

## Sixth Supplement to Memorandum 87-100

Subject: Study L-1036 - Probate Attorney Fees (Policy Issue Determination)  
Study L-1055 - Fees of Personal Representative (Policy Determination)

Attached as Exhibit 1 is a letter from the Estate Planning, Trust and Probate Law Section. The letter notes that fees based on a percentage of assets managed or sold are used in a variety of normal business situations.

The Background Study on fees of personal representatives includes the following table:

<u>Table 1. Comparison of States' Fee Systems for Attorney and Personal Representative</u>			
<u>Fee of:</u>	<u>No. of states providing reasonable fee</u>	<u>No. of states providing hybrid fee</u>	<u>No. of states providing percentage fee</u>
attorney	41	5	4
personal representative	24	14	12

The table shows that states are more likely to provide a percentage fee or a hybrid (including a percentage fee aspect) type fee for the personal representative (26 states) than for the estate attorney (9 states). The background study comments:

The likely reason for this is that the personal representative is compensated for managing the estate. The larger the estate, the greater are the responsibilities assumed by the personal representative. The estate attorney, on the other hand, is compensated for professional expertise and other factors which bear a less direct relationship to the size of the estate.

The attached letter notes that the fees for management of trust assets ordinarily are determined as a percentage of the value of the assets being administered. This is a further justification for using a percentage of the value of the estate as the basis for the fees for the personal representative. On the other hand, the attorney who provides legal services to the trust ordinarily is paid on an hourly or other rate based on the legal services actually provided rather than on a percentage basis.

The attached letter also notes that real estate broker's fees are customarily based on a percentage of the sale price of the property. The fee is split between the listing and selling realtors. The fee is analogous to the contingent fee; a fee is earned only if the property actually is sold. The fees are not set by statute and there is no extra fee for extraordinary services. There is a customary percentage fee, but there are cut-rate real estate brokers. In addition, it must be recognized that the existing California statute requires that the printed real estate sales agreement contain a statement that the percentage fee is subject to negotiation between the property owner and the broker.

The attached letter also notes that the Commission has approved retention of the percentage basis for probate referee compensation. The Commission will recall that this concept was retained--rather than adopting, for example, a different percentage for listed stock or a reasonable fee system--because otherwise it would not be possible to retain the probate referee system. It was recognized that the fee was not related to the services provided in the particular estate being valued. But the existing percentage fee was retained because it is exceedingly modest, and the system could not be maintained unless, subject to the waiver provision, all property (except money) were included in the probate referee's appraisal and no distinction was made as to the ease or difficulty of appraising particular types of property.

The attached letter also refers to other situations where the fee is based on a percentage basis, as is the case for stock sales. However, these fees are not fixed by statute. It is general knowledge that discount brokers charge lower fees, and the consumer can shop around for a stock broker that provides a competitive fee for the type of service the consumer desires.

Although percentage fees may be used for normal business services, the government rarely prescribes the fee for services provided in the course of normal business, although in numerous fields (including attorney fee contracts) government regulations apply that are designed to permit the consumer to make an informed decision.

If California went to a reasonable fee for probate attorney fees, a particular attorney could use a percentage fee if he so desired. One study shows that after the UPC fee provisions were substituted for the statutory fee schedule in Idaho, some attorneys (14%) continued to charge a percentage fee, although almost 60 percent went to a fee based on a combination of hourly basis and size and complexity of the estate. If the reasonable fee system were adopted for probate attorney fees and the fee contract provided for a percentage fee, the fee would not be subject to court review if there was no objection to the fee after notice of proposed action was given. And if there was an objection to the fee, the contract fee would be upheld by the court upon review unless the fee was clearly excessive in light of the services rendered. See Estate of Painter, attached as Exhibit 2.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

**ESTATE PLANNING, TRUST AND  
PROBATE LAW SECTION  
THE STATE BAR OF CALIFORNIA**

*Executive Committee*  
 KATHRYN A. BALLSUN, *Los Angeles*  
 D. KEITH BILTER, *San Francisco*  
 OWEN C. FIORE, *San Jose*  
 JOHN A. GROMALA, *Emeryville*  
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 JANET L. WRIGHT, *Fresno*  
 DIANE C. YU, *Oakland*



555 FRANKLIN STREET  
 SAN FRANCISCO, CA 94102-4498  
 (415) 561-8200

January 6, 1988

VIA FEDERAL EXPRESS

California Law Revision Commission  
 Room D-2, 4000 Middlefield Road  
 Palo Alto, California 94303

JAN 07 1988

RECEIVED

Re: Memoranda 87-100 and 87-107 -  
 Compensation Based on a Percentage

Dear Commissioners:

Statutory executor's commissions are provided by Probate Code Section 901. The historical notes under that section indicate that that section with certain changes in the rate structure has been in existence since 1931. It was derived from statutes which date back as far as 1851. Section 910, which provides that attorneys are to be allowed the same amounts as are allowed as commissions to executors, apparently was added in 1905 to the statutes.

Both statutory executor's commissions and statutory attorney's fees are based upon a percentage of the total amount of assets handled in a probate and are computed upon the total amount of the inventory, plus gains on sales, plus receipts, less losses (Probate Code Section 901).

Probate Code Section 609, referring to compensation for a probate referee, is also based upon a percentage of the total value of the assets appraised, subject to a minimum fee and certain other minor modifications. The Commission has approved retention of that percentage basis for probate referee compensation.

When real property is sold through the probate court, compensation is allowed to the broker or brokers involved based upon a percentage of the sale price of the property. New Sections 10160-10167, effective July 1, 1988, set forth in some detail how compensation to brokers is to be divided on a sale through the court on a probate estate. Attached hereto as Exhibit 1 are extracts from the Local Probate Policy Memoranda of a number of different counties in California which outline the percentage compensation to be allowed brokers on a sale under varying fact situations. Commissions of 5% or 6% of the selling price for improved real property are standard for brokers in most areas. Sale of unimproved land often results in a commission equal to 10% of the sale price.

Although trustee fees are not specifically set forth in the Probate Code, it has long been the practice for trustees to charge a percentage of the value of the assets being administered in the trust as compensation for those services. As the value of the assets subject to trust administration increases, normally the percentage decreases. This is similar to the provisions of Section 901, decreasing the applicable percentage for commissions to an executor or an administrator as the size of the estate increases. Attached hereto as Exhibit 2 is a current fee schedule in effect for First Interstate Bank of California. Attached hereto as Exhibit 3 is a fee schedule for Personal Asset Management from Security Pacific National Bank, where the minimum account of this type is \$500,000.

Attached hereto as Exhibit 4 is a Personal Financial Services Fee Schedule from Trust Services of America, Inc. which, although expressed in dollar amounts, in fact represents percentage compensation. Exhibit 5 attached hereto is a table included in an article entitled "Survey of California Corporate Fiduciary Fees and Practices" which appeared in the Summer/Fall 1985 issue of the Estate Planning, Trust and Probate News, State Bar of California. Exhibit 6 is a form of agreement for City National Bank, Beverly Hills, to act as a trustee or custodian. Exhibit 7 is a schedule of fees and charges of Security Pacific National Bank for a number of different kinds of accounts, almost all of which are based upon a percentage compensation with some type of minimum fee. Each of the fee schedules issued by a trust department is based upon a percentage of the value of assets.

Stockbrokers similarly make a charge which is based upon a percentage with certain adjustments depending upon the number of shares involved in the transaction. Exhibit 8 is a schedule issued by Paine Webber as to charges for sale of securities.

Title insurance companies have fee schedules for policies which, while stated in dollar amounts, are fixed and hence effectively represent percentage charges for those services. Exhibit 9 is an extract from a Schedule of Title Fees by Equity Title which demonstrates the method by which various title policies are priced.

Compensation for services rendered based upon a percentage of the value of the assets handled is common business practice today. The statutory fee system in California is in accord with normal business practice.

Sincerely,



Charles A. Collier, Jr.  
for the Executive Committee,  
Estate Planning, Trust and  
Probate Law Section, State  
Bar of California

CAC:vjd

Enclosures

cc: D. Keith Bilter, Esq. (w/encls.)  
James V. Quillinan, Esq. (w/encls.)  
James D. Devine, Esq. (w/encls.)  
James Opel, Esq. (w/encls.)  
Irwin D. Goldring, Esq. (w/encls.)  
Valerie Merritt, Esq. (w/encls.)  
Theodore J. Cranston, Esq. (w/encls.)

Normal broker's commissions on sale of real property in probate estate as set forth in probate policy memoranda for the respective counties are as follows:

Alameda: Policy No. 802

Improved property: \$50,000 - 6%  
\$50,000 - \$200,000 - 6% first  
\$50,000; 5% next \$200,000  
\$200,000 - 6% first \$50,000;  
5% next \$150,000; 2-1/2% on  
balance

Unimproved property: 10% on first \$20,000;  
8% next \$30,000; 5% on balance

Contra Costa: Policy No. 403

Improved property: 6%  
Unimproved property: 10%

Fresno: Policy No. 7.2 - 6%

Kern: Follows Los Angeles Policy No. 12.05 - 5%

Los Angeles: Policy No. 12.05 - 5%

Marin: Policy No. 1008(a) & (b)

Improved property: 6% on first \$100,000;  
5% on balance

Unimproved property: 10% on first \$20,000;  
8% next \$30,000; 5% on  
balance

Orange: Policy No. 5.03(a) - 6%

Riverside: Policy No. 903 - 6%

Sacramento: Policy No. 604

Improved property: 6%

Unimproved property: 10% first \$20,000; 8% next  
\$30,000; 5% on balance

San Bernardino: Policy No. 603 - over \$500, 6%

San Francisco: Policy No. 8.10

Improved property: 6% of first \$100,000; 5% next  
\$50,000; 2-1/2% on balance

Unimproved property: 10% first \$20,000; 8% next  
\$30,000; 5% on balance

San Joaquin: Policy No. 608 - 6%

Solano: Policy No. 8.10(d)

Improved property: over \$500, 6%

Unimproved property: over \$500, 10%

Stanislaus: Policy No. 905 - over \$500, 6%

Tulare: Policy No. 5(c) - over \$500, 6%

Ventura: Policy No. 11.11(c) - over \$500, 6%

Yolo: Policy No. 16(a)

Improved property: 6%

Unimproved property: 10% of first \$20,000; 8% next  
\$30,000; 5% on balance

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**P E R S O N A L  
F I N A N C I A L  
M A N A G E M E N T**

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*Providing Investment and Trust Services*

Effective February 1, 1987

**FEE SCHEDULE:**

**Managed Trust Services**

For publicly traded securities, money market instruments and notes—includes all custody services

**Assets Under Management**

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First \$1 Million .....  
Next \$1 Million .....  
Next \$3 Million .....  
Over \$5 Million.....

**Annual Market Value Fee**

1.15%  
0.80%  
0.50%  
0.30%

- No Set-Up Fee
- No Base Maintenance Fee

**Minimum Annual Fee**

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Assets 100% Invested in Collective  
Investment Funds .....  
Assets Consisting of Individual Securities....

\$3,000.00  
\$5,000.00

**Termination Fee**

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Assets Distributed to Trustor .....  
Assets Distributed to Others.....  
Minimum Charge on Final Termination.....

0.1% of Market Value  
1.0% of Market Value  
\$500.00

**Tax Fees** .....

According to Tax Fee Schedule

**Co-Trustee Fee**

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Third Party Co-Trustee Consultation or  
Approval Required .....

Additional Market Value Fee of 0.25% on  
First \$1 Million of Assets Under Management

**Extraordinary Services** .....

When we provide services beyond those  
considered ordinary or customary, an  
additional charge will be imposed based on  
the time and/or expense of providing the  
additional services.

**PERSONAL ASSET MANAGEMENT  
FROM SECURITY PACIFIC**

**300 S. Grand Avenue  
Los Angeles, California 90071**

## **FEE SCHEDULE**

**\$ 500,000 to \$1,000,000 .....1.0%**

**\$1,000,000 to \$2,000,000 .....0.95%**

**\$2,000,000 to \$3,000,000 .....0.90%**

**Over \$3,000,000**

**Individual Quotation**



**TSA**

A CalFed Company

**PERSONAL FINANCIAL SERVICES FEE SCHEDULE**

**Annual Fee** (per \$1000 value)

<u>Asset Value</u>	<u>Investment Management</u>	<u>Directed Accounts</u>
First \$1,000,000	\$ 10.00	\$ 4.50
Next \$1,000,000	\$ 7.50	\$ 3.50
Next \$1,000,000	\$ 6.00	\$ 2.50
Next \$1,000,000	\$ 5.00	\$ 2.00
Over \$4,000,000	\$ 3.00	\$ 2.00
Minimum:	\$ 2,000.00	\$ 1200.00

- For accounts with ALL assets in Common Trust Funds, a 10% discount from the managed investment fee schedules and a \$1200 minimum will apply.
- Cash Reserve Account (i.e. cash sweep) used by Agency and Custody will have its entire fee of 75 basis points (\$7.50/\$1,000 Value) automatically taken from income generated by the CRA. No additional annual fee will be charged on these assets.

**Set Up Fees: \$100.00, plus**

- Securities: \$ 20.00 each
- Real Estate, Loans, Mineral Interests: \$ 100.00 each

**Transaction Fee: (Directed Accounts only)**

- Each purchase, sale, maturity: \$ 20.00
- Mutual funds and non-depository items: \$ 30.00

**Revocation/Termination Fee: \$500.00, plus**

- per recipient
- Securities: \$ 20.00 each
- Real Estate, Loans, Mineral Interests: \$ 100.00 each

**Other Assets:**

- Loan collection: \$ 10.00 per \$1000 value
- Real Estate (see Real Estate Schedule on reverse:):
  - Trustor's residence \$ 300.00

**Extraordinary Services:**

Reasonable compensation for any unusual or extraordinary services rendered, including but not limited to the preparation of tax returns and reports, sales and leases of real property, handling complex security assets, and the processing of amendments.

Trust Services of America, Inc., offices  
Los Angeles Beverly Hills San Diego Newport Beach San Bernardino San Francisco Pasadena

**PERSONAL FINANCIAL SERVICES  
REAL ESTATE FEE SCHEDULE**

	<u>Asset Value</u>	<u>Annual Fee</u> (per \$1000 value)
Unimproved, Acreage, and Vacant Lot.	First \$150,000	\$ 3.50
	All over \$150,000	\$ 2.50
All other Commercial, Industrial, and Residential.		\$ 10.00
Mineral, Oil and Gas.		\$100 each, plus 6% of income
Trustors Residence.		\$300

**TABLE 2.**  
**LIST OF TRUST OFFICES BY MINIMUM SIZE OF ESTATE**

	Probate Executor	Trustee of Living or Test Trust	Conservator
<b>STATEWIDE</b>			
Ahmanson Trust Company	No minimum size — but a minimum fee applies		
Bank of America (all offices)	\$200,000	\$250,000	\$400,000
	(Institution may grant exceptions to the above minimum size of an account on a case by case basis.)		
Bank of California	No minimum size — but a minimum fee applies		
Bank of the West	\$100,000	\$100,000	\$100,000
	(Institution may grant exceptions to the above minimum size of an account on a case by case basis.)		
California First Bank	No minimum size — but a minimum fee applies		
Crocker Bank (all offices)	\$200,000	No minimum size minimum fee applies	\$250,000
First Interstate Bank	No minimum size — but a minimum fee applies		
Security Pacific National Bank	No minimum size — but a minimum fee applies (some local offices may have a minimum size)		
Trust Services of America	No minimum size — but a minimum fee applies		
Union Bank	usually declines	\$250,000	\$250,000
Wells Fargo Bank	\$500,000	\$200,000	\$500,000
<b>SAN FRANCISCO BAY AREA</b>			
American Bank & Trust	\$100,000	\$100,000	\$100,000
	(Institution may grant exceptions to the above minimum size of an account on a case by case basis.)		
Borel Bank & Trust Company	No minimum size — but a minimum fee applies		
Burlingame Bank & Trust Company	No minimum size — but a minimum fee applies		
California Commerce Bank	No minimum size — but a minimum fee applies		
County Bar and Trust	No minimum size — but a minimum fee applies		
Pacific Trust Company	\$ 50,000	\$ 50,000	\$100,000
Pacific Union Bank & Trust Company	No minimum size — but a minimum fee applies		
University National Bank & Trust	\$100,000	\$125,000	\$250,000
<b>LOS ANGELES AREA</b>			
City National Bank	No minimum	\$175,000	\$175,000
Lloyd's Bank	\$200,000	\$150,000	\$300,000
Santa Monica Bank	Dependent on various factors — minimum fee of \$750 for fully managed accounts		
<b>SAN DIEGO OFFICES</b>			
Home Federal Trust	\$200,000	\$200,000	\$200,000
	(Institution may grant exceptions to the above minimum size of an account on a case by case basis.)		
La Jolla Bank & Trust	No minimum size — but a minimum fee applies		
San Diego Trust & Savings Bank	\$250,000	\$200,000	\$200,000
<b>SANTA BARBARA OFFICES</b>			
Santa Barbara Bank & Trust	No minimum size — but a minimum fee applies		
<b>SACRAMENTO OFFICES</b>			
First Independent Trust Company	\$ 50,000	\$ 50,000	\$100,000
<b>SAN JOAQUIN COUNTY OFFICES</b>			
First American Trust Company	No minimum size — but a minimum fee applies		

Figures shown reflect Minimum Size of Account Corporate Fiduciary Will Handle (Standard Policy)

TRUST

FEE SCHEDULE FOR PERSONAL TRUSTS,  
TRUSTS UNDER WILL and  
MANAGEMENT AGENCY ACCOUNTS

DEPARTMENT

CITY NATIONAL BANK 120 SO. SPALDING DR., P.O. BOX 1141, BEVERLY HILLS, CA 90213

It is mutually agreed by and between the undersigned that the fees of City National Bank for acting as Trustee/Custodian shall be:

Annual Fees:

% of the fair market value on the first	\$ 500,000
/10% (.008) of the next	\$ 500,000
/10% (.006) of the next	\$ 4,000,000
Fees will be quoted on amounts in excess of	\$ 5,000,000
Minimum Annual Base Fee	\$ 1,750

Securities Maintenance Fee: 1-10 issues (stocks, bonds, mutual funds) No extra charge  
 Each issue over 10, a fee of \$35 per issue  
 This fee is waived for any account having a market value over \$750,000.

Notes, mortgages, liabilities, partnerships, ventures, and closely held assets. \$150 per item

Real Estate and Real Estate Management Services fees are described in a separate schedule.

In Addition To The Fees Shown Above

**Extraordinary Fee:** Reasonable compensation for any unusual or extraordinary services rendered.

**Court Appearances:** When applicable, reasonable compensation (\$350 minimum).

**Statements:** Annual fee includes a quarterly and annual statement. More frequent statements or extra copies to be charged at \$5 per copy.

**Tax Services:** The above mentioned fees do not include tax services.

**Miscellaneous:** Recovery of out-of-pocket expenses for required compliance with Federal and State laws and regulations as enacted or amended.

**Distribution Fee:** A fee of 1% of the fair market value of the property distributed or transferred will be charged upon termination of the account in whole or in part, or upon

resignation or removal of the trustee or agent within the first 24 months. Thereafter the fee will be 1/2 of 1% with a minimum of \$500 on final distribution.

This agreement constitutes the standard fees charged by City National Bank. Governing instrument fee clauses to the contrary notwithstanding, it is understood and expressly agreed that City National Bank shall have the right to modify this fee agreement from time to time to conform to current standard fees chargeable by it where like or similar fiduciary services are performed. Any fee increase shall be preceded by ninety (90) days written notice. If any fees under this agreement are not paid when due, it is agreed that City National Bank shall be reimbursed for all costs, expenses and attorneys' and other fees it incurs as a result of such nonpayment, whether suit is filed or not.

CITY NATIONAL BANK

Account Name

By

Bank Officer

Date

**PERSONAL TRUST FEES**

Introducing an innovative and simplified pricing approach. A single percentage charge is applied to the total value of your assets (excluding real estate). It's a simple and direct approach.

**INVESTMENT MANAGED ACCOUNTS**

Agency Investment Services and Personal Trusts (excluding Real Estate)	If your Total Assets are:	Over \$3,000,000	\$2,000,000 to less than \$3,000,000	\$1,000,000 to less than \$2,000,000	\$500,000 to less than \$1,000,000	Less than \$500,000	Base Administration Fee	ANNUAL MINIMUM

**DIRECTED ACCOUNTS (No Investment management)**

Agency Accounts and Personal Trusts (excluding Real Estate)	If your Total Assets are:	Over \$3,000,000	\$2,000,000 to less than \$3,000,000	\$1,000,000 to less than \$2,000,000	\$500,000 to less than \$1,000,000	Less than \$500,000	Base Administration Fee	ANNUAL MINIMUM

**OTHER ACCOUNTS (Investment managed)**

States	Subject to Statutory Rates and Applicable Other Charges	Guardianship/Conservatorship	1.0% for all ranges	\$500	\$3,000
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Fees will be charged quarterly based on most current market valuation.  
 Directed Accounts — \$20 per depository security transaction  
 — \$35 per non-depository security transaction

**REAL ESTATE FEE SCHEDULE**

Asset/Property Management Services (including Agriculture)	Investment Managed Property	Directed Property (including Owner Occupied SFF)	% Asset Value (All Value Ranges)	Annual Minimum Per Asset
			1.25%	\$500
			1.00%	\$500

Title Holding Service	Fee Rate/Year
Residence Reserve Single Family Residence (SFR) only	\$250 per Asset
All Other Properties	\$500 per Asset

Unimproved Non-income Producing Land	Fee Rate/Year
	\$375 per Asset

Real Estate Notes	Fee Rate/Year
	\$75 Holding Fee Plus .25% unpaid balance

Mineral Interest Management	% Asset Value	Annual Minimum Per Asset
Income Producing, Working or Royalty Interest	1.0%	\$55 per lease
Leased Asset (Non-producing or minimal income)	—	\$55 per lease
Non-leased Asset (Non-producing)	—	\$20 per asset

Set-up Fee	\$250/Asset
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RECEIVED

JAN 4 1988

Law Offices  
TROWEN & COLLIERING

LISTED AND UNLISTED STOCKS SELLING AT \$1.00 AND ABOVE

SHARES INVOLVED IN THE ORDER

ODD LOT or 100	200	300	400	500	600	700	800	900	1,000	Over 1,000
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Money Involved	Commission	Money Involved	...COMMISSION...							
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Under \$ 152	17.00%	Under \$ 4,000	1.60% +	47.00	56.50	66.00	75.50	85.00	94.50	104.00	113.50	123.00
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\$ 152 to \$3,000	1.80% + \$ 23.00	\$ 4,000 to \$10,667	1.40% +	55.00	64.50	74.00	83.50	93.00	102.50	112.00	121.50	131.00	Add \$7.20 for each
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\$3,000 to \$4,786	1.40% + \$ 35.00	\$10,667 to \$23,556	1.25% +	71.00	80.50	90.00	99.50	109.00	118.50	128.00	137.50	147.00	100 shares exceeding
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\$4,786 and over	\$102.00	\$23,556 to \$33,500	0.80% +	177.00	186.50	196.00	205.50	215.00	224.50	234.00	243.50	253.00	1,000 shares
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and over	\$33,500	and over	244.00	253.50	263.00	272.50	282.00	291.50	301.00	310.50	320.00	
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Commissions for Stocks, Warrants and Rights Selling for Less than \$1.00 (the 17%/\$36 minimum does not apply \*)

Under \$2,800: 10% plus \$1.00 (minimum \$6.00 for principal of more than \$6.00) \$2,800 to \$10,000: 8.25% plus \$50.00 Over \$10,000: 5.5% plus \$325.00

PROVISIONS & NOTES:

1) On any order combining round and odd lots, commissions are calculated separately on the round and odd lot portions of the order. The commission for a round lot plus an odd lot shall not exceed the commission on the next larger round lot.

2) The commission on each round lot in a multiple round lot order shall not exceed the single round lot commission (no minimum).

3) The maximum commission on each round lot or odd lot is \$102.00.

4) Except as noted under minimum charges for all stocks selling at \$1.00 and above the commission will not exceed 17% of the money involved.

MINIMUM CHARGES:

On both round lot and odd lot orders the commission is subject to a minimum charge of \$36 or 17% of the money involved, whichever is less. However, at stocks selling at \$1.00 and above up to the principal of \$35.29, there is a minimum commission of \$6.00. If the order combines round and odd lots this minimum applies to the total order. Minimum is not applied to "Econo-Trade" commissions.

"ECONO-TRADE" PROGRAM:

A special Palmtebber program for listed and NASDAQ unlisted stocks: The regular commission is reduced 20% on orders which meet the following requirements:

a) Order may not be limited as to price.

b) Order must be placed in time for it to be received in New York no later than 30 minutes prior to the opening. It will be executed on the opening or as soon thereafter as possible, or based upon the opening if an odd lot. Over-the-counter stocks will be executed within the opening NASDAQ median market or as close thereto as possible.

c) On a sell order, the securities must be held by, or have been delivered and properly endorsed to, Palmtebber at the time the order is entered.

d) On a buy order, sufficient funds (or buying power in a margin account) must be on account with, or have been deposited with, Palmtebber at the time the order is entered.

EFFECTIVE MARCH 4, 1987

# EQUITY TITLE



## SCHEDULE OF TITLE FEES

Amount of Insurance	Traditionally Sellers Cost Owners, Joint Protection (JWC) or A.L.T.A. Lenders/Reliancees		Traditionally Buyers Cost A.L.T.A. Lenders (New \$) Concurrently with Owners/J.P.		Traditionally Borrowers Cost Hard \$ Seconds Lenders
	Basic Rate	Short Term	Concurrent Rate	C.L.T.A. Loan Rate	
20,000	295.00	236.00	100.00	236.00	
21,000	295.00	236.00	100.00	236.00	
22,000	295.00	236.00	100.00	236.00	
23,000	295.00	236.00	100.00	236.00	
24,000	295.00	236.00	100.00	236.00	
25,000	295.00	236.00	100.00	236.00	
26,000	295.00	236.00	100.00	236.00	
27,000	295.00	236.00	100.00	236.00	
28,000	295.00	236.00	100.00	236.00	
29,000	295.00	236.00	100.00	236.00	
30,000	300.00	240.00	100.00	240.00	
31,000	305.00	244.00	100.00	244.00	
32,000	310.00	248.00	100.00	248.00	
33,000	315.00	252.00	100.00	252.00	
34,000	320.00	256.00	100.00	256.00	
35,000	325.00	260.00	100.00	260.00	
36,000	330.00	264.00	100.00	264.00	
37,000	335.00	268.00	100.50	268.00	
38,000	340.00	272.00	102.00	272.00	
39,000	345.00	276.00	103.50	276.00	
40,000	350.00	280.00	105.00	280.00	
41,000	355.00	284.00	106.50	284.00	
42,000	360.00	288.00	108.00	288.00	
43,000	365.00	292.00	109.50	292.00	
44,000	370.00	296.00	111.00	296.00	
45,000	375.00	300.00	112.50	300.00	
46,000	380.00	304.00	114.00	304.00	
47,000	385.00	308.00	115.50	308.00	
48,000	390.00	312.00	117.00	312.00	
49,000	395.00	316.00	118.50	316.00	
50,000	400.00	320.00	120.00	320.00	

Amount of Insurance	Traditionally Sellers Cost Owners, Joint Protection (JWC) or A.L.T.A. Lenders/Reliancees		Traditionally Buyers Cost A.L.T.A. Lenders (New \$) Concurrently with Owners/J.P.		Traditionally Borrowers Cost Hard \$ Seconds Lenders
	Basic Rate	Short Term	Concurrent Rate	C.L.T.A. Loan Rate	
\$ 51,000	404.00	323.20	121.20	323.20	
52,000	408.00	326.40	122.40	326.40	
53,000	412.00	329.60	123.60	329.60	
54,000	416.00	332.80	124.80	332.80	
55,000	420.00	336.00	126.00	336.00	
56,000	424.00	339.20	127.20	339.20	
57,000	428.00	342.40	128.40	342.40	
58,000	432.00	345.60	129.60	345.60	
59,000	436.00	348.80	130.80	348.80	
60,000	440.00	352.00	132.00	352.00	
61,000	444.00	355.20	133.20	355.20	
62,000	448.00	358.40	134.40	358.40	
63,000	452.00	361.60	135.60	361.60	
64,000	456.00	364.80	136.80	364.80	
65,000	460.00	368.00	138.00	368.00	
66,000	464.00	371.20	139.20	371.20	
67,000	468.00	374.40	140.40	374.40	
68,000	472.00	377.60	141.60	377.60	
69,000	476.00	380.80	142.80	380.80	
70,000	480.00	384.00	144.00	384.00	
71,000	484.00	387.20	145.20	387.20	
72,000	488.00	390.40	146.40	390.40	
73,000	492.00	393.60	147.60	393.60	
74,000	496.00	396.80	148.80	396.80	
75,000	500.00	400.00	150.00	400.00	
76,000	504.00	403.20	151.20	403.20	
77,000	508.00	406.40	152.40	406.40	
78,000	512.00	409.60	153.60	409.60	
79,000	516.00	412.80	154.80	412.80	
80,000	520.00	416.00	156.00	416.00	
81,000	524.00	419.20	157.20	419.20	
82,000	528.00	422.40	158.40	422.40	
83,000	532.00	425.60	159.60	425.60	
84,000	536.00	428.80	160.80	428.80	
85,000	540.00	432.00	162.00	432.00	
86,000	544.00	435.20	163.20	435.20	
87,000	548.00	438.40	164.40	438.40	
88,000	552.00	441.60	165.60	441.60	
89,000	556.00	444.80	166.80	444.80	
90,000	560.00	448.00	168.00	448.00	
91,000	563.50	450.80	169.05	450.80	
92,000	567.00	453.60	170.10	453.60	
93,000	570.50	456.40	171.15	456.40	
94,000	574.00	459.20	172.20	459.20	
95,000	577.50	462.00	173.25	462.00	
96,000	581.00	464.80	174.30	464.80	
97,000	584.50	467.60	175.35	467.60	
98,000	588.00	470.40	176.40	470.40	
99,000	591.50	473.20	177.45	473.20	
100,000	595.00	476.00	178.50	476.00	

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Colorado for the purpose of maintaining this wrongful death action against their mother's estate. The only asset alleged to be subject to administration in Colorado by virtue of ownership by Christine Price was an automobile liability insurance policy. This policy was issued to the Prices in Nebraska through an Iowa insurance agency, which, by admission, was authorized to transact business in Colorado.

The appointed personal representative initially challenged by motion the subject matter jurisdiction of the court on the ground that the permissible period for appointment of a personal representative and presentation of a creditor's claim had expired. See C.R.S. 1963, 153-7-2 & 153-7-3. After denial of this motion, the personal representative filed an answer generally denying the allegations of the wrongful death complaint and raising certain affirmative defenses. With the permission of the court, a supplemental answer questioning subject matter jurisdiction generally was later filed prior to trial. A jury found for the plaintiffs.

Appellant alleges numerous errors in support of reversal. We conclude, however, that the issue of subject matter jurisdiction is dispositive of this appeal.

In *Wheat v. Fidelity & Casualty Co.*, 128 Colo. 236, 261 P.2d 493 (1953), our Supreme Court concluded, on the basis of facts indistinguishable from the present case, that Colorado courts lack subject matter jurisdiction to administer the estate of a non-domiciliary who at the time of death owned no assets which were arguably subject to Colorado administration other than a liability insurance policy issued by a company authorized to transact business within this state. There, the court determined that the situs of the policy issued to the non-domiciliary was the decedent's actual domicile, and hence, the policy issued was not an asset subject to Colorado administration. See C.R.S. 1963, 153-1-3.

This aspect of *Wheat* has never been modified or overruled by statute or decision, and thus remains the law in Colorado.

[1-3] The effect of *Wheat* on this case is that the district court lacked subject matter jurisdiction over the wrongful death action. The question of subject matter jurisdiction was raised below, and was a matter for the independent determination of the trial court. See *Jackson v. Bates*, 133 Colo. 248, 293 P.2d 962 (1956). Although jurisdiction was challenged only generally, and not on the precise point upon which we reverse, subject matter jurisdiction cannot be conferred by stipulation or inaction. *Meyers v. Williams*, 137 Colo. 325, 324 P.2d 788 (1958); cf. *Miller v. Weston*, 67 Colo. 534, 189 P. 610 (1920).

Judgment reversed.

SILVERSTEIN, C. J., and STERNBERG, J., concur.



In the Matter of the ESTATE of Austin  
M. PAINTER, Deceased.

The COLORADO STATE BOARD OF  
AGRICULTURE,  
Beneficiary-Appellant,

v.

The FIRST NATIONAL BANK OF GREE-  
LEY, Colorado, and its counsel, William  
H. Southard, Personal Representative-  
Appellees.

No. 76-329.

Colorado Court of Appeals,

Div. I.

July 21, 1977.

The District Court, Weld County, Donald A. Carpenter, J., awarded the administrator of a \$1,000,000 estate \$39,337 in fees and counsel for the administrator \$42,000 in fees. A beneficiary of the estate challenged the awards as excessive on the

**MATTER OF ESTATE OF PAINTER**

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*Cite as, Colo.App., 567 P.2d 820*

ground that the duties performed by the administrator and counsel were routine. The Court of Appeals, Smith, J., held that: (1) in setting fees under the Colorado Probate Code, the trial court was required to consider and weigh all the factors which the Code enumerated, and (2) because the services rendered by the administrator and counsel were routine and did not present any novel or difficult questions or involve any will contest, the fees awarded were excessive.

Reversed and remanded.

**1. Executors and Administrators ⇐216(2), 496(1)**

Under the Colorado Probate Code, the task of setting fees for personal representatives and attorneys is governed by a standard of reasonableness. C.R.S. '73, 15-10-101 et seq., 15-12-719, 15-12-721; C.R.S. '63, 153-14-16.

**2. Executors and Administrators ⇐216(2), 496(1)**

For purpose of determining what constitutes reasonable compensation under the Colorado Probate Code for a decedent's personal representative and his counsel, critical question is not how large or small is the estate but rather what actual services were required and rendered. C.R.S. '73, 15-12-721(2).

**3. Executors and Administrators ⇐216(2), 496(1)**

In view of fact that some administrations involve extended negotiations or complex litigation, a personal representative or one employed by such personal representative in a complex estate should be compensated on a basis which takes into account the expertise required; accordingly, those involved in an administration requiring special expertise such as litigation skills are entitled to compensation which, in addition to compensating for time spent, gives emphasis to the factors of amount involved and results obtained. C.R.S. '73, 15-12-721(2); Code of Professional Responsibility, DR7-101.

**4. Executors and Administrators ⇐216(2), 496(1)**

For purpose of determining what constitutes reasonable compensation under the Colorado Probate Code for a personal representative or one employed by a personal representative in connection with estate administration, services which are routine and require no special expertise or experience should be compensated with more weight being given to the factor of amount of time expended for the actual services rendered. C.R.S. '73, 15-12-721(2).

**5. Executors and Administrators ⇐496(1)**

In setting fees for executors and administrators under the Colorado Probate Code, trial court must consider and weigh all factors which the Code enumerates. C.R.S. '73, 15-12-721(2).

**6. Executors and Administrators ⇐216(2), 496(3)**

Where administration of estate was routine and neither presented novel or difficult questions nor required marshalling of assets and where there were no questionable claims against the estate and no will contest and counsel for the estate made no appearance in court other than that made at the hearing to set fees, administration fees of \$39,337 and counsel fees of \$42,000 were excessive, even though estate was valued at approximately one million dollars. C.R.S. '73, 15-12-721(2).

J. D. MacFarlane, Atty. Gen., Jean E. Dubofsky, Deputy Atty. Gen., Edward G. Donovan, Sol. Gen., J. Stephen Phillips, Deputy Atty. Gen., Denver, for beneficiary-appellant.

Jack D. Henderson, Denver, for personal representatives-appellees.

SMITH, Judge.

Following the administration of the Austin M. Painter estate, valued at approximately one million dollars, the district court awarded the administrator, The First National Bank of Greeley, \$39,337 in fees and counsel for the administrator, William H.

Southard, \$42,000 in fees. On the basis that the duties performed by the administrator and counsel were of a routine nature and involved no legal disputes, a beneficiary of the estate, The State Board of Agriculture, challenges those awards as being excessive. We agree that they were excessive and remand for a redetermination of both awards.

Responding to "the public outcry over antiquated and expensive probate laws", *Colorado Legislature Council, Research Publication # 194, Colorado Probate Code XXVII (1972)*, The General Assembly, in 1972, authorized a review of The Colorado Statutes relating to probate and estate administration. That review led the legislative council to conclude:

"[T]he [current] system of probate and administration is often unnecessary, inordinately cumbersome, expensive and time consuming . . ." *Research Publication # 194, supra*, at XXVII.

[1] Subsequent to this review, the legislature sought to simplify estate administration procedures and reduce probate costs through the enactment of the Colorado Probate Code § 15-10-101 *et seq.*, C.R.S. 1973. (CPC). In furtherance of that objective, the CPC substitutes a standard of reasonableness for the former percentage method of setting fees for personal representatives and attorneys. Compare §§ 15-12-719, 15-12-721, C.R.S. 1973 with C.R.S. 1963, 153-14-16.

The percentage method which existed in the statute prior to enactment of the CPC was based upon the premise that the amount of work required in estate administration is directly proportional to the value of the assets. See *In re Estate of Bloomer*, 43 N.J.Super. 414, 129 A.2d 35; *In re Robinson's Will*, 202 Misc. 231, 109 N.Y.S.2d 67. The General Assembly recognized the error of this premise when it enacted the CPC, accepting the reality that the duties of a personal representative and those employed by him, if any, vary greatly depending upon numerous factors, only one of which is the monetary value of the estate.

Reasonable compensation under the CPC is to be determined by considering certain factors, including but not limited to: (1) the time and labor required, novelty and difficulty of the questions involved, and skill required to perform the service properly; (2) the likelihood that other employment will be precluded by acceptance of the particular employment for which fees are sought; (3) the fee customarily charged in the locality for similar services; (4) the amount involved and results obtained; (5) time limitations upon such services as were rendered; (6) and the experience, reputation, and ability of the person performing the services. Section 15-12-721(2), C.R.S. 1973. To determine how these criteria are to be applied and the weight to be given to each in the setting of fees represents the crux of the issue before us.

[2] A multitude of factors determine the complexity and amount of work required of a decedent's personal representative and his counsel such as: location and form of assets; the existence and nature of encumbrances against these assets; claims against the estate; the number and age of heirs or devisees, and whether or not they can be located; the presence of legal issues which invite, or necessitate, litigation; and the complexity of the litigation itself. Hence, the critical question in determining what constitutes a reasonable fee is not how large or small is the estate, see *In Re Chieffo's Estate*, Sur., 86 N.Y.S.2d 343, but rather what actual services were required and rendered. *Chase v. Lathrop*, 74 Colo. 559, 223 P. 54; *McLaughlin v. Old Colony Trust Co.*, 313 Mass. 329, 47 N.E.2d 276.

[3,4] We are aware that some administrations involve extended negotiation or complex litigation and that they require that those responsible possess and exercise greater expertise and training in protecting and zealously representing their clients' interests than if the administration is merely routine. See Code of Professional Responsibility, DR 7-101. Thus, a personal representative or one employed by him in a complex estate should be compensated on a basis which takes into account such exper-

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tise. In Re Chieffo's Estate, supra. Accordingly, those involved in administering an estate requiring special expertise, such as litigation skills, are entitled to compensation which, in addition to compensating for time spent, gives emphasis to the factor of amount involved and results obtained. See In re Estate of Seabrook, 127 N.J.Super. 185, 316 A.2d 698; Wolfe v. Turner, 267 Md. 646, 299 A.2d 106; cf. McLaughlin v. Old Colony Trust Co., supra. On the other hand, services which are routine and require no special expertise or experience should be compensated with more weight being given to the factor of amount of time expended.

Here there is no question but that administration of the Painter estate was routine. There were no novel or difficult questions. The major assets consisted of approximately one million dollars in American Home Products Stock, which is regularly traded on the New York Stock Exchange, U.S. Treasury Bonds, and bank accounts. These assets were at the time of Painter's death, already in the possession of the personal representative, The First National Bank of Greeley. It had served as paid conservator for many years prior to Painter's death. Thus, no marshalling of assets was required. To preserve the value of the estate, the bank performed the relatively simple and painless tasks of selling the stock and purchasing its own certificates of deposit. No search for devisees was required to be undertaken, since all were known. There were no questionable claims against the estate. There was no will contest in which the bank or the counsel for the estate, Mr. Southard, were required to appear. Southard made no appearance in court other than that made at the hearing to set fees. Pre-

paration and filing of tax returns by Southard admittedly could have been accomplished by accountants and involved no substantial difficulties. The distribution of assets pursuant to a court approved stipulation of all the parties was uncomplicated and routine. There was no evidence that employment by the estate precluded any other employment, either for the bank or Southard.

It is apparent that the two expert witnesses who testified for the bank and Southard as to fees customarily awarded arrived at their opinions using the percentage method that was expressly rejected by the General Assembly when it adopted the CPC.

[5] We hold that, in setting fees under the CPC, the trial court must consider and weigh all of the factors which the code enumerates.

[6] We conclude therefore, that the fees awarded to both the administrator and counsel for the administrator, whose services were routine, were excessive.

Order reversed and cause remanded for a redetermination of fees for both the administrator and counsel in accordance with the views expressed herein.

SILVERSTEIN, C. J., and RULAND, J., concur.



... marked the result of ...