We have found that this can produce a significant cost reduction over using paper and the U.S. Mail. Naturally, there are some items such as original documents that must be mailed. In addition, there are some limits, depending upon your internet service provider, as

to how large a file can be sent through the internet. If you have an email address, please furnish it to us, unless you have already done so.

With respect to email, we use it to send and receive information including documents, where the original is not required. You may do the same. However, you should not use email if a prompt response is needed. In any situation, where a prompt response is needed, you should call our office rather than use email.

I hope that the above is a helpful explanation. Our staff will do all that we can to make matters go as smoothly as possible.

Assuming the above is acceptable, please fill out, sign, and return a copy of this memorandum to us for our file. After we meet, either in person or by telephone, we will let you know if we agree to represent you.

If you have any questions, please let us know. Until this letter is signed and the copy returned to us along with the requested information and we agree to represent you, we will not be able to do any further work, other than the initial consultation.

Also, there is no attorney-client relationship until such time as we agree to represent you. Notwithstanding this, you are a prospective client and all information that you give us will be treated as confidential.

Lastly, although in most cases our fees and costs can be payable from estate, or possibly trust assets, as between you and our firm, you agree to be personally responsible and liable for our fees and costs, including costs of collection.

Very truly yours,

The Law Office of Michael J. Howell, P.A.

Estate of _____

Date of Death: _____

Name of Personal Representative: _____

Mailing Address of Personal Representative: _____

Email Address of Personal Representative: _____

Telephone Number of Personal Representative: _____

Letter read, approved, and signed by: _____, Personal Representative

Date: _____, 20____

(Rev. 02/23)