FLORIDA ATTORNEYS' FEES IN PROBATE

Authority	How Fees Awarded	Awarded For	Source of Payment
732.2151: Elective Share Proceedings	As in chancery	Dispute regarding: • Entitlement; • Inclusion of assets and valuation; • Satisfaction	• Estate; or, • Party's interest in elective share or elective estate; or, • Judgment that can be satisfied from other property of party
732.805: Spousal Rights Procured by Fraud, Duress, Undue Influence	As in chancery	All actions brought under section	• Party's interest in estate • Judgment that can be satisfied from other property of party; or, • Both
732.806: Gifts to Lawyers and other disqualified persons	As in chancery	All actions brought under this section, BUT no fees against a party who, in good faith, initiates an action under this section to declare gift void	• Party's interest in estate or trust • Judgment that can be satisfied from other property of party; or, • Both
733.106: Costs and attorneys fees[1]	(1) In all probate proceedings, as in chancery		
	(2) To named personal representative or will proponent if nominated personal representative does not act in reasonable time	Good faith justified offering will for probate even if probate denied or revoked	Estate (discretion to direct from what part, no bad faith finding required)
	(3) Any attorney	Who has rendered services to an estate	Estate (discretion to direct from what part, no bad faith finding required)
733.1061: Fees and costs Will Reformation and Modification	As in chancery (attorneys fees and guardian ad litem fees)	For a proceeding arising under 732.615 (Reformation to correct mistakes) or 732.616 (Modification to achieve testator's tax objectives)	• Party's interest in estate • Judgment that can be satisfied from other property of party; or, • Both

[1] *Dayton v. Conger*, 448 So.2d 609 (Fla. 3rd DCA 1984) (beneficiaries not personally liable for fees); *In re Estate of Lewis*, 442 So. 2d 290, (Fla. 4th DCA 1983) (includes services that are successful in simply effectuating the testamentary intention set forth in the will); *In re Estate of Simon*, 549 So. 2d 210 (Fla. 3d DCA 1989) ('If the [attorney's] services tend to break down, subtract from or dissipate the estate [the attorney] cannot be compensated from it.)

Authority	How Fees Awarded	Awarded For	Source of Payment
733.3101: Personal representative not qualified	Against personal representative personally	Failure to comply with section	Personal representative personally
733.608(8): General Power of Personal Representative	As in chancery	Any action for enforcement of debt described in section (Personal representative lien on homestead property)	Unclear, possibly same sources that personal representative can enforce payment of debt: • Foreclosure of lien on homestead property • Offset of debt against other property in personal representative's possession; • Offset of the debt against revenues from the protective homestead received by the personal representative
733.609: Improper exercise of Power; Breach of Fiduciary Duty[2]	Chancery	All action for breach of fiduciary duty or challenging the exercise of or failure to exercise a personal representative's powers	• Party's interest in estate • Judgment that can be satisfied from other property of party; or, • Both
733.6171: Compensation of Attorney for Personal Representative[3]	to attorney for personal representative	Reasonable compensation for ordinary services	Estate assets without court order
	To attorney for personal representative	Reasonable compensation for extraordinary services	Estate assets, upon petition of any interested person
733.6175: Proceedings for Review of employment of agents and compensation of personal representative and employees of estate[4]	As part of administration process	Proceedings to determine reasonable compensation of personal representative or any person employed by the personal representative	Estate assets (can direct from part of estate), unless substantially unreasonable
733.705: **Payment of and Objection to Claims**	Attorney for administrator ad litem	Defending estate in independent action after objection to creditor claim	• May be awarded as provided by 733.106(3) (attorney who has rendered services to estate) • If paid from estate, discretion to direct from what part shall be paid

[2] *Landon v. Isler*, 681So. 2d 755 (Fla. 2d DCA 1996)(personal representative does not breach fiduciary duty by opposing a claim that later proves to be valid)

[3] *Glantz v. Glantz, P.A. v. Chinchilla*, 17 So. 3d 711 (Fla. 4th DCA 2009); *Venis v. Greenspan*, 833 So. 2d 208 (4th DCA 2002) (consideration of extraordinary fees).

[4] *Geary v. Butzel Long PC*, 13 So. 3d 149 (Fla. 4th DCA 2009)(discussion of review proceedings)