



RECOVERING ATTORNEY FEES IN TEXAS

Rohrmoos and its Exceptions

ABSTRACT

The Texas Supreme Court's landmark ruling in *Rohrmoos Venture v. UTSW DVA Healthcare, LLP* in 2019 provided significant clarity and established the required method of proof for attorney's fees in fee-shifting cases. This decision left little doubt about the procedural and evidentiary requirements that a party must satisfy to recover attorney's fees under a statutory or contractual fee-shifting provision

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Briefing on Attorney's Fees in Texas Law

I. Introduction to Attorney's Fees in Texas

In Texas, attorney's fees are generally not recoverable unless authorized by statute or contract, adhering to the "American Rule" that prohibits fee awards unless specifically provided for.¹ When allowed, these fees must be proven to be "reasonable and necessary." The landmark case of *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469 (Tex. 2019) fundamentally reshaped the standard for recovering attorney's fees under fee-shifting provisions in Texas.

II. The Rohrmoos Venture Standard for Attorney's Fees

A. The Lodestar Method: The Presumptive Standard

Before *Rohrmoos*, we had *Anderson*² and the lodestar method. According to the Court, the lodestar method was never intended to be a separate standard but rather was intended to be a short-cut version of the *Anderson* method.

Rohrmoos Venture definitively established the lodestar method as the standard for proving attorney's fees in Texas under statutory or contractual fee-shifting provisions. This method involves a two-step calculation:

Step 1: Base Calculation (Time x Rate): The initial step requires determining "the reasonable hours spent by counsel in the case and a reasonable hourly rate for such work." Multiplying these two figures yields "the base fee, or 'lodestar,' which is a presumptively reasonable fee award."

- **Specific Evidentiary Requirements:** To support this base calculation, claimants must provide detailed proof, including:
 - ✓ "particular services performed"
 - ✓ "who performed those services"

¹ See *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 550, 130 S.Ct. 1662, 176 L.Ed.2d 494 (2010) ("The general rule in our legal system is *484 that each party must pay its own attorney's fees and expenses."); *Ashford Partners, Ltd. v. ECO Res., Inc.*, 401 S.W.3d 35, 41 (Tex. 2012) ("As a general rule, litigants in Texas are responsible for their own attorney's fees and expenses in litigation.").

² *Arthur Andersen & Co. v. Perry Equipment Corp.*, 945 S.W.2d 812, 818 (Tex. 1997).

- ✓ "approximately when the services were performed"
- ✓ "the reasonable amount of time required to perform the services"
- ✓ "the reasonable hourly rate for each person performing such services"
- Rohrmoos clarified that general testimony about an attorney's experience or the total fees is insufficient.
- **Contemporaneous Billing Records:** While not "required" by Rohrmoos, the burden of documenting hours and their value makes contemporaneous billing records practically essential. Courts have reversed awards based on "overly-redacted or generic billing records." For instance, in *Faith P. and Charles L. Bybee Foundation*, an award was reversed because the only evidence was an affidavit without billing records, listing generic tasks like "investigating the matter" and "drafting pleadings."
- **"Strong Presumption":** The base lodestar figure, when properly calculated and supported, carries a "strong presumption" of reasonableness and necessity. In a jury trial, the jury "should be instructed that the base lodestar figure is presumed to represent reasonable and necessary attorney's fees."

Step 2: Adjustment of the Base Lodestar: The base lodestar figure "may then be adjusted up or down (apply a multiplier), if relevant factors indicate an adjustment is necessary to reach a reasonable fee in the case."

- **Avoiding Double-Counting:** A crucial caveat is that "an enhancement or reduction of the base lodestar figure cannot be based on a consideration that is subsumed in the first step of the lodestar calculation." For example, in *Texas Mut. Ins. Co. v. DeJaynes*, a "double enhancement" based on the contingent nature of the case (used to increase the hourly rate and then again to justify the gap between time-and-hour fees and the contingency) was expressly disapproved as Rohrmoos prohibits such double counting.
- **Arthur Andersen Factors:** The Rohrmoos court noted that many factors previously considered for reasonableness, such as those from *Arthur Andersen* (e.g., novelty and complexity of issues, skill of counsel, results obtained), are typically "subsumed within the initial calculation" of the lodestar and generally "cannot serve as independent bases for increasing the base fee award." These factors are derived from Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct. Upward adjustments are considered proper only in "rare" and "exceptional" cases.

B. Purpose of Attorney's Fee Awards

Attorney's fee awards are "compensatory in nature, intended generally to make the prevailing party whole as to reasonable and necessary fees for successfully prosecuting or defending against a claim." They are not solely dependent on the contractual fee arrangement between the prevailing party and its attorney.

III. Key Concepts and Considerations for Attorney's Fees

A. Basis for Recovery: Statutes, Rules, and Contract

Attorney's fees are recoverable when authorized by Fee-Shifting Statutes and Rules. Numerous Texas statutes and rules allow for fee-shifting. Examples include:

- Texas Civil Practice and Remedies Code Chapter 38 (most often for breach of contract, rendered services, performed labor, furnished material, etc.)
- Texas Citizens' Participation Act (TCPA)
- Texas Deceptive Trade Practices Act (DTPA)
- Texas Government Code Prompt Payment Act
- Texas Family Code (e.g., dissolution of marriage, enforcement actions, family violence findings, frivolous modification suits, SAPCR)
- Uniform Declaratory Judgments Act (UDJA)
- Texas Theft Liability Act (mandatory for prevailing party)
- Texas Property Code Section 70.008 (motor vehicle/boat possession and debt)
- Texas Turnover Statute (mandatory for judgment creditor)
- Texas Medical Liability Act
- Texas Labor Code
- Texas Insurance Code
- Rule 91a Motion to Dismiss
- Contractual Provisions: Parties can contract for fee-recovery standards, which may be "looser or stricter than Chapter 38's."
- Sanctions: Attorney's fees can be awarded as sanctions under:
 - Texas Rule Civil Procedure 215
- Inherent Authority of the court (for "bad faith abuse of the judicial process" that "significantly interfered with the court's legitimate exercise of one of its core powers")
- Chapter 10 of Civil Practice and Remedies Code (for "groundless allegations and other pleadings presented for an improper purpose")

B. "Prevailing Party" Requirement

General Definition: For many fee-shifting cases, the party seeking fees must be a "prevailing party," meaning they obtained "actual and meaningful relief, materially altering the parties' legal relationship."

Successful Counter-Defendant: Rohrmoos Venture clarified that a defendant who successfully defends against a claim and secures a take-nothing judgment can be a "prevailing party," even if they were the original plaintiff and obtained no monetary damages. UTSW in Rohrmoos was considered a prevailing party because it "successfully defended against Rohrmoos's breach of contract counterclaim, and the trial court rendered a take-nothing judgment in UTSW's favor as a counter-defendant."

Exceptions: Some statutes, like the Uniform Declaratory Judgments Act (UDJA), "do not contain a prevailing party component to be entitled to fees." Under the UDJA, a court "may award costs and reasonable and necessary attorney's fees as are equitable and just," and a party "need not prevail to be awarded attorney's fees."

C. Segregation of Claims

A fee claimant must "segregate legal fees for claims for which attorney's fees are recoverable from those that are not."

An exception exists when services "advance both recoverable and unrecoverable claims and are 'completely intertwined' or 'essentially identical.'" For example, in Pioneer Emerald Pointe, LLC, counsel testified that all issues were "inextricably intertwined" and "impossible" to segregate, relating to "billing and a debt and whether the bills were accurate and the lien associated with that debt and defending claims if it wasn't."

D. Expert Designation and Proof

A party seeking attorney's fees in a fee-shifting case must "designate an expert to testify regarding the reasonableness and necessity of the fees and comply with disclosure rules."

For conditional appellate fees (fees not yet incurred), the standard articulated in Yowell v. Granite Operating Co. applies, which does not require specific hours or identity of attorneys for particular appellate services, as appeals generally involve researching, preparing, and drafting briefs.

E. Judge or Jury Decision on Fees

Texas statutes and rules vary on who decides attorney's fee awards.

Judge: The trial court solely decides attorney's fees awarded as sanctions, with "no right to a jury trial." Some statutes have also been interpreted to only allow the trial court to decide attorney fee awards, as seen in *Meyers v. 8007 Burnet Holdings, LLC*, where the court rejected the argument that the jury should decide fees under Chapter 125, noting the statute's plain language "commits to the trial court both the question of entitlement to fees, and the criteria for awarding fees."

Jury: If a question of fact exists as to the reasonableness of attorney's fees under a statute (e.g., TCPA) that is "silent on the critical judge or jury question," a jury determination is required if one is requested.

F. Summary Judgment and Bench Trials

Summary Judgment: When requesting fees at summary judgment, an "attached affidavit or unsworn declaration made in compliance with applicable law is testimony that may be considered proof of the attorney's fees incurred." Such testimony, even from an interested witness, can establish fees as a matter of law if it is "clear, direct, positive, not contradicted by any other witness or attendant circumstances, and could have been."

Bench Trials (Chapter 38 Exception): For proceedings under Chapter 38.001 of the Texas Civil Practice & Remedies Code, Section 38.004 provides a limited exception in bench trials, allowing a court to "take judicial notice of usual and customary attorney's fees."

G. Challenging Fee Awards

Overly-Redacted Bills: A common method to challenge lodestar calculations is to argue that billing invoices are "too heavily redacted to allow the court to review whether they were reasonable and necessary." The trial judge "is obliged to do more than simply act as a rubber-stamp" and must conduct a "meaningful review" of the fee request.

Objections Required: Failure to object to an attorney's fee affidavit or its content before the trial court signs the dismissal order can result in the objection being waived on appeal.

H. Remedy for Failure to Meet Burden

When a party fails to meet its burden of proving attorney's fees under *Rohrmoos*, Texas courts typically "remand the case for a redetermination of fees." This is because the appropriate remedy is a "remand for further proceedings on the attorney fee request" when the record "lacks the requisite details to support a requested fee award."

However, with *Rohrmoos* being over five years old, there is an increasing awareness that courts "may eventually choose to reverse and render (meaning no award) rather than remand if the claimant consistently fails to provide legally sufficient evidence."

I. Pro Se Attorneys

Generally, an attorney representing themselves pro se cannot recover attorney's fees because they do not "incur" fees by becoming liable for them.

An exception exists "where the statute explicitly does not require fees to be 'incurred'".

IV. Rohrmoos Venture Distinguished in *In re Guardianship of Murray*

The case of *In re Guardianship of Murray* (2025) provides a notable distinction to the applicability of Rohrmoos Venture. In this case, appellants argued that a guardian ad litem's fee request was "insufficiently detailed" and should be subject to Rohrmoos because the guardian failed to "segregate the time he spent performing legal services from the time spent performing guardian ad litem services."

However, the Court of Appeals rejected the argument that Rohrmoos Venture applied to the guardian ad litem's fees. The court reasoned that Rohrmoos sets the standard for attorney's fees sought under a statute, contract, or rule. In contrast, the guardian ad litem in *Murray* was seeking "guardian ad litem fees" as "reasonable compensation for the guardian ad litem's services" pursuant to the Texas Estates Code, which permits fees in an amount the court considers "equitable and just," and does not require adherence to the specific evidentiary requirements of Rohrmoos. The court still reversed part of the fee award as unsupported by the record, rendering judgment for the amount specifically requested by the ad litem.

V. Conclusion

Rohrmoos Venture has provided a clear "roadmap for recovering attorney's fees pursuant to a statutory fee-shifting provision in Texas." Practitioners must adhere to the detailed requirements of the lodestar method, including meticulous record-keeping and proper segregation of fees. While the standard is primarily for "attorney's fees," it's crucial to understand its limitations, as exemplified by cases like *In re Guardianship of Murray*, where different statutory bases for compensation may exempt an award from Rohrmoos's strict requirements. The trend suggests that courts will increasingly enforce these standards, potentially leading to outright reversal rather than remand for consistent failures to provide legally sufficient evidence.