

MASSACHUSETTS BAR ASSOCIATION

CONTINUING LEGAL EDUCATION

PROBATE LITIGATION

Obtaining Attorneys' Fees

THURSDAY, APRIL 13, 4–7 P.M.
MBA, 20 WEST ST., BOSTON

Sponsored by the MBA's Probate Law Section



SEMINAR WITH
REAL-TIME
WEBCAST



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PRICING

MBA members..... **FREE**

Non-members..... **\$160**

When it comes to court-awarded attorneys' fees, the "American Rule" provides that each party is responsible for paying its own attorneys' fees, unless specific authority granted by statute or contract allows the assessment of those fees against the other party.

There are exceptions to this rule when it comes to probate litigation. Our expert panel will break down the law in Massachusetts that authorizes the Probate and Family Court to award attorneys' fees.

Topics include:

- Discussion of *Giroux v. Laranjo*, et al, a dispute involving:
 - The validity of a change to a realty trust schedule of beneficiaries by the "lifetime" beneficiary's attorney-in-fact
 - Additional claims against personal representative for breach of fiduciary duty
- Applicable Law:
 - The American Rule
 - M.G.L. c. 215, § 45
 - M.G.L. c. 231, § 6F
- Discussion of *The Estate of King*, 455 Mass.796, 802-803 (2010), factors:
 - Whether as a matter of equity fees should be awarded
 - Whether a separate evidentiary hearing is required before granting fees
 - If a court grants an award for fees, the fees still need to be reasonable
- Making the case for a shifting of attorneys' fees, by highlighting:
 - The successful party's attempts to resolve matter amicably
 - The unsuccessful party's low likelihood of success from onset
 - Bad behavior of unsuccessful parties (delaying hearings, frivolous claims, irrelevant discovery, ignoring court orders, etc.)
 - Additional unnecessary costs created by unsuccessful parties (e.g., appointment of independent trustee)
 - The fees charged by the unsuccessful parties' attorneys (hourly rate and total fees) to justify one's own attorney's hourly rate and total fees
 - The average fees charged by other attorneys (include supporting affidavits) to justify one's own attorney's hourly rate and total fees
 - How failure to award fees will distort an otherwise valid estate plan

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