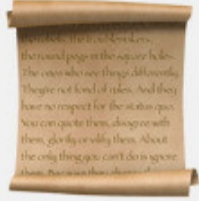




# Recovering Attorney's Fees in Texas

Thomas J. Daley // KoonsFuller, P.C. // June 6, 2025



**Court discretion  
plays a key role in  
cost recovery.**

# Proving Attorney's Fees in Texas

This presentation explores the modern standards and nuances in proving attorney's fees, including the Rohrmoos Venture framework, the lodestar method, and the Guardianship of Murray exception.

# Introduction & Agenda



## **Recovery of attorney's fees is not automatic in Texas**

The fact finder determines reasonableness and necessity. The court awards judgment.



## **Rohrmoos Venture set the modern evidentiary standard**

The Supreme Court adopted the lodestar method as the evidentiary standard.



## **Guardianship of Murray clarified when Rohrmoos does not apply**

Rohrmoos does not apply to guardian ad litem fees governed by the Estates Code for costs of advocating for the GAL (as opposed to ward).



## **Navigating challenges and best practices**

Maintaining detailed billing records, making proper objections, and designating experts.

**Understanding the American Rule, the Rohrmoos framework, and its exceptions is crucial for effectively proving and challenging attorney's fees in Texas.**

# The American Rule & Basis for Recovery



## **Attorney's Fees Not Automatic**

Recovery of attorney's fees is not automatic in Texas - must follow the "American Rule".



## **American Rule: Each Party Pays**

Under the American Rule, each party pays their own fees unless authorized by statute, contract, or rule.



## **Plead Correct Basis**

Claimant must plead the correct basis (statute, contract, rule) to recover attorney's fees.

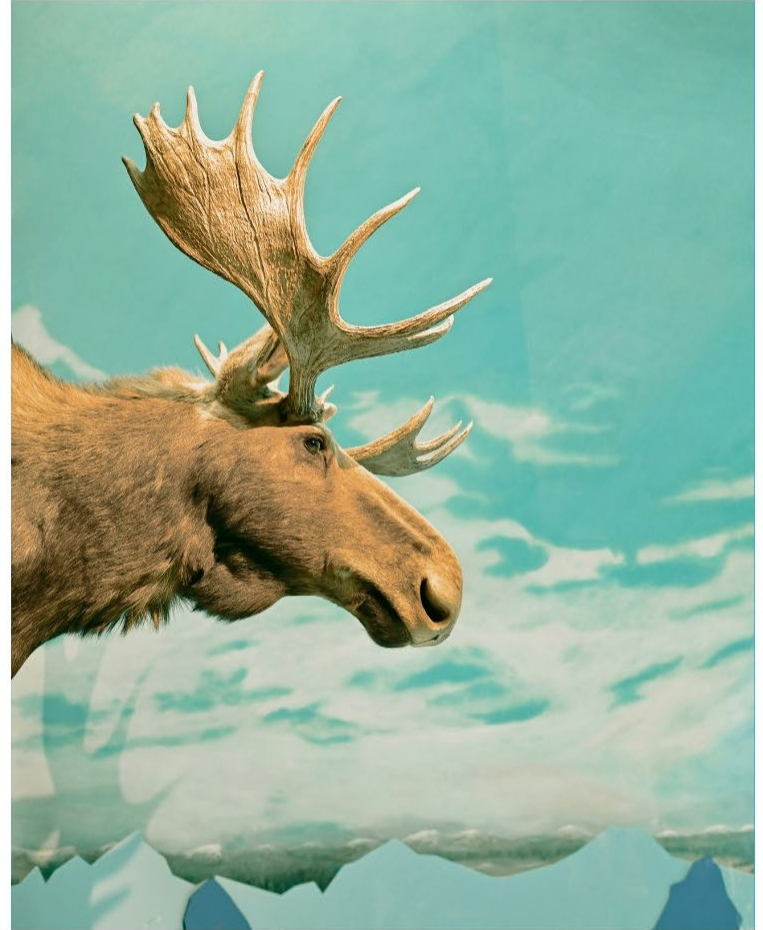
**Properly establishing the legal basis and satisfying the evidentiary requirements is crucial for recovering attorney's fees in Texas.**

# Rohrmoos Venture – The Turning Point

In the landmark Rohrmoos Venture decision, the Texas Supreme Court set the modern evidentiary standard for proving attorney's fees. The court rejected vague testimony on fees, and instead adopted the lodestar method as the required framework.



Old Practice





# Lodestar Method – Step 1: Base Fee

## Multiply Reasonable Hours × Reasonable Hourly Rate

The result is the "base lodestar," which is presumed reasonable if supported by adequate evidence.

## Jury Instruction on Presumption of Reasonableness

The jury should be instructed on the presumption of reasonableness for the base lodestar.

## Required Evidence

Evidence required includes what was done, who did it, when it was done, time spent, and hourly rate.

**General or conclusory testimony is insufficient.**

## Contemporaneous Billing Records

Contemporaneous billing records are strongly encouraged to support the lodestar calculation.

# Proving Step 1 – Evidentiary Requirements

- **Required Evidence**

Reasonable hours worked X reasonable hourly rate

The fee claimant bears the burden of providing sufficient evidence on both counts.

Sufficient evidence includes, at a minimum, evidence of (1) particular services performed, (2) who performed those services, (3) approximately when the services were performed, (4) the reasonable amount of time required to perform the services, and (5) the reasonable hourly rate for each person performing such services.

- **General or Conclusory Testimony**

Insufficient to meet the evidentiary requirements

# Lodestar Method – Step 2: Adjustments



Court May Adjust Lodestar Up or Down

Adjustments Only for Factors  
Not Included in Rate or Hours

Avoid Double-Counting Complexity, Skill, or Risk

Adjustment Must Be Supported by Specific Evidence



## ADJUSTMENTS

# Cannot Double-Count Factors

Upward Adjustments Cannot be Made on These Factors

1

Time & labor required

2

Local customary fee

3

Novelty & difficulty

4

Amount involved

5

Skill required

6

Exp., rep., & ability

7

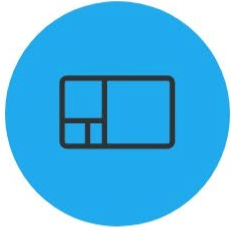
Fixed or contingent

8

Collection uncertainty



# Additional Fee Considerations



## **Segregate recoverable vs. non-recoverable claims**

Unless claims are intertwined, fees must be segregated



## **Designate an expert under Rules 194.2(f) and 195.5**

Properly designate an expert witness to support fee claim



## **Fees awarded as sanctions must still meet Rohrmoos standards**

Even when fees are awarded as sanctions, the Rohrmoos evidentiary requirements apply



## **Pro se attorneys generally cannot recover fees**

Attorneys representing themselves are typically not entitled to recover fees

**Properly addressing these additional fee considerations can help ensure a successful recovery of attorney's fees in Texas.**

## **PROVE-UP OF ATTORNEY'S FEES**

My name is Thomas J. Daley. I am an attorney licensed to practice law in the state of Texas, and I have been licensed to practice law in Texas since 2007. I am Board certified in Family Law.

I have represented clients in family law cases since 2007 and have the experience and the ability to handle family law cases similar to this one.

On March 3, 2021, [REDACTED] [REDACTED] hired me and my law firm to represent him in this case. At that time, [REDACTED] [REDACTED] signed an employment contract with my firm that contained the firm's billing rates. [REDACTED] [REDACTED] agreed to pay me at the hourly rate of \$500.00, a legal assistant at the hourly rate between \$145.00 and \$200.00, and other attorneys in my law firm with hourly rates ranging from \$325.00 to \$900.00.

lawyers performing the services; and the uncertainty of collection before the legal services have been performed.

The case could have been resolved less expensively but for Ms. [REDACTED] conduct which necessitated more preparation and litigation than would normally be necessary in a case of this kind. For example:

1. She waited until 13 days prior to the Enforcement trial before nonsuiting her claims against [REDACTED]
2. Our office spent 57.25 hours working on preparing on defending [REDACTED] against the suit between February 8, 2024 through April 17, 2024. During that time our office spent the following hours working on the following:
  - a. Go through Petitioner's Enforcement and analyze which violations were enforceable.
  - b. Traveling to Austin, Texas to meet with the client to go over each violation and gather exhibits.
  - c. Create violation spreadsheets and analyze enforceability of each violation.
  - d. Review discovery to correspond with violations



**MODIFICATION FEES**

Statement Date	Fees Incurred	Costs Incurred	Total
07/01/2023	\$ 5,906.25	\$ 166.00	\$ 6,072.25
08/01/2023	\$ 2,637.50	\$ 1,053.00	\$ 3,690.50
09/01/2023	\$ 1,243.75	\$ -	\$ 1,243.75
10/01/2023	\$ 512.50	\$ -	\$ 512.50
12/01/2023	\$ 1,125.00	\$ -	\$ 1,125.00
01/01/2024	\$ 3,143.75	\$ -	\$ 3,143.75
02/01/2024	\$ 1,300.00	\$ -	\$ 1,300.00
02/29/2024	\$ 812.50	\$ -	\$ 812.50
03/31/2024	\$ 1,562.50	\$ -	\$ 1,562.50
04/30/2024	\$ 3,406.25	\$ -	\$ 3,406.25
05/31/2024	\$ 881.50	\$ 987.50	\$ 1,869.00
06/30/2024	\$ 950.00	\$ -	\$ 950.00
07/31/2024	\$ 3,750.00	\$ 2,059.00	\$ 5,809.00
08/31/2024	\$ 4,775.00	\$ 106.00	\$ 4,881.00
09/30/2024	\$ 2,711.25	\$ 490.00	\$ 3,201.25
10/31/2024	\$ 6,537.50	\$ -	\$ 6,537.50
11/30/2024	\$ 2,587.50	\$ 1,600.00	\$ 4,187.50
12/31/2024	\$ 1,312.50	\$ -	\$ 1,312.50
01/31/2025	\$ 9,118.75	\$ 536.50	\$ 9,655.25
02/24/2025	\$ 22,713.75	\$ 149.50	\$ 22,863.25
<b>TOTAL THROUGH FEB 24</b>			<b>\$ 84,135.25</b>

**Enforcement Fees**

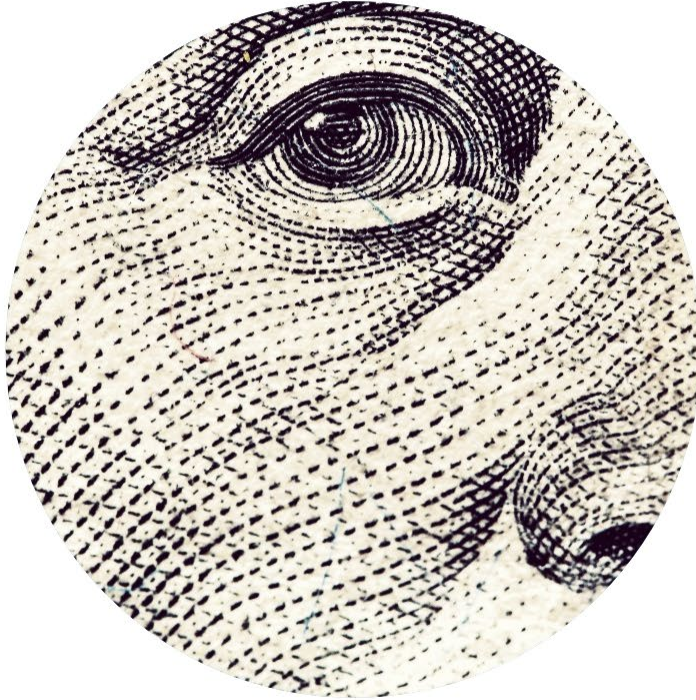
06/30/2024	\$ 950.00	\$ -	\$ 950.00
07/31/2024	\$ 3,750.00	\$ 2,059.00	\$ 5,809.00
08/31/2024	\$ 4,775.00	\$ 106.00	\$ 4,881.00
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02/24/2025	\$ 22,713.75	\$ 149.50	\$ 22,863.25

**TOTAL THROUGH FEB 24 \$ 84,135.25****Enforcement Fees**

Statement Date	Fees Incurred	Costs Incurred	Total
11/30/2024	\$ 187.50	\$ -	\$ 187.50
12/31/2024	\$ 831.25	\$ -	\$ 831.25
01/31/2025	\$ 93.75	\$ 82.31	\$ 176.06
02/24/2025	\$ 1,012.50	\$ 339.31	\$ 1,351.81

**TOTAL THROUGH FEB 24 \$ 2,546.62**

# Billing Records Required?



**Contemporaneous billing records are not required** to prove that the requested fees are reasonable and necessary.

Nevertheless, **billing records are strongly encouraged** to prove the reasonableness and necessity of requested fees when those elements are contested.



# MISSING THE FOREST FOR THE FEES: RECOVERING TRIAL AND APPELLATE ATTORNEY FEES POST-*ROHRMOOS*

BY JODY SANDERS & D. TODD SMITH

**A**LTHOUGH TEXAS FOLLOWS THE AMERICAN RULE regarding recovery of attorney fees,<sup>1</sup> the Legislature has expanded the opportunities for fee shifting over the last several sessions. Lawyers must be well-versed in identifying and leveraging contractual and statutory provisions to maximize fee recoveries for their clients. Proving up attorney fees is a major step in that process.

In 2019, the Texas Supreme Court tightened the evidentiary standards for recovering trial court attorney fees, requiring the lodestar method in every case. *Rohrmoos Venture, Ltd. v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469 (Tex. 2019). The following year, the Court also tightened the proof required to recover conditional appellate fees, adopting a slightly lighter version of the lodestar approach. *Yowell v. Granite Operating Co.*, 620 S.W.3d 335, 354-55 (Tex. 2020).

While the Supreme Court declared in *Rohrmoos* that it was not “endorsing satellite litigation as to attorney’s fees,” the influx of cases since then suggests that courts and parties still struggle to meet the new Supreme Court standards for both trial and appellate fees. *Rohrmoos Venture*, 578 S.W.3d at 503. This creates inefficiencies and delays that parties and their attorneys can avoid. Careful planning from the outset of a case can help create rock-solid evidence to support awards that will stand up in the trial court and on appeal under both the *Rohrmoos* and *Yowell* standards.

## 1. What *Rohrmoos* requires for trial court fees.

Regardless of the type of fee arrangement you have with your client, *Rohrmoos* requires tailoring your fee evidence to the lodestar method. *Rohrmoos* institutes a two-step process. Step 1 requires proof of (1) the reasonable hours worked multiplied by (2) a reasonable hourly rate. *Rohrmoos*, 578 S.W.3d at 497-98. When properly used, this approach creates a presumption that the base calculation “reflects the reasonable and necessary attorney’s fees that can be shifted

It sounds simple, but at a minimum, Step 1 requires evidence of (1) particular services performed by the attorneys; (2) who performed the services; (3) approximately when they performed the services; (4) the reasonable amount of time to perform the services; and (5) the reasonable hourly rate for each person performing those services. *Id.* at 497-98. These requirements apply to each attorney timekeeper. You also must establish legal assistant qualifications and time under similar standards. See *El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757, 763 (Tex. 2012).

These considerations serve as a “short hand version” of the traditional attorney fee factors listed in Texas Disciplinary Rule of Professional Conduct 1.04 and discussed by the Texas Supreme Court in *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997). *Rohrmoos*, 578 S.W.3d at 496.

*Rohrmoos* also contemplates a second step to enhance or reduce the base calculation. Step 2 provides a basis to adjust a lodestar that produces an “unreasonably low fee award” or “a windfall for the prevailing party[.]” *Id.* at 502. Courts have provided little instruction on Step 2 post-*Rohrmoos*. What we know is that Step 2 requires “specific evidence” to justify an upward or downward departure from the base lodestar. *Id.* at 500-01. Departure from the base lodestar “cannot be based on a consideration that is subsumed in the first step of the lodestar method.” *Id.* at 500.

## 2. What *Yowell* requires for appellate fees.

Because a party has not yet incurred appellate fees by the time of trial, the Supreme Court recognizes that the *Rohrmoos* framework does not fit appellate fees neatly. In *Yowell*, the Supreme Court adopted a *Rohrmoos*-lite approach. The *Yowell* court recognized that appellate fees “have not yet been incurred and thus must be projected based on expert opinion testimony.” 620 S.W.3d at 355. As a result, “there is

# Conditional Appellate Fees – Yowell

The Supreme Court in *Yowell* held that the lodestar method does not apply to future appellate fees. Instead, expert testimony on the expected services and reasonable rates is sufficient, without the need to estimate specific hours or identify the attorneys.

**FINAL TRIAL**  
**March 3, 2025 @ 9:00 a.m.**

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**MOTHER'S SUMMARY OF REQUESTED APPELLATE FEES**

██████████ (hereinafter "Mother") requests judgment for attorney's fees on appeal in the total sum of One Hundred and Fourteen Thousand Seven Hundred and Fifty Dollars and No Cents (\$114,750.00) Further, Mother requests that any judgment for attorney's fees on appeal be subject conditioned on an unsuccessful appeal and subject to remittitur as necessary.

MOTHER seeks \$2,050.00 if ██████████ (hereinafter "Father") files any post-verdict but pre-judgment motions in this cause. This amount was determined as follows:

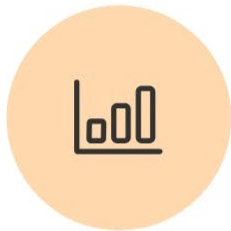
- It is expected that ██████████ will have to spend 2 hours performing the following services after any post-verdict but pre-judgment motions are filed prior to a hearing being set: reviewing the motions, reviewing applicable transcripts, and reviewing applicable law. These services and estimated time are reasonable and necessary. ██████████ hourly rate is \$525.00 dollars, which is reasonable and necessary.
- It is expected that ██████████ will have to spend 2 hours performing the following services after any post-verdict but pre-judgment motions are filed prior to a hearing being set: reviewing the motions, reviewing applicable transcripts, and researching applicable law. These services and estimated time are reasonable and necessary. ██████████

# Challenging Fee Awards



## Redacted Billing

Redacted billing may prevent meaningful review of fee awards



## Failure to Segregate

Failure to segregate recoverable and non-recoverable claims can result in reversal



## Timely Objections

Failure to timely object may waive appellate arguments against fee awards



## Specificity Required

General or conclusory testimony is insufficient to support fee awards

**Failure to properly prove and challenge fees can lead to remand, reversal, or complete denial of fee recovery.**



"Incurred"

# Do Pro Se Litigants get Fees?

Usually, **NO**.

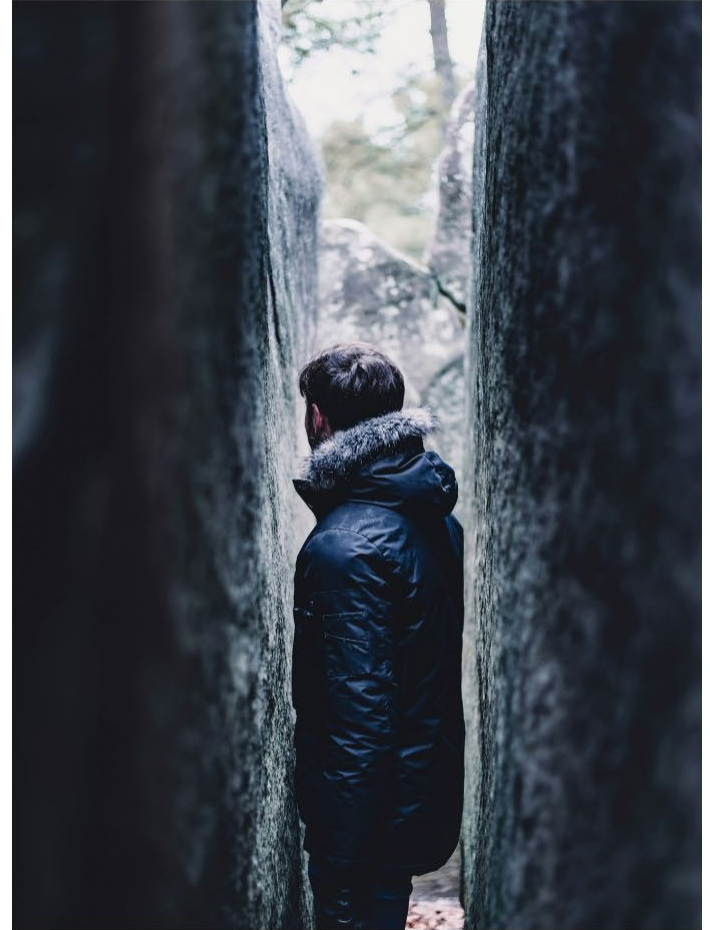
*Rohrmoos* and the cases it derives from repeat that the award of fees is for fees **INCURRED**. Even a self-represented attorney is probably not entitled to fees.

**Contra:** What if they claim opportunity cost in representing themselves?



# Guardianship of Murray – A Narrow Exception

The Guardianship of Murray case clarified that the evidentiary standard set forth in Rohrmoos Venture does not apply to guardian ad litem fees governed by the Texas Estates Code. Instead, the court must award fees that are equitable and just, and cannot award more than the amount requested.



# Conclusion – Key Takeaways



## **Rohrmoos Venture set the modern evidentiary standard**

Courts must now apply the lodestar method, requiring detailed evidence on hours worked and hourly rates



## **Maintain organized billing records**

Contemporaneous billing records are strongly encouraged to meet the evidentiary requirements



## **Proper objections are critical to preserve appellate issues**

Failure to timely object can result in waiver of arguments on appeal



## **Know which standard applies: trial, appellate, or statutory**

The evidentiary requirements may differ depending on the type of fee claim

**Carefully navigating the Rohrmoos framework and its exceptions is crucial to successfully proving attorney's fees in Texas**



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