

## First Supplement to Memorandum 87-70

Subject: Study L-3010 - Corporate Trustee Fees (Attorney Survey Analysis)

After the July meeting, the staff distributed a questionnaire concerning corporate trustee fees to approximately 700 persons on our address list. Over 500 of them were persons who had indicated a willingness to review tentative drafts of proposals in the area of probate law. As an added inducement to respond to the survey, these persons were informed that new tentative recommendations recently prepared would be sent to them only if they returned the questionnaire.

Response to Questionnaire

To date, we have received 241 questionnaires. Of these, 172 respondents (71%) reported that trust matters are a significant portion of their practice, 69 respondents (29%) did not consider trust matters as a significant part of their practice. Because of the structure of our mailing list, a number of this latter group were out of state attorneys or law firm libraries.

FEE COMPLAINTSNumber of Respondents Reporting Complaints

The second question asked: "During the past 18 months, have you received any complaints about the fees charged by a corporate trustee for the administration of a living or testamentary trust?" The answers break down as follows:

113 attorneys had received complaints in past 18 months  
99 were attorneys with significant trust practice (88%)  
14 others (12%)

128 attorneys reported no complaints in past 18 months  
73 were attorneys with significant trust practice (57%)  
55 others (43%)

Looked at from another perspective, 99 of the 172 trust attorneys (58%) reported complaints. We understand that the sample is not scientific,

but we also think it is safe to say that there is a significant degree of dissatisfaction with corporate trustees' fees as measured by the percentage of trust attorneys who have received complaints.

Number of Complaints

The third question asked the attorneys to estimate the total number of complaints made during the past 18 months that a corporate trustee was charging an "excessive" fee. Because of the structure of the questionnaire, which grouped higher numbers of complaints (6-10, 11-15, 16-20, and 20+), it is impossible to arrive at an exact total of complaints reported. But if we take the mid-point in each bracket and count the "20+" bracket as 20 complaints, we find conservatively that the 113 respondents reported 480 complaints. The breakdown is as follows:

<u>Complaint Bracket:</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6-10</u>	<u>11-15</u>	<u>16-20</u>	<u>20+</u>	<u>Total</u>
# of Reports:	20	22	25	12	10	18	3	0	3	= 113
# of Complaints:	20	44	75	48	50	~144	~39	0	60	= 480

Nature of Complaints

The fourth question asked for an estimate of the percentage of the complaints that fall into four categories: minimum fees, percentage fees, special or extraordinary services, or other. Taking these percentage breakdowns as reported by each respondent and applying them to the number of complaints reported by these same respondents, reveals the following:

<u>Count</u>	<u>%</u>	<u>Nature of Complaint</u>
220	45%	Complaint concerned minimum fee (minimum amount for which corporate trustee will handle a trust estate)
145	30%	Complaint concerned scheduled rate (ordinarily a percentage of the trust estate)
68	14%	Complaint concerned a fee for special or extraordinary services (additional fee for special or extraordinary services not covered by scheduled rate)
54	11%	Other fee problem

*Note.* The total count in this table (487) differs from the previous table because of a different manner of computation, which involves rounding.

### Additional Comments on Trustees' Fees

The second page of the questionnaire was left blank for any comments the respondent might have concerning the fees charged by corporate trustees. The space was also provided for additional information concerning the number or nature of the complaints reported. The overall nature and number of complaints is summarized by the data above. However, a reading of the comments on trustees' fees will provide a fuller understanding of the various views among attorneys on this subject. All of the remarks submitted to us are reproduced in Exhibit 1. The questionnaire stated that the respondent's name would not be disclosed, so the writers are not indicated.

The staff has several observations on this material:

(1) A significant minority report that the current situation is satisfactory, that market forces should be relied upon, or that the courts should be kept out of it. (Exhibit 1, see comments 184, 212, 225, 251, 275, 421, 473, 523, 570, 623, 637, 695, 784, 786, 827, 1010, 1015, 1035, 1050, 1060, 1061.) In fact, some of the respondents apparently do not want the court or the beneficiaries to be able to do anything about fees. 25 respondents checked "unacceptable" on alternative G, court review of the reasonableness of a trustee's fees on petition by an interested person. 33 respondents checked "unacceptable" on alternative C, transfer to another corporate trustee if all beneficiaries agree or if approval granted by the court. On the other hand, at least one respondent noted that the similarity in the rates of the major trust institutions showed that the market place was not setting the rates. (Exhibit 1, see 569.) Another suggested that the fees indicated that the corporate trustees have a sense of invulnerability. (Exhibit 1, see 909, 984, 1008)

(2) There were many complaints about lack of service, particularly in relation to the fees charged. (Exhibit 1, see, e.g., 743, 884, 983, 1054, 1061, 1091) Others complained about the lack of communication, brought on in part because of the elimination of the continuing court jurisdiction scheme, which resulted in less contact between the attorney and the corporate trustee. (Exhibit 1, see comments 93, 173, 527, 696, 1973.)

(3) Quite a few respondents focused on the problem of getting a corporate trustee for a small trust in light of the fixed costs. (Exhibit 1, see comments 131, 209, 601, 623, 695, 923, 929, 1006, 1036, 1052, 1062, 1064, 1076) "Small" trusts were variously described as trusts under \$200,000 to as much as \$1,000,000.

(4) Several complaints concerned the perceived unfairness of a percentage of value fee as applied in large trusts. (Exhibit 1, see comments 324, 1004.)

(5) Many respondents feel increasingly that the "real work," or more of what used to be covered by the minimum fee, is now being billed separately, perhaps as a special, additional, or extraordinary fee. (Exhibit 1, see comments 372, 386, 527, 569, 585, 623, 668, 696, 1071, 1073, 1107.)

(6) The questionnaire did not ask about set-up or wind-up fees, but several respondents reacted negatively to the fees for terminating or transferring a trust to another trustee. (Exhibit 1, see comments 151, 447, 587, 668, 686, 983, 1035, and 1073.) This type of charge clearly has an impact on the utility of a procedure for replacing a corporate trustee, since the wind-up charge would have to be factored into the decision whether the expense of a transfer is justified. This problem raises the question whether the court should be given specific authority to review the reasonableness of a termination charge.

(7) Several respondents reported that corporate trustees were negative toward cotrustees, by discouraging their appointment in the first instance or by charging the same fee notwithstanding the shared responsibility. (Exhibit 1, see comments 93, 408, 588.)

(8) Computers were offered both as a reason for the increased cost of doing business and as a reason to expect that there would be cost savings. (Exhibit 1, see comments 184, 188, and 587.) Computers were also blamed for other sins. (Exhibit 1, see comments 719, 914.)

(9) Several respondents reported that trustees were cooperative in relinquishing a trust when requested. (Exhibit 1, see comments 300, 421, 923.) Others had a different experience and found that the trustees were not cooperative. (Exhibit 1, see comments 448, 619, 1065.)

(10) Complaints were also made that while corporate trustees were cooperative and flexible when seeking business, later they were not so friendly or flexible. (Exhibit 1, see comments 601, 909.)

(11) One respondent noted a special problem with minimum fees in a case where a testator's trust is divided into separate trusts for each surviving child. (Exhibit 1, see comment 444.)

### LEGISLATIVE APPROACHES

#### Opinions on Suggested Legislative Schemes

The sixth question asked the respondent to give an opinion on eight possible legislative approaches, assuming that the Commission were to decide that legislation is needed. The opinions were classed as "best," "acceptable," "no opinion," and "unacceptable." More than one approach could be designated as "best" (or any other category). The eight approaches were stated in the following terms:

- A. Permit transfer to another corporate trustee with court approval where it is shown to be to the advantage of the trust in light of the fees charged by the existing corporate trustee.
- B. Permit transfer to another corporate trustee (1) if the corporate trustee to be replaced and all trust beneficiaries agree or (2) if court approval is granted as in item (a).
- C. Permit transfer to another corporate trustee (1) if all trust beneficiaries agree on the transfer (consent of existing corporate trustee not required) or (2) if court approval is granted as in item (a).
- D. Permit transfer to another corporate trustee (1) upon the direction of all cotrustees other than the one to be replaced (consent of beneficiaries not required) or (2) if court approval is granted as in item (a).
- E. Require prior court approval of any increase in the fees charged by a trustee.

- F. Permit the trustee to increase fees if no objection is received after giving notice to all trust beneficiaries.
- G. Provide specifically by statute for court review of the reasonableness of a trustee's fees on petition by any interested person.
- H. Establish a statutory fee schedule for trustees based on the value of the trust estate and permit charging additional fees for extraordinary services only on court approval.

The survey data is analyzed in detail in Exhibit 2. Here we will consider these proposals in order, and note some interesting or significant results from the survey. Unless otherwise stated, the percentages below reflect only those respondents giving an opinion pro or con on the approach under discussion. In other words, those who circled "no opinion" or did not circle anything, are not considered below unless otherwise noted. The approaches are discussed in the standard order. As a cautionary note, let us remember the adage *de gustibus non est disputandum*.

#### A. Transfer by Court Order

This approach, which represents a refinement of existing law, was approved by 89% of respondents. This is equal to the highest rate of approval, shared with court review of fees (G). This approach received 99 votes as the "best" which is the third greatest number. For some reason, 11% found this approach to be unacceptable, perhaps in part because the standard of replacement "in light of the fees charged" is vague. Some objected because of opposition to any court involvement.

#### B. Transfer by Beneficiaries and Trustee

The staff would have expected this approach to receive a high rate of approval, but only 68% approved while 32% found it unacceptable. It should be noted that the questionnaire linked approaches B, C, and D with approach A, so a certain number of the negative opinions for B, C, and D may be a carryover from the 24 respondents who found transfer pursuant to court order unpalatable for some reason. It is difficult, otherwise, to imagine who, other than the settlor, would be in a position to object if the beneficiaries and the trustee agree to a transfer. Perhaps the pro-settlor sentiment, the dead-hand contingent, is stronger than we imagined.

The negative reaction is probably directed at approach B as an alternative to requiring only the consent of the beneficiaries. Those who want freer transferability would object to proposal B since it in effect gives the trustee a veto power. Thus, we would expect a significant number of the 65 who found B unacceptable to approve C. The figures reveal that of the 65 respondents who found B unacceptable, 50 of them approved option C. Put another way, 81% of the 65 who expressed an opinion on option C approved of it. Half of them ranked transfer by beneficiaries without the need for trustee consent as a "best" approach. Only 12 respondents disapproved of both B and C.

#### C. Transfer by Beneficiaries

Transfer by beneficiaries without the need to get the consent of the trustee received the greatest number of "bests" (115), but came in third in the overall approval count (183). 85% of respondents approved of this approach (third highest approval rate) and 15% found it unacceptable (third lowest disapproval rate).

#### D. Transfer by Cotrustees

The approach of letting the other cotrustee or cotrustees remove a corporate trustee (the "piranha option"), is distinguished by having the lowest number of approvals (100), though not the lowest approval rate, and by stirring up the most fervent apathy, as measured by "no opinions" (51) and no answers (13). While 53% of the respondents approved this option, only 15% (29) found it to be a "best" option and 40% (71) found it to be "acceptable." This represents by far the softest support for any of the options, as measured by a ratio of "bests" to "acceptables."

#### E. Prior Court Approval of Fee

This approach received the lowest percentage of support (53%) although 109 respondents found it "best" or "acceptable." It sparked a noticeable degree of ambivalence, however, since 77 respondents (44%) found it "unacceptable." This is the third greatest number of no votes and the second greatest percentage of disapproval.

#### F. Increase If No Objection

This approach adopts the idea of the notice of proposed action in the Independent Administration of Estates Act and was approved by a ratio of 2 to 1 (66% to 34%). A large number of respondents approved (132) but a significant number found it unacceptable (69). The novelty of this approach in the area of fee increases apparently moved many respondents to a state of apathy. This proposal attained the second greatest "yawn count" (40). The support is also somewhat soft, since 23% consider it a "best" approach as compared to 43% who consider it "acceptable."

#### G. Court Review of Fees

The option of petitioning the court for review of fees is existing law in essence and has probably always been the law in every jurisdiction where English is spoken. Thus, it was not surprising to find that the greatest number of respondents (198) approved of this proposal. This number equals the highest approval rate (89%) as well. Support is also strong, since 50% ranked it "best" and 39% ranked it "acceptable." Nevertheless, 25 respondents found it "unacceptable." This number is equal to the lowest rate of disapproval (11%) shared with approach A. Perhaps these respondents object to the statement of the standard which gives the court power to review the "reasonableness" of the fees. It would be interesting to ask the 25 naysayers whether a standard phrased in terms of "unconscionable" or "shocks the conscience" would alter their opinion. Another factor is also at play here, since one respondent circled "unacceptable" for all eight approaches, presumably as a protest against any further legislation at all. (Exhibit 1, see comment 827.)

#### H. Statutory Fee Schedule

The approach of legislating a fee schedule attained a surprisingly high approval level of 61% (133 respondents). Support was relatively strong, as well, since 33% (73 respondents) ranked it "best" and 27% (60 respondents) ranked it "acceptable."

### Summary

The eight legislative approaches fall roughly into three categories of approval. While all approaches were approved by at least half of the respondents who expressed an opinion, the ratio of approval to disapproval is significant enough to divide the eight approaches into these three groups:

The first category had an very high approval rate (85%-89%) and included approaches A (transfer by court order), C (transfer by beneficiaries), and G (court review of fees).

The second category includes approaches that are approved by approximately 2 out of 3 respondents. This group includes approaches B (transfer by beneficiaries and trustee) and F (increase if no objection).

The third category includes approaches where those who disapprove nearly equal those who approve. Approval hovers around the 6 out of 10 level or less for approaches D (transfer by cotrustees), E (prior court approval of fee), and H (statutory fee schedule).

If legislation were to be recommended on the basis of this opinion poll, it would make sense to implement the three approaches in the first category which happen to be the schemes that would require only some relatively minor tinkering with existing statutes. The staff would throw out approach B (transfer by beneficiaries and trustee) because it would not contribute anything if the alternative of permitting the beneficiaries to transfer is adopted. (Approach B would be useful, however, if it is determined that federal tax problems would result from approach C.) Approach F (increase if no objection) also seems worth investigation, although it did not achieve as high an approval rate as expected. The third category would not be the basis for legislation in light of the substantial percentages that found these proposals unacceptable.

### Comments on Legislative Proposals

The last page of the questionnaire asked if the respondent had any other suggestions for legislation on corporate trustees' fees. (Many mixed their legislative recommendations with their comments on the

first part of the questionnaire relating to fee problems.) All of the comments submitted to us are reproduced in Exhibit 1. Comments particularly directed toward legislation are set out in italics.

The staff has several observations on this material:

(1) Satisfaction with the existing state of affairs is expressed by many respondents, as noted in paragraph (1) on page 3. Two of these persons will be in for a rude shock in the upcoming months, however, since they are placing their faith in Probate Code Section 1138.1, which was repealed on July 1. (Exhibit 1, see comments 637, 1031.)

(2) A number of respondents urge a return to the former regime of court supervision. (Exhibit 1, see comments 93, 303, 386, 444, 666, 1039.) None of them suggest why this court supervision should apply only to testamentary trusts. Respondents also suggest that fees should be controlled by local court rules (Exhibit 1, see comment 199) or judicial council rules (Exhibit 1, see comment 588).

(3) A typical comment by those who favor transferability is that legislation should not limit transfer to corporate trustees but should also deal with transfer to individuals. (Exhibit 1, see comments 173, 184, 300, 370, 466, 949, 1086.) As noted in Memorandum 87-70, the staff anticipates that where appropriate, any proposed legislation would apply to both types of trustees. For example, if fees are reviewable based on a standard of reasonableness, this would apply to both corporate and individual trustees.

(4) One respondent suggested that the statute require annual written and signed fee agreements. (Exhibit 1, see comment 337.) Another would require trustees to publish fees. (Exhibit 1, see comments 388, 466.) Another suggests that trustees should be required to supply detailed billing information so that charges could be tied to billable hours. (Exhibit 1, see comment 983.) Others also suggest that charges should be based on time actually spent. (Exhibit 1, see comments 795, 1059.)

(5) A number of respondents suggest that the beneficiaries should be able to replace a corporate trustee by majority, rather than unanimous, agreement. (Exhibit 1, see comments 333, 456, 691.) Problems of obtaining the consent of certain classes of beneficiaries are also noted. (Exhibit 1, see comment 467, 691.)

(6) There is concern that giving the beneficiaries the power to replace the trustee would invite coercion or violate the wishes of the settlor. (Exhibit 1, see comments 543, 923, 956, 980.)

(7) While one respondent describes the services of corporate trustees as "fungible" (Exhibit 1, see comment 909), another suggests that a particular corporate trustee is chosen because of its special expertise in an area of interest to the settlor (Exhibit 1, see comment 370).

(8) It is suggested that specific authority should be provided for review of "extraordinary" fees. (Exhibit 1, see comment 467.)

(9) The suggestion is made that replacement is best handled by an appropriate provision included in the trust instrument. (Exhibit 1, see comment 392.)

(10) Some advocate a "pro bono" approach that would require the corporate trustees to accept small trusts. (Exhibit 1, see comments 588, 1006.) Others suggest a public trustee to administer small trusts. (Exhibit 1, see comments 929, 1027.)

(11) A statutory trust form is advocated by one respondent. (Exhibit 1, see comment 182.)

(12) Several persons want more information on the economics of corporate trustees as a basis for determining an appropriate fee structure. (Exhibit 1, see comments 34, 619.) In a related vein, another respondent argues that courts have shown an "unfortunate lack of perception of business reality in evaluating corporate trustee's fees. (Exhibit 1, see comment 923.)

(13) Regulation of set-up and wind-up fees was also urged. (Exhibit 1, see comment 686.)

(14) One respondent suggests that the trustee should be liable for costs incurred in transferring a trust. (Exhibit 1, see comment 150.)

(15) An industry (presumably) panel or review board was also suggested. (Exhibit 1, 743.)

(16) Control of the liability for punitive damages was urged as a means to balance the ledger. (Exhibit 1, see comment 184.)

Respectfully submitted,

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Staff Counsel

## Exhibit 1

COMMENTS OF ATTORNEYS RELATING TO CORPORATE TRUSTEES FEES

*Note.* The following comments are complete and in the form submitted, except that minor editorial changes have been made such as supplying punctuation, correcting spelling, and using unabbreviated words. Comments were submitted by 153 persons.

Respondents were not strict in segregating their answers to question 5 (comments on fee complaints) and question 7 (comments on possible legislation). Accordingly, the material here combines all comments. If a respondent submitted comments to both questions, the beginning of the response to question 7 is marked by ".". Remarks specifically directed toward legislative proposals are set out in italics.

11. Complaints about Wells Fargo Bank's initiating revised (upward) fee schedules for trustee services, especially for business from (absorbed) Crocker National Bank, appear to have caused Wells Fargo Bank to withdraw its proposed increases for the interim minimum size of trust account the banks will handle (translating into a minimum fee) leaves many \$100,000-\$400,000 estates without access to a corporate fiduciary as trustee.

14. Fees excessive -- all bank does is invest in its own common funds.

34. I was attorney for two beneficiaries of a trust in which Security Pacific National Bank was trustee. The trustee charged a flat rate for fees. Suit was filed in Probate Court. . . . I proved the work accomplished was little and did not warrant the flat fee. Law on it was only a "reasonable fee." Judgment was in our favor.

*Certainly the reasonable fee law must be changed. It may be best to allow trustee fees on a formula likened to Sections 901 and 910 of the Probate Code. I felt the trust companies and banks were running the courts by sticking to their flat % -- they should be held to a better standard. It would be a good idea to have retired bank trust officers work with you who at this time have no axe to grind.*

*The trust administration is similar to that of probate administration. There are many aspects to it. Probably a study should be made of the costs of trust administration. What are the costs of using computers to list & store information of the trust: What are the costs of trust employers, officers, the cost of selling real property, to sell or buy securities; how much profit should they be allowed to make. After this information is acquired then a formula must be used. Get away from the reasonable rule. There must be a great many cases where trustee's fees have been spelled out. With the formula rule the power stays in the law & not with the trust companies.*

93. Most complaints have arisen in the area of minimum fees for trusts in the \$500,000 to \$1,000,000 range, particularly where there is

a cotrustee. Corporate trustees apparently are going out of their way to discourage the appointment of cotrustees.

*•All testamentary trusts should be returned to the continuing jurisdiction of the probate court. The probate courts should adopt a reasonable fee schedule which should be the same for all counties in a metropolitan area. The fee schedule should also apply to the attorneys for the trustees who should receive 1/4 of the amount allowed corporate trustees, and reasonable fees in case of individual trustees, with the total fee of the individual trustee and his/her attorney not to exceed the total fee of a corporate trustee and its attorney. Exceptions to the court's fee schedule should only be permitted by the court in the most extraordinary circumstances where to do otherwise would be grossly unfair.*

It is important that testamentary trusts be returned to the continuing jurisdiction of the probate court. The present system excludes the attorney from any involvement in the trust, although in most cases the testator looked primarily to the attorney and not the corporate trustee for personal input.

131. Considering the amount of work, responsibility and liability assumed, the fees (I'm assuming 1% of principal value) are usually quite reasonable. The real problem seems to be getting a trustee for a small trust -- i.e., under \$200,000 since the fixed costs of handling it are relatively high.

I guess I didn't realize there was a problem with corporate trustee fees. I'd like to hear (review) the complaints (or an analysis of the complaints) since I suspect it (they?) are founded in ignorance and motivated by a desire to get but not pay.

Sorry to be so cynical, but since we get stuck with a lot of trustee work because clients can't use a corporate trustee (and this must explain the cost), it is clear that even the sophisticated public does not understand what trustees do/should do.

150. *Legislation might address fees of individual cotrustees. Wells Fargo Bank currently has a practice of charging a higher corporate trustee's fee if there is an individual cotrustee. This is "justified" by the fact that the corporate trustee must spend time dealing with the individual trustee. If a statutory fee schedule is developed, it should be clear that it applies whether or not there is an individual cotrustee. Division of fees between corporate and individual trustees should also be covered. Finally, if a trust is effectively forced out of a corporate trust department because of increases in fees, the resigning corporate trustee should bear some responsibility for the costs incurred in the transfer.*

151. Many complaints have been due to the sizable fee increases imposed by Wells Fargo Bank and the attempt of Wells Fargo Bank to force clients to accept common trust funds in order to avoid a high "minimum" fee on individually managed accounts. This has become particularly acute as other large trust departments (i.e., Crocker and Bank of America) have been subjected to the fee increases at Wells Fargo. Many clients have chosen to move trusts to other corporate trustees, thereby incurring legal costs and sometimes incurring capital gains on sales of common trust funds that cannot be moved from one bank to another.

173. I don't think the level of dissatisfaction can be determined solely from the number of complaints received by attorneys. Now that testamentary trusts with corporate trustees are no longer subject to court supervision, the attorneys are often not involved in the accounting process. I think many beneficiaries, realizing that the attorney represents the trustee, don't even bother to complain.

•To require cost approval only for any increase in fees charged by a trustee, as proposed in alternative E, would only reward those trustees who have been charging excessive fees in the past. What is an increase, anyway? A hike in the scheduled rate or a raise in the dollar amount of the actual fee, which may be attributable only to an increase in the size of the trust estate.

I don't see repeal of the 1982 legislation as a proposed alternative in question 6.

Any statutory fee schedule should apply to individual, as well as corporate, trustees.

182. I believe corporate trustees fees generally are very reasonable. In fact, I think corporate trustees should generally charge higher fees in exchange for better services. They should pay trust officers more so as to get better people who will stay around longer and do better work.

The minimum fee is a serious problem. Some corporate trustees, like some lawyers, accountants, investment counselors, and others, have high minimum fees to meet the cost of the services performed. There still seem to be a number of corporate trustees who do not have high minimum fees however.

The situation would be helped if we had a statutory trust arrangement similar to the CUTMA custodianship that could go on for life or until the beneficiary attained a specified age or ages, which would make it easier to administer trusts generally.

•Higher fees are justified with regard to assets not held in a corporate trustee's common trust funds. A statutory fee schedule might be possible with respect to the investment of and accounting for assets held in a common trust fund or cash account. A trustee should be able to charge a "reasonable" fee for the cost of administering other assets and providing all other services, subject to court review on petition by any interested person. Trustees need to have a free hand in setting fees without prior court approval, but like anyone else they should be accountable, if an interested person so desires, to the court.

184. Corporate trustee's fees are based upon the cost of services provided, including the cost of such items as computer hard and soft ware allowing sophistication in accounting and other communications with trust customers. One major factor in reviewing any proposal for a cap or other legislation limiting trustee's fees is the almost certainty that any litigation against a corporate trustee will result in pleadings for and possible imposition of punitive damages, which would probably not even be sought against an individual trustee who commits the same alleged error. There needs to be some reasonableness imposed on the whole area of amount of liability for negligent acts! At a minimum the Commission should reassert its prior proposal to limit punitive damages to three times actual damages.

Lastly, all trustees should have same basis of review -- i.e.,

payment of a reasonable fee for services rendered. Individual, noncorporate trustees should be as accountable as corporate trustees!

•I don't believe that new legislation is needed as the market place should control fees for services by all trustees.

188. (1) Trustees should not be able to put trust assets into their common trust funds, in which a profit is built in, and then charge an additional trustee's fee for "administering" those assets.

(2) Once a corporate trustee has all necessary trust data computerized so that the services rendered are little more than clerical, a large trust, the fee on which is a percentage fee, is subject to customary fee charges which are probably greatly in excess of any valuable services performed.

(3) Trustees manage assets very passively. They either retain the securities, etc., exactly as they receive them when the trust is created or they liquidate and buy their own common trust fund.

(4) The statutory fee is rarely deemed adequate any longer. If the trustee actually does any work, he wants extraordinary compensation.

199. Banks seem to be going over our time honored 3/4 of 1%. San Mateo County keeps this as a cap per its court rules.

•Should be left to local court rule-making power if possible. It would be very hard to mandate, on a state wise basis, a proper level for fees.

204. Fee problems would disappear if these problems did not exist: (1) No personal interest by trustee. (2) No permanent staff person. (3) Trustee's priority to safeguard itself rather than make practical decision. (4) Lack of competency to make sensible decisions.

209. The big problem I see is that many small trusts are of no interest to corporate trustees. It would seem that corporate trustees could come up with a standardized trust instrument that could be administered economically and serve the very many small estates that could use trust services if only a trustee could be found who would accept the duties.

212. Think fees about right -- except Wells Fargo's announced raise in early 1987.

•The less court involvement the better.

214. Fees should be subject to court review after notice to all parties.

225. The fees follow the Probate Code and seem to be fair.

236. Corporate trustees should not receive high fees when estate is invested in common funds and little effort is required to monitor needs of beneficiaries

241. This is not a direct answer, but lack of proper communication and poor quality of management skills prompt fee questions.

246. If a trust provides for transfer of a trust from one corporate trustee to another, then the terms of the trust ought to control. Since a trust is a very personal act of the settlor, the settlor's choice of corporate trustee should be honored. The trust agreement itself should provide an administrative mechanism for (a) overseeing fees (b) transfer from one corporate trustee to another corporate trustee. *F is the best solution because it permits marketplace forces to operate.*

251. Market forces seem to take care of this.

253. A. *How would this advantage be shown? It's more than fees; it's also ability of trustee.*

B. *Requiring trustee's agreement may negate usefulness.*

C. *This allows beneficiaries to decide; but how are minors to be protected and/or to give consent.*

D. *Adult beneficiaries should have involvement.*

E. *This appears to be too burdensome.*

F. *What happens if objection is received?*

G. *This allows review of fees but should result in many possible disputes being resolved short of going into court.*

H. *This may be too burdensome where parties can agree on fees for extra services.*

263. Fee letters should be clear and describe:

--Size of fee

--How fee is calculated

--When it is taken

*Fee changes should be written as well and beneficiaries or settlors given 30 days notice.*

264. I believe costs incurred by fiduciaries in performing trust duties have increased greatly as have the risks of personal liability. The fees charged, if increased at all, have risen modestly. Large customers such as pension funds obtain the services of the best and most gifted personnel while small accounts are not even accepted. We usually get what we pay for.

*.No trustee should be locked in. It can quit & can be dismissed. All disagreements, including those over charges, should be settled by court proceedings.*

275. Probably a little high for the level of service performed, especially if assets invested in common trust funds.

*.Generally I favor legislation that does not control fees of trust departments or materially increase the administrative burdens thereof coupled with sufficient leverage in the beneficiaries to change corporate trustees without material expense, because I think the market place will correct any unreasonableness. We are seeing competition cause better rates and more trustees popping up right now.*

279. Fees are excessive for large estates. Rate curve should have steeper decline.

300. In my experience, corporate trustees have been cooperative in resigning whenever there was a complaint by a beneficiary concerning

the matter in which the trust was handled, either fees or otherwise. The only concern on the part of the corporate trustee was that another qualified person agree to serve as trustee; whether the successor was an individual or a corporation was irrelevant.

*•Avoid court costs if possible. Handle fee increase, resignation and transfer to successor by advice of proposed action to ferret out objectors. Go to court only if there are objections. Don't preclude individual successors.*

302. Our firm in the past has not participated in Trust law. My concern stems from a future partnership and/or association my firm is presently negotiating with another. Therefore, I have no actual knowledge of this area of the law.

303. My comment is that the corporate trustee fees are disproportionate to the attorneys fees allowed by local court rules.

*•Some form of court supervision as to reasonableness. Reverse the legislation of 1982 removing the testamentary trust from court supervision, which I believe to be a mistake.*

318. *Should be set by law same as statutory fees.* Trusts are replacing probate administration and fees are more expensive for less work.

324. The fees charged by corporate trustees based on a percentage of the value of the assets in the trust estate usually result in an excessive fee for the time, effort and responsibility of the corporate trustee in administering the trust. We avoid the use of a corporate trustee for this reason whenever possible. It would be extremely interesting and relevant if the Commission could ascertain the net income realized by corporate trustees from their trust activities to be used as a guide drafting legislation to govern trustee's fees.

*The corporate trustee should be required to maintain records on a current bases of the time devoted to the administration of the trust and cost records of the salaries paid to those persons who are actively involved in the administration of the trust and other allocable expenses of administration. The trustee should be compensated on a reasonable fee bases for the time and allocable costs incurred with adjustment, both up and down, for superior or unsatisfactory performance. Court approval should be required of all trustee's fees whenever they are questioned by written communication to the trustee by any person beneficially interested in the trust.*

333. I am bothered by the minimum valuation requirements by many corporate trustees. I would be willing to see larger fees, if that is necessary, to encourage their service in smaller matters. Sometimes a corporate trustee is the only solution, even in smaller matters.

*•I think a change in corporate trustees should be permitted if a majority of beneficiaries consent, as opposed to unanimity.*

337. *Require annual written & signed fee agreement between a corporate trustee & current beneficiary(ies).*

348. I have a great deal of interest in cleaning up the probate and trust law, but my interest therein is limited to the doing of closely held business valuations for state and gift for purposes.

355. Professional fiduciary services are expensive. The bank have been providing the services below cost in the past, and they are now unwilling to do so. I have not heard of a bank that would not resign if the beneficiary insisted. *It would be very unwise public policy to force them to keep business they don't make money doing.*

*Whatever you do, keep the courts out of it!*

356. With no court supervision the beneficiaries are at a great disadvantage, particularly in those trusts which were in effect prior to the time courts lost jurisdiction over "annual" accountings. There was no planning undertaken in those trusts to protect beneficiaries since court supervision was assumed by the trustor and drafter of the instruments.

358. The majority of the complaints received by the beneficiaries relate to the amount of trustee fees and on occasion dissatisfaction as to the handling of the trust. Upon advising the inquiring party to seek legal counsel, the issue of expenses arises, much to the chagrin of the interested party. The ordinary beneficiary is not sufficiently sophisticated to dispute the actions of a trustee and seek redress.

*Other than approach H, dissatisfaction by an interested party and recourse to the courts denotes the retention of an attorney and resulting legal fees.*

367. It is difficult to find a corporate trustee for small trusts (under 1 million). Minimum fees are such that currently only 2 or 3 trustees can be considered.

370. Estate planning, probate and trust administration comprise approximately 75% of my practice, and I represent a number of beneficiaries of trust, as well as both individual and corporate trustees. To date, I have received only one complaint regarding a corporate trustee's fee. The trust is worth in excess of \$2,000,000, and the corporate trustee raised its fee from .75% to 1.0% of the value of the trust annually without notice to its two cotrustees, who are also income beneficiaries. The problem was not so much the fact of the increase in fees, but the manner in which the bank did so (without notice to or consent of its cotrustees, as required by law). At the cotrustee's request, the corporate trustee resigned and another was appointed. Ironically, the successor corporate cotrustee is now charging 1%. We are in the process of obtaining a court order specifying that, as to the one-half of the trust estate which is held for the benefit of one beneficiary, the trustee shall charge only .45% per year of the assets as its fee. For this reduced rate, however, the individual cotrustees receive no investment advice; the trust is "self directed" by the individuals, and the corporate trustee takes no role in the investment decision-making process. As a result, the trust saves \$3,000 per year in trustee's fees, and the beneficiaries lose the benefit of a corporate investment advisory service.

As a general rule, and noting that exceptions certainly exist, I

believe that a beneficiary gets what he or she pays for in terms of trust services.

*I am bothered by this questionnaire because it promotes the concept of "free transferability" of trusteeships. This ignores the fact that most testators chose a corporate fiduciary not for its fee schedule, but for other reasons such as stock market expertise, real estate management skills, convenience of trust office branches, and knowledge of family history, to name a few.*

If a testator wants the beneficiaries to be able to change trustees by consent, the testator may so provide in his or her will or trust.

*Options B and C both overlook the likelihood that beneficiaries and cotrustees will "shop" the trust not on the basis of a trustee's expertise, but rather on the basis of a trustee's known liberality in making discretionary payments of principal.*

*Option F, permitting a trustee to increase fees if no objection is received after giving notice to trust beneficiaries, appears to be the most fair method for dealing with what the Commission believes is a serious problem. A bank could serve a notice (along the lines of Notice of Proposed Action under Probate Code Section 591 et seq.) and, if no objections are received by a beneficiary within 60 days, proceed to increase its fees to the amount provided in the notice. If, several years later, a beneficiary decides to object to a fee increase after receiving notice, the bank ought to be entitled to retain any fees charged between the date of commencement of the new fee schedule and the date of objection by the beneficiary.*

*Finally, I see no reason why corporate fiduciaries should be singled out for compensation limitations. The Commission's perception may be that many more beneficiaries under a corporate trustee are complaining than under individual trustees, but so few individual trustee matters are properly audited that excesses by individual trustees are rarely brought to light.*

372. The fees do not bear a relationship to the amount of work the trustee has done but appear to be a function of the size of the estate only. Any real work done is billed in addition to the basic fee.

386. *Basic fees are based upon an arbitrary percentage of the value of the trust regardless of services rendered or results achieved. Added fees now are being charged for services which formerly were part of the basic fee, such as tax returns, regardless of whether the basic fee was adequate compensation for all services. Hidden fees are now appearing which the unsophisticated beneficiary will not notice or which even may be unreported, i.e., "sweep fees" for performing a basic trust function of keeping cash invested in an income producing account. In short, corporate fiduciaries have abandoned any pretense of justifying the reasonableness of compensation.*

*The CBA lobby probably is too powerful to reverse the mistake of removing testamentary trusts from court jurisdiction, but if it were possible to do so this would be superb "consumer" legislation. Not just fees are involved. No longer is there any effective oversight of trust administration, a function formerly performed by attorneys and the court. The average beneficiary can not perform this function, and the exceptional one who can now must bring an adversarial action to*

achieve the purpose. From limited contact with trusts which no longer seek representation of counsel, I suspect a survey of administrative performance since the removal from court jurisdiction would disclose a shocking deterioration in investment results simultaneously with a substantial fee increase.

388. The corporate trustee in this case agreed to compromise the fee because the trustee had arbitrarily charged the client for services the client was not informed about.

*•Require trustees to publish fees. Require trustees to get signed agreement from beneficiaries or cotrustee, or both. Require notice to beneficiaries about fees charged during a fiscal year with a detailed explanation.*

392. Most well-drafted wills and trusts have a provision which allows the current beneficiaries of the trust to replace a corporate trustee with another corporate trustee. An example of such a clause is as follows:

"If a corporate fiduciary shall be acting as trustee of any trust, the majority of the persons then entitled to receive the income of the trust or, if there are none, the majority of the persons then entitled to receive distributions therefrom in the discretion of the trustees, shall have the power to corporate trustee having a net worth of at least \$20,000,000 to act in its place. Moreover, any substitute bank or trust company similarly may be removed without cause and a different bank or trust company substituted in its place. All such removals and appointments shall be exercised in writing and the fiduciary being removed and the replacement fiduciary."

This type of clause is helpful, not only where there is a problem as to the reasonableness of the corporate trustee's fees, but would allow replacement of a corporate trustee where the trust is being mismanaged, etc., by the corporate fiduciary. That is, the clause is somewhat broader in its scope than relating to fees.

*A general clause of this type included in the trust law itself would put all corporate fiduciaries on notice that they are subject to being replaced without cause by another corporate fiduciary. Since corporate fiduciaries are competitive in their rates and often smaller banks or trust companies, for example, are willing to handle trusts at a lower rate than a large bank or trust company, this type of statutory provision would seem to solve the fee issue.*

408. Usually the fee to serve as cotrustee, often an individual, is high regardless of time or work involved.

421. Fees are generally fair and reasonable in relation to service rendered and responsibility assumed by trustee. If fee is too high, interested parties generally have a mechanism by which to change trustees. Corporate trustees are normally very cooperative in transferring the trust to another qualified corporate trustee.

*Probate courts are generally unrealistic in their assessment of a corporate trustee's cost of doing business. Probate courts should have little or no role in setting fees, unless an interested party cannot otherwise seek recourse and file a petition in court for consideration of the trustee's fee. Statutes should not set fees for corporate or individual trustees.*

434. Clients avoid naming corporate trustees because of the minimum fees and the lack of control over fee increases in the future. (This conduct may not be in the best interest of the client.)

•When comparing corporate trustee fees to conservators' fees (for individual conservators), the fees seem quite high. The truth probably is that the fees for the individual serving as conservator are probably too low. This may tend to discourage a client from establishing a trust when it may be in their best interest.

444. Minimum fees charged by some, but not all, corporate trustees appear to be unreasonable. A particular problem with most corporate trustees is that once a trust is divided into separate trusts (i.e., separate trust for each surviving child of testator) a separate fee is charged for each separate trust of each child. If the minimum is applied to each such separate trust, the administration expenses absorb much of the trust income. Court supervision of trusts would not allow this situation.

Specific minimum complaints: Many persons with \$200,000 in trusts pay \$3500-\$4000 or more in annual trustee fees including preparation of individual and fiduciary income tax returns.

•*The previous system of requiring testamentary trusts to be subject to the jurisdiction of the court was a good check and balance as to all aspects of testamentary trust administration including, but not limited to, trustee fees.*

446. Should have some bearing on the administrative tasks involved. Pure custodial action, with periodic disbursements should not warrant a set % of the corpus, unless the trust is below a certain amount. The fees charged should have correlation to services performed.

447. In my opinion the fees are generally fair for administration of trusts, but the trustees often charge termination fees upon termination of a trust which are not warranted or even authorized.

448. Any statute requiring consent of corporate trustee is not a good idea. My experience is that banks will not resign if the trust is substantial and generates significant fees.

•Complaints often come from those with "small" trusts who are shocked at base fee and upset with extra fees charged for a variety of matters. *Complaints re fees are often coupled with complaints re poor service. Obviously not an issue Law Revision Commission can deal with.* Clients with longstanding relationship with trust department are upset at recent fee increases. Many clients are actively shopping for new trustees where they have ability or power to change.

456. In investigating the matter I discovered that Crocker Bank had automatically increased its rate schedule, after the elimination of court supervision of accountings, to include in its fee the amount that had ordinarily been allowed to both the trustee and the trustee's attorneys. Accordingly, the trustee fees being charged in the unsupervised cases were universally higher than the maximum allowed under court rules of the various county superior courts. I understand a number of other banks also raised their fees at this time. In the case of Crocker, the increased fees were also accompanied by a

substantial reduction in service in an apparent attempt of the bank to maximize profitability. We were tempted to bring a class action but X, who is confined to a wheelchair, was suffering bad health at the time and was not up to a more extensive litigation.

*Among the proposed solutions, a statutory maximum fee that would work automatically would probably help the most number of people. Requirements regarding all beneficiaries are difficult because of the usual provisions for a broad class of remaindermen, including minors and unborn heirs.*

466. I have tried to inquire into the fees charged by corporate trustees, but don't think I got a very clear picture of how they determine their fees. *Perhaps the law could require them to publish detailed schedules showing how they compute fees, and to provide these to anyone inquiring, or to all beneficiaries, and to notify all beneficiaries when there are changes. It would be helpful.*

*You don't seem to envisage a change from a corporate trustee to a noncorporate trustee. It seems to me that this could be a solution to excessive fees in some cases. Such a change should probably be made only if the beneficiaries agree and the court approves it, to guard against relatives or others who might pressure a beneficiary to make them trustees for their own purposes.*

*I found that some of your alternatives were not entirely clear. If an amount is charged based on a percentage, do you consider the fee to be "increased" where the increase is based solely on the basis of a growth in the assets? One would surely think there would be no need for court approval for an increase of this type.*

467. The issues in trust administration which result in complaints from beneficiaries are, as often as not, the attorneys' fees billed by the trustee's attorneys. There is also the struggle among beneficiaries of the same and differing classes (income beneficiaries, remaindermen) concerning influencing the trustee's behavior in regard to income distributions and discretionary distributions, as well as investments. *Any proposal to allow changes in trustee or to provide that, absent any objection from the persons interested in the trust, a trustee's fee can be increased, must address the issue of unascertainable beneficiaries and minor beneficiaries. Will there be a provision to make mandatory the appointment of a guardian ad litem to represent the interests of such beneficiaries upon funding of a testamentary trust or the death of a grantor to an inter vivos trust? If not, how will the issue of notice be resolved as to the proceedings to change trustee and/or increase fees.*

*The fairest solution to the fee issue is to establish a statutory fee for the trustee and the attorney for the trustee and to delineate which services shall be construed as "extraordinary". If the trustee's fee were statutory, then there would be no need for legislation concerning change of trustee "in light of the fees" charged; which, in any case, seem unlikely to be sufficient to establish benefit to the trust given the varying investment approaches of the many corporate trustees providing services these days. There should be a provision to give the court the right to review the fees charged by the trustee for "extraordinary" services.*

473. I believe that fees in range of 1% of fair market value are reasonable, subject to increase for special services. As to minimum fees, they should be handled by the trust document or agreement between the parties in interest. If corporate trustees are unable to receive a fair return they will go out of business and the public will be the "loser".

*•I think the code should provide specifically that a corporate trustee may resign in the event of an unresolvable fee dispute, subject to the appointment of a successor trustee as provided for in the instrument or statutes.*

487. Trustee's fees based primarily on relatively high scheduled percentage rates can produce unreasonable results in certain common situations, e.g., large trusts with liquid assets, trusts simply holding assets pending final distribution after death of life beneficiary, or other situations in which substantial assets are held without significant administrative responsibilities.

*•I would prefer to see a statutory fee schedule set relatively low, which would be designed to cover the basic and ordinary services required in administering every trust. This statutory fee could be supplemented with extra compensation for services beyond the normal scope; to wit: tax returns, sales of property, management of investment properties, sales of any type, complex distribution patterns. The latter compensation would be subject to discretionary court review upon the petition of an interested party.*

493. Only a small handful of my clients have complained about fees, and most would have found something to complain about anyway. One client switched trustees over a fee issue. I personally feel that fees should be what the market will bear. Let free enterprise work it out.

505. Corporate trustees have removed a lot of trusts from the jurisdiction of the court. Their schedule of fees is more than the court would approve if asked for on an accounting presented to the court.

One trust we had been handling was recently removed from court jurisdiction and we were told by the trustee that the remaindermen were upset about the fees.

508. I believe the fees charged should diminish on a percentage basis, such as attorneys' fees % diminish with the size of the estate.

523. The fees seem high but the overhead of the trustee is also high. Let the market place determine fees.

527. Minimum fees are a particular problem for "small" estates -- those under \$1,000,000. Minimum fees are also a problem when a trust has a non-income producing asset of disproportionate size, but low income to produce money to pay fee. For example, house is worth \$500,000 but other assets of \$200,000 must pay fees and expenses of surviving spouses living. Many wealthy clients are so afraid of the high regular fees of banks that they will go to great lengths to avoid using them. Long time beneficiaries where banks are trustees complain

about the increased segregation of charges so that the normal fees seem to cover less services.

*Beneficiaries need to be given better notice of what their options are by the corporate trustee. This should be done in plain English. Resort to court is expensive and should not be required when all agree. On the other hand, change of trustees should not be too easy. A sole beneficiary may be upset with a trustee who refuses to invade principal for unpermitted purposes and use fees as an excuse to get a more cooperative trustee.*

543. Bad questionnaire. Doesn't give any indication of rate of complaints. Worse, no indication of whether or how complaint resolved within scope of existing law.

*I am very concerned about what happens in a situation like that in Gump v Wells Fargo Bank where the children/income beneficiaries -- already angry that their parents didn't give them their inheritances outright -- try to blackmail the corporate trustee into acting in a manner not in the best interests of the remaindermen. For that reason, I strongly object to proposals which add grounds for trustee removal rather than merely allowing court to review the fee.*

*I would favor option G whenever there are minor or unborn beneficiaries with F being allowed if (1) authorized by instrument or (2) court authorized on finding that interests of remaindermen are remote or protected under principle of virtual representation.*

558. Fees seem high for mediocre service, and it's difficult to even find a corporate trustee for a trust under one million dollars.

569. The market place does not really set the rates. A comparison of major trust institutions shows striking similarities. "Extras" make schedules meaningless in any event.

Minimums make trusts under \$1,000,000 strictly common trust fund investors -- basically eliminate at least 50% of trusts from corporate trustee consideration.

570. According to my experience, clients have felt they were very fair.

574. Bigger complaint has been that corporate trustees lose money for the trust. They invest in their own trust accounts and do a bad job of managing.

581. The Commission should seek "profit" statistics from major corporate trustees. If indeed the profits are reasonable, then some trusts must be getting a free ride on other simpler ones and a new fee approach would seem necessary.

583. After the corporate trustees were relieved of court supervision the fees "jumped" substantially.

585. Real estate management fees should be allowed only for substantial extra service, and a trustee should not be permitted to include the value of property on which it gets real estate management fees in the value of the estate for purposes of computing trustee's fees.

587. Corporate fiduciaries in the Los Angeles area charge a fee generally based on a percentage of the market value of trust assets involved and work required, particularly investment decisions. All fiduciaries charge annual minimum rates ranging from \$1,500 to \$3,000. In addition, certain other charges can be incorporated by a corporate trustee such as "start up fee," "transfer fee" or "termination fee." Sometimes these may appear excessive. As an example, a local banking institution charged \$150 as a termination fee upon the transfer of \$125,000 trust to another jurisdiction. All that was involved was liquidating the assets held in the corporate fund and issuing a check to another new court appointed trustee -- a relatively simple procedure. In this computer age, accounts are updated daily.

Basically, most corporate fiduciaries invest trust assets in their own particular funds to provide liquidity and basic potential investment growth. They gear their annual fee to cover overhead and the expenses involved in providing the basic trust services. Any specific investment advice or special services performed as a cotrustee, or tax preparation, should warrant additional special charges.

588. Many complaints have been received -- particularly in the area of minimum fees for trusts in excess of 1/2 million dollars. Banks also penalize trusts where a cotrustee is appointed to work with the corporate trustee.

*I believe that the court should review all trustees' fees when they depart from a schedule set forth by the judicial council, or a council of judge covering all metropolitan areas. Attorneys' fees for gaining such approval should likewise be regulated.*

*Corporate trustees should be required by statute to accept and act for small trusts and estates, accepting good with the not so good. This is particularly so where the trustor or testator has been a customer or depositor of the corporate trustee, and has previously dealt with it in other financial transactions, thereby developing a reliance upon it.*

601. Have participated in 2 matters where (1) fees disallowed (2) substantially reduced.

Each corporate trustee sets a minimum size trust that it is willing to handle, or conditions handling trust on serving as estate representative in probate. Both of these tend to substantially increase trustee fees.

The same corporate trustees advertise and have influenced the public to be nominated and appointed both as executor and trustees. In reliance thereon, they have been so nominated. Then the corporate trustees reject the nomination because the trust or estate is too small. This is a fraud on the unknowing and relying members of the public.

619. The minimum fees being charged by corporate trustees are too high. This especially impacts relatively small estates where the trustor or testator (in case of testamentary trusts) requires the appointment of a corporate trustee. A good rationale for fees should not only be on the size of the managed corpus but on the work and complexity required. Many corporate trustees often develop a balanced

portfolio and do not actively supervise changes in position of investment as the market requires, or in the other extreme, "churn" the accounts, and the estate is charged too much in commissions.

*Many corporate trustees are unwilling to yield to the selection of another corporate trustee when a complaint is made about the service, and it should be easier to seek a court order to change corporate trustees when it can be demonstrated that another corporate trustee could do a better job of investing and save money to the estate. Gross negligence of the trustee is too rigid a standard to require in the case of a court directed change. The court should use the standard that a change would be permitted when it demonstrated by the preponderance of the evidence that a change would be in the best interests of the estate.*

*Perhaps a commission should be established to examine the fee schedules of leading corporate trustees and require them to justify on a cost analysis basis the business reasons for charging such high fees. It would be better for the trust business to self-regulate and to permit greater competition in the market place. The implied threat is that if they do not "get their act together," the Legislature can do it for them.*

One problem is the slowness of corporate trustees to make final distribution when mandated by the instrument. Some corporate trustees even allege that they make transfers on only a particular time in the month and not when asked to do so. This is a foolish policy and delay in carrying out trust responsibilities should be penalized by damages if there is a loss to the estate caused by such delay. The market often moves so rapidly that a responsible trustee is mandated by the common law duty of fiduciary to move quickly to prevent loss to the estate. If a delay in final distribution is mandated by consideration of a benefit to the remaindermen, such a delay should be consented to after informing them of the suggestions why the trustee believes a delay would be a benefit. Once the right of remaindermen and beneficiaries matures, the trustee must act to please them, and if following the insistence of impatient beneficiaries causes damage, it will be clearly their fault, and not that of the trustee. Most trustees can save themselves a lawsuit if they approach the court for instructions in difficult situations.

*In the case of widespread dissatisfaction with the trustee by a majority (not all) of the beneficiaries, the court should be more inclined to make a change possible, even against the will of the incumbent trustee.*

623. There is a sense that fewer services are included in the base fee and more are either "extraordinary" or performed and billed separately by an outside agency.

Some trusts require a corporate trustee but their size may not justify the cost. Some cost effective means should be available to substitute an individual trustee in these cases.

632. The market place is still the best test.

637. Usual charge in our area is 1% of value of trust per annum. I can live with that. Set up fee of 1% is generally charged and distribution fee of 1%.

Several trustees have instituted minimum fees which, in many instances, will mean we will not consider them. Wells Fargo, for example, has indicated an annual minimum fee of \$10,000 (still not formally adopted). This would mean they do not want trusts of less than one million.

•Present Probate Code § 1138.1 appears to be sufficient.

666. *Accountings to court should be required and reviewed at time fees are requested.*

668. The fees must be sufficient so that the trustee will accept the trust. However, if they are too high, settlors will not appoint corporate fiduciaries. Reasonable fees, therefore, are in the interests of both settlors and trustees. I believe an annual fee of 0.75% (1% for real estate) with a \$750 minimum is reasonable. I believe this should be in lieu of any set-up charge or distribution charge or any other fee. If the trustee prepares tax returns through house accountants, the charge should be the same as for an outside CPA. If the trustee buys and sells securities through a trustee-related subsidiary (e.g., Security Pacific Brokerage), only the broker's commission should be charged.

An annual percentage fee automatically allows for cost increases due to inflation.

686. I am surprised that this matter has taken so long, since nearly all the corporate trustees raised their fees immediately upon passage of the "reform" legislation. However, we were able to negotiate lower fees on behalf of our clients for a while after 1983.

If the corporate trustees did as good of a job as some of the Midwestern and Eastern banks and trust companies we have dealt with, we would have no problem with the current rates. Given the current lousy service and lack of warmth exhibited by most California trust departments, I don't think they should receive the fees they charge.

Because of this, and the generally poor investment performance of most California corporate trustees, our firm resists naming corporate fiduciaries whenever possible -- as it usually is.

Again, were the corporate trustees to deliver as their advertising and promotional efforts promise, the current fee structure would be quite reasonable.

•Provide for lower fees if trust: (1) Invests primarily in common trust funds, (2) has an office within a reasonable geographic distance from the primary beneficiaries, given the bank's administrative costs are much lower, (3) consider regulating "set-up" and "termination" fees, (4) consider a written advance disclosure of all compensation payable to the trustor in a specified period (e.g., one year) to the primary beneficiaries as a precondition to collecting a fee.

691. *Your choices should include choice of new trustee on consent of majority of beneficiaries and present trustees (one being replaced and cotrustee of one). Also which beneficiaries? Income, remainder, vested, contingent minor? Alternately, on petition to court to substitute trustee. Should always have right as a beneficiary to petition court to question fees. Also, fiduciary should give advance notice of change in minimum fee and basis of calculation of fee over*

*minimum. If beneficiary objects (he should be advised of this right in notice), then trustee should either meet and resolve with beneficiary or petition court for approval of new fee structure or to have new trustee substituted.*

694. I have not received any complaints. In my opinion, the following factors are important in determining trustee fees:

*(1) Trustees should be free to set fees without the necessity for petition or court orders;*

*(2) Interested parties should be entitled to object to excessive fees by: (a) changing trustee if: (1) all interested parties consent to change; or (2) all cotrustees (except cotrustee to be removed) consent to change; or (3) court determines removal to be in best interests of trust and those interested in trust; or (b) seeking judicial review of amount of fees.*

695. The minimum fees effectively foreclose the use of corporate trustees in smaller trusts.

.In general I find trustee's fees to be a bargain. When compared with the average fees charged of the managers of mutual funds (.8-1.5%) who have only half the responsibility of a trustee, I would think that trustees' fees should average above 1.5% of the trust estate, perhaps even approaching 3-4% on small trusts.

696. While I have not been made aware of any complaints recently, I believe that a means of access to the court in the event of fee questions should be maintained. The complaints I have been aware of in the past usually arose because the services of the trustee were not either explained or adequately set out. This failure makes it difficult at best to determine the reasonableness of the fees. Also, many corporate trustees place significant amounts into funds administered by themselves for which a trust receives a certain number of units of said fund. While the return is usually adequate the corporation also profits by the investment which I feel should be a consideration in assessing fees.

700. *Liberalization of law to allow transfer of corporate trustee without trustee's approval should eliminate most problems. Provisions to eliminate need for corporate trustee could be liberalized.*

709. The complaint I received was from a beneficiary who saw fees rise with the value of the trust portfolio.

715. Simply complain that for small trust (or estate) the minimum fee is too high.

719. Most of the complaints involve a lack of service, compassion, personal interest and accuracy. Everything goes into a computer and a fee is spit out at the end.

725. In my practice, which is with a public agency, I have little dealings with trustees, corporate or other. I do believe that all trustees should be periodically reviewed by a court.

737. Too steep; they're a deterrent and they keep people from using trusts in some situations which it's really needed.

742. The complaints deal more with trust investments and distributions rather than fees. Generally reasonable and often less than individual trustee fees when added with accounting, legal, etc., fees that individual trustees have to charge.

743. Complaints: Too expensive, poor quality work, statements always have mistakes, inadequately trained personnel do not understand nature of job.

761. Generally, the fees are well earned, but exceptions do occur. *A panel or review board right be a nice option.*

763. Recent acquisition of Bank of America by Wells Fargo, and adoption by Wells Fargo of new minimum trustee fees accounted for 2 of the 3 complaints. A statutory fee schedule would resolve most problems. Complaints over fees seem centered on the larger institutions.

784. I do not find them to be excessive.

786. I think they are essentially fair. I've had a number of bad experiences with Wells Fargo Bank, and advise my clients to avoid that institution. Others have been okay.

788. Before law changed, under court supervision banks charged 1/2 to 3/4 of 1%. Now they charge 3/4 to 1% or more. Corporate trustees make it difficult to change trustees by investing in their own trust funds. Sale is required and tax gains recognized if you change the trustee.

795. There is no correlation between set fee and amount of time spent by corporate trustee.

827. Such fees are uniformly reasonable.

*•We need less legislation. I've been doing trust & probate work for 38 years. Less is better.*

847. I hear little regarding fees. The comments are directed more to the investment of funds in "in house" funds, as well as lack of initiative and supervision with outside investments.

*•It would seem equitable to consider the nature of trust assets, as to management efforts and liability exposure required, in setting and approving fees.*

882. *Corporate trustees have been charged anywhere from 1/2 to 1% of most estate plus requesting fees for extra services. This could be exorbitant in some cases if the estate is all cash or otherwise easily administered. A graduated fee schedule like Probate Code § 901 could be devised with a cap subject to court award for any additional fees. This would give the trustees some general idea of what fees will be and court control over granting additional fees.*

883. Most client reaction has been avoidance of corporate trustees services, except as a last resort, because of the high fee structure. Smaller trusts cannot afford many of the minimum fees imposed by corporate trustees and is something of a problem where a corporate independent trustee is needed.

884. I have received many complaints over the years, but none recently. The most common complaint is the lack of quality of service. Usually the small and medium size matters are handled by the less qualified personnel. As a result, mistakes are common and ignorance of the law, administration and even the trust document involved are frequent. Clients resent then having to pay for the work and then pay the attorney for the time necessary to correct it.

890. The principal complaints I have heard over the years have involved situations with a diminishing trust corpus and fees that appear to beneficiaries to be excessive considering the limited trust income.

909. To me, the primary problem with the fees charged by corporate trustees, and the occasional poor quality of the fiduciary's lack of realistic accountability to beneficiaries and their concerns when the issues involved don't justify a lawsuit against the trustee. Corporate fiduciaries recognize that in run of the mill trust administration matters, beneficiaries have a difficult burden in any effort to remove the trustee or change the trustee's decision. Corporate fiduciaries sometimes act with what might charitably be called "high-handed confidence" based on their realization of their relative invulnerability.

The charging of trustee fees seems to me to one area where corporate fiduciaries frequently rely on their relative invulnerability to their own advantage. The regular increases in the yearly minimum fee and the annual increases in charges reflect their sense of invulnerability. The submission by corporate fiduciaries of reams of computer printouts to the court or beneficiaries as support for their fees, when those printouts seldom explain the nature and extent of the services rendered for the particular trust (other than the accounting services illustrated by the print outs), also reflects their sense of invulnerability. It is interesting to note that the fee schedule of a corporate fiduciary is nearly always very flexible when a new account is being wooed, but completely inflexible where the company is already serving as the existing trustee.

*The Commission should consider a statute that injects a sense of vulnerability into the corporate trustee's fee-charging decisions. In general, the law should consider corporate fiduciaries to be fungible; one corporate fiduciary should be considered as good as another. If equivalent fiduciary services can be obtained for a lower price, the law should provide a relatively low-cost mechanism for the replacement of the existing fiduciary.*

*All the current income beneficiaries or the other trustees of a trust should be able to petition the court to replace a corporate trustee with another corporate trustee based solely on the amount of fees charged by the existing corporate trustee. The approval of the court seems necessary in order to avoid the improper use of this basis*

for replacement, as where cotrustees or beneficiaries might want to get rid of a corporate trustee for other reasons. Approval of the corporate trustee being replaced certainly should not be required.

I also believe beneficiaries should be able to obtain court review of a trustee's fees by way of a petition to the court and a summary hearing. Often a beneficiary may disagree with the fees charged, or some aspect of the fees, yet not want to replace the corporate trustee.

914. Ever since the probate court was deprived of jurisdiction over testamentary trusts, fee complaints (and the fees themselves) have sky rocketed. I think that there is a direct connection.

•The flip side of the fee bulge is the fact that trustees will not take "complicated" matters, such as conservatorships, where fees are regulated by the court. Overall regulation would also ameliorate this problem.

923. I have had no complaints expressed to me. I have frequently had clients mention that the minimum fees charged by corporate fiduciaries made the use of their services prohibitive. In those few cases where existing trusts could not support the minimum fees, I have found the corporate fiduciaries more than willing to assist in terminating the trust or transferring the assets to another less expensive trustee.

•I strongly oppose the statutory creation of the right of the beneficiaries to change the trustee unilaterally. This approach could well circumvent the testator/trustor's wish that the trustee stay in place despite conflicts between them. Many times the beneficiaries may use excess fees as an excuse to oust a trustee who is simply doing the difficult job of exercising discretion in distributions, etc. No trustee will be able to act prudently if there is the constant threat of removal, unilaterally, by the disgruntled beneficiaries.

I also believe the courts have shown an unfortunate lack of perception of business reality in evaluating corporate trustee's fees. The extremes evidenced by some judges in cutting fees were directly related to the corporate trustee's pressure to eliminate court supervision. Until some vehicle is found to help the courts recognize the realities (economic, in particular) of running a trust business, placing the final say with them will not benefit the system.

929. Believe trusts of less than \$500,000 frequently exist. Does not pay trustee to handle. Need a public trustee to handle such trusts at fees to be set by statute.

•Cannot get a corporate trustee to handle trusts of less than \$500,000. If forced, corporate trustees will go out of trust business. Bank of America sold trust business to Wells Fargo. Wells Fargo formerly had minimum size of trust at \$1,000,000. Problem is trust of less than \$500,000.

949. The minimum fee limits availability of corporate trustees to sizable matters only.

•Why do you assume a transfer to another corporate trustee? Actual practice indicates replacement by an individual as trustee. Banks do not normally oppose being replaced, at least in cases where the trust is not very large.

955. Corporate trustees got through a law exempting them from court supervision. This was with the understanding they would reduce the expense to the beneficiaries. This reduction never happened.

956. Present fee schedules appear reasonable for the services rendered.

*Caution is required to avoid too much latitude to trust beneficiaries who were unhappy with the trust in the first instance and would use these limitations to discourage a trustee and thus frustrate the testator's intentions. Any fees, regardless of the amount, may well be considered an infringement on an "expected" inheritance by an unhappy beneficiary, and thus could provide the beneficiary with a weapon for harassment of the trustee.*

967. Now that Wells Fargo has taken over the Bank of America Trust Department as well as the Crocker Bank Trust Department, it has made an unconscionable increase in fees for estates of \$1,000,000 or less. For example: A \$350,000 cash trust fund, the minimum fee for a bank managed account with shared responsibility is \$12,000 annually!

972. I have no comments on fees charged by corporate trustees. My practice tends to deal more with investment advisors to trusts than corporate trustees. The investment advisory fees tend to be at about the same level as corporate trustees fees about such fees.

980. *I think permitting a change of trustee simply upon unanimous agreement of beneficiaries (option C) is unsound. While attractive in some cases, it would encourage trustee shopping by the beneficiaries & jeopardize trustee independence.*

983. Most of my clients do not want to use corporate trustees. In rejecting corporate trustees the clients do not emphasize fees. The concern is with lack of concern, frequent turnover of personnel, and inability to communicate.

I currently have three clients complaining bitterly about termination fees charged by a Chicago bank as a condition of the three beneficiaries replacing the bank as trustee. In my experience the termination fee charged by banks is the most unfair charge.

*Make trustees supply detailed billing with hourly rate charged for the personnel involved and with the fees not to exceed "cost" (i.e., hours times hourly rate).*

984. It is my understanding that the banks lobbied aggressively for legislation allowing them to avoid court accountings on the ground that to do so would allow them to charge lower fees; but after the legislation was passed, they actually raised their fees, and they are in a better position to raise their fees further because they are not monitored by the courts and they may be in a stronger bargaining position vis-a-vis the beneficiaries than vis-a-vis the courts.

1002. Most complaints I receive concerning corporate trustees are not directly relating to fees. Most complaints relate to: (1) Poor service, (2) constant change of personnel (trust officers assigned to handle matter), (3) lack of flexibility -- i.e., inability or

unwillingness to deal with trust investments, dealing with real estate and business interests and individualized tailored investments -- with consequent feelings expressed that fees have not been earned.

1004. They are high, percentage schedules don't decline fast enough.

1006. Most corporate trustees have priced themselves out of the market for small and medium sized estates with their high minimum fees. Further, since testamentary trusts are no longer under court supervision, most corporate trustees have less contact with attorneys.

*•The large corporate trustees should be required to take some of the small & medium trusts for a reduced fee where there is nobody else willing and/or capable of acting.*

1008. One client was involved with a corporate trustee in a nontrust matter (special administrator of an estate during a will contest); as to certain assets, the scheduled rate applied, but the company also petitioned for extraordinary fees which we believed were expensive (especially in light of the statutory fee). However, the grievance was handled by the probate court.

I was unhappy with the philosophy of the trust officer and the company's lawyers in attacking me for questioning their fee petition -- they essentially said I should "play ball" with them and if I did I could expect referral business.

1009. My understanding of the corporate trustees' fee was sometime during the 70's when they found some judges in some courts were unwilling to allow trustees fees which approximated 3/4 of 1% of the value of the trust res on an annualized basis. Apparently that rate of fee was satisfactory for many years, and trust departments seemed to do reasonably well, particularly when they considered the secondary business of the bank that was derived from operation of the trust departments. The legislation enacted in 1982 was orchestrated by the bankers' lobby, and it is my understanding that they have generally increased their fees to approximately 1% of the value of the trust res on an annualized basis. Bank of America recently sold its trust department to Wells Fargo and it is noted that they were able to find a buyer who would pay cash because of a profitable operation.

I suspect that the 3/4 of 1% fee, together with extraordinary fees for tax work and special situations, is fair and adequate compensation. It would be nice to protect the beneficiary under one or more of the proposals that are outlined. As a practical matter, most beneficiaries are either embarrassed, ignorant, or intimidated by the size of our major banks and their trust departments, and thus don't voice their objections as rapidly as we do when one grocery store raises its prices. Additionally, the nature of the trust denies the beneficiaries the freedom to move around rapidly. *Unfortunately, it would be a good idea to regulate those fees, much as we do attorneys' fees in the probate area, by statute.*

1010. I generally have no comments concerning the fees charged by corporate trustees. No complaints have been received. Considering the services rendered by corporate trustees, I believe their fees to be fair.

1015. Most are not justified. Grumbling about fees compared to perceived incompetency of trustee. Litigation expenses when complainant on other side.

•The market place should govern trustees fees. I believe trustees are vulnerable to all kinds of attacks by beneficiaries and in almost every case I've observed where the trustee made unreasonable charges redress was satisfactorily obtained.

1017. Very general comments from clients. But most such clients want the benefits of professional trust administration without paying for it.

1018. When Section 1120 of the Probate Code was amended to exempt trust from court jurisdiction, the common talk among attorneys and probate attorneys or examiners was "it is a license to steal." I do not know of any stealing but I also know that lay people do not understand trust accounts. They do not have anything to use as a standard for charged. Beneficiaries do not usually have separate attorneys to "ride herd" on the trustee.

1021. No complaints but I avoid using corporate trustees.

1027. My impression is that the fees are highly negotiable, especially in larger trusts. The real problem with small trusts is not that the fees are high, but that no corporate fiduciary will accept them under any conditions. *A statutory schedule won't help, because like probates, the small cases will still be rejected. Only solution would be a "public trustee" provision.*

1031. Existing provisions of Probate Code § 1138.1 are sufficient for protection of all concerned.

1035. I think their set up and going out fees are too high.

1036. My principal concern is for the smaller (less than \$1 million) trusts. It is very difficult to find corporate trustees willing to accept (as opposed to a minimum fee) basis. The complaints I have received reflect a general lack of communication between beneficiaries and trustees.

•*As long as the market remains competitive, I would vigorously oppose court supervision of trustees' fees. However, trustees should be encouraged to be more competitive with respect to small trusts.*

1039. Having been around the courts for over 40 years and both as a clerk of the Superior Court and as an attorney (for 35 years) *I think the idea of allowing corporate trustees to get by without court established commissions is wrong. There was nothing wrong with the "old" system and in my experience it operated efficiently and properly and was a definite safeguard to the alleged "overcharging."* Assuming we "never go back" at least the legislature should enact "guidelines" as to fees allowed and require the corporate trustees to not only abide thereby and remain within said guidelines, but in addition, only their annual accountings to the beneficiaries, set forth the law limiting the fees, thereby educating the said beneficiaries.

1042. Trust officers of Security Pacific Bank and Wells Fargo addressed this very subject at Bar section meeting. It is not economically feasible to get less than 1% fee annually -- nor does that seem unreasonable considering additional services available to client. Security minimum account -- \$300,000. Wells Fargo -- \$2,500 minimum annual fee.

1050. Across-the-board increases have garnered predictable complaints -- but not ones that require an unusual response. New Probate Code § 15408 should encourage the courts to be sensitive to uneconomical trusts -- and I've not had a problem with "little" ones. Usually, corporate trustees and beneficiaries have agreed to seek court approval and terminate. I've seen more conflict with larger trusts where the corporate trustees and beneficiaries have differed over value of trustee's services. Particularly with increase in real estate and securities values, many individuals have questioned % increases. Best response is to allow beneficiaries and cotrustees to "shop" for cheaper or better services.

*•Although the court should continue to be available to resolve fee disputes -- whether with or without an accounting -- routine court involvement is unnecessary.*

1052. The complaints to me have related to minimum fees for very moderate-sized trusts. The policy of corporate trustees regarding a \$3,000 minimum annual fee has caused such trusts to have an individual trustee substituted in place of, generally, the bank. In many cases, the minimum fee has prevented persons from using corporate trustees.

1053. Because of competitive nature of trust administration, fees charged by corporate trustees are reasonable.

1054. Most clients seem more concerned about what they perceive to be poor service by corporate trustees rather than high fees per se.

1059. Most of my trusts have settlor trustees or family members as successor trustee. Most of these trustees do not take a trustee's fee. Most corporate trustees take a percentage of the estate. This does not seem reasonable. Although the liability of larger estates is greater, the insurance to cover this does not require the fee to be as high as it is. Percentage of estate fees are justified when small "money losing" estates are handled as well as large "profitable" estates, so the fees equalize. However, most corporate trustees will not take the smaller estates. Sometimes the trustee services are already compensated by sales commissions. Fees should be tied in some way to the amount of time spent in management of the estate.

*•Fees based on work performed with a maximum dollar amount to be paid (calculated as a percentage of the estate) without court approval. If fees exceed that percentage, must obtain court approval. Can obtain approval in advance as a safeguard to trustee. Fees charged should be based on time spent not just percentage of estate. Beneficiaries must be given notice of fees annually. Beneficiaries may then object in court if fees are excessive.*

1060. We have no hesitancy recommending corporate trustees. Although they charge approximately 1% (one percent) of the value of the trust assets per annual. I believe because of their trained investment people, that they can earn that 1% and more over a noncorporate trustee.

•It is my experience that the people who use a corporate trustee are generally sophisticated and do shop around and can negotiate fees. I believe, if all the trust beneficiaries agree on a transfer that this will keep the trustee's fees competitive or, in the alternative, have the court review the reasonableness of a trustee's fees. It seems to me that there are enough trustees out there competing for the business to keep the fees in line. I think if they also had to keep all the beneficiaries happy with the fee arrangement, that the fees will remain competitive.

1061. The fees are approximately the same regardless of the quality of work and results. When the quality of work is good, the fees are reasonable, the market place seems to work to keep fees competitive. A much greater problem is the uneven quality of corporate trustees' services, both administrative and investment management.

1062. Although not directly connected with fees, I have had frequent comments that grantors would like to have corporate trustees, but the corpus is not large enough to be acceptable by a corporate trustee. The feeling is that the corporate trustees are not only looking to make a normal profit from their trust accounts, but, rather, are looking to make a killing, and if they can't do that, they don't want to play.

1064. A lot of clients who want to use corporate trustees have trust estates of less than \$250,000, and few banks are willing to take them without a \$3,000 minimum fee. Wells Fargo even refused to take a \$550,000 trust even though the trust officer agreed to do so before the client died.

I do not feel the fees are too high. I just feel that more banks accept smaller trusts for less affluent clients. Possibly smaller state chartered banks should be encouraged to do this, or at best be encouraged to open remote offices not attached to a bank branch.

I think American Bank and Trust Co. of San Jose and Walnut Creek does a super job and you should investigate their system. They will take trusts as small as \$70,000 and smaller clients appreciate that.

•*Legislation is not what is needed.* There must be some encouragement of new trust companies. I also believe that the attorney for the trust remain an impartial intermediary between the corporate trustee and the beneficiaries so the attorney's duty will be both to the trustee and the beneficiaries. If the attorney can be removed by the corporate trustee alone without the concurrent approval of the majority of the vested beneficiaries, the attorney will not be as effective a watchdog.

In probate this is not a problem because the attorney removed by a corporate executive has "his day in court" and the corporate executor is reluctant to remove such an attorney who may be a "whistle blower." Since there is no such approval needed for the corporate trustee to remove its attorney that is zealous on behalf of the beneficiaries (and it would be a breach of legal ethics to inform the beneficiaries of a dispute) the attorney has a real disincentive to "rock the boat."

1065. Trustees are unwilling to negotiate fees on testamentary trusts. When asked to resign in favor of a trustee who will charge less, the reply is, (as to testamentary trusts) we have no indication the decedent would want us to resign. A reply of the decedent had no idea you would double your minimum charge on the trust is met by silence.

1071. In my opinion it is not sufficiently clear as to what work of the corporate trustee should be included in their basic fee ("statutory fee") and what work entitles trustee to additional (or "extraordinary") charges.

1073. One bank sold investments without notifying cestui of sale, put money in money markets, then tried to charge for investment services pending delivery of assets (9+ months) to cestui. (We negotiated this to save client circa \$6000+.)

Banks are charging "investment fees" when they are simply putting \$ into their own trust funds. In larger (?) trusts, when this is proposed, I have had some success going back to basics, which (usually) require trustees to invest in "individual issues -- the "common trust" route is a way of getting fees for individual attention but abdicating individual attention -- that is, increasing the trustee's pay by reducing the work.

One bank trust department tried to charge a one percent "termination" fee when all it did was to deliver (assign) stock to the cestui. The savings was like reducing the charge from \$5000 to \$240.

*•Perhaps corporate trustees should (continue to ??) have privilege of petition of charging for fees.*

1076. My limited contact in the area leads me to the conclusion that the minimum fee is generally too high -- some banks in the San Diego area charge a minimum of \$3,000 regardless of the size of the trust. It is my understanding \$2,000 is about the least a bank will accept plus of course charges for each transaction they accomplish. Small trusts appear to be uneconomical, i.e., any trust less than \$300,000.

1080. The present situation is confused, so some direction would be helpful.

1082. I have a client that is a non-profit charitable corporation. It acts as a conservator. We have received many adverse comments regarding the fees charged. This client does not charge fees based on the size of the estate. The fees are charged at a flat hourly rate. That rate is currently \$65 per hour. The complaints appear to primarily question why so much time is necessary to handle the estate.

1086. They have obviously been increased since the end of court supervision, so that any saving on attorney fees has been more than replaced by additional trustee fees.

*•Expand the type of corporates authorized to act as trustees. Allow corporate trustee to be replaced by individual trustees on requested of beneficiaries, or by the court on request of any beneficiary, for good cause.*

1091. Usually associated with poor performance. If trustee efficient and communicates well, fees not usually an issue.

1101. Make any power to change trustee not equivalent to a general power of appointment, by statute.

1107. I believe that fees now charged by corporate trustees are in many cases too high. I recently filed with the court for settlement on behalf of X Bank, as trustee, an annual accounting relating to a testamentary trust having a present fair market value of \$811,000. The fee requested by X Bank is \$6,286 based on a schedule of 8/10ths of 1% on the first \$400,000 and 3/4ths of 1% on the excess. An additional fee of \$300 is also requested for preparing fiduciary income tax returns. The trust estate consists of municipal Bonds, common stock and cash carried in mutual funds. The services of X Bank during the accounting period consisted of collecting and recording income there were no problems. Based on this corporate trustees fees are considered to be too high.

•The last approach (H) would solve many problems in this area.

1108. In every case where there have been complaints about fees, the clients have chosen a private fiduciary instead of a corporate one.

Exhibit 2COMMENTS OF ATTORNEYS RELATING TO CORPORATE TRUSTEES FEES

Tables 1 and 2 give an overview of the opinions expressed on legislative approaches. A description of each approach as set out in the questionnaire appears on page 5 and 6 of the First Supplement to which this exhibit is attached.

Table 1 states the number of responses to each of the approaches and also shows the number of nonresponses ("No Ans"). "OK" means "acceptable" in the terms of the questionnaire, "Not OK" means "unacceptable," and "No Op" means "no opinion" was circled on the form. Respondents were permitted to circle more than one "best" approach.

Table 2 states the same information in percentage terms.

Table 1

<u>Approach</u>	<u>COUNT</u>					<u>Total</u>
	<u>Best</u>	<u>OK</u>	<u>No Op</u>	<u>Not OK</u>	<u>No Ans</u>	
A Transfer by Court Order	99	90	19	24	9	241
B Transfer by Benes & Trustee	63	75	24	65	14	241
C Transfer by Beneficiaries	115	68	14	33	11	241
D Transfer by Cotrustees	29	71	51	77	13	241
E Prior Court Approval of Fee	59	50	25	95	12	241
F Increase if No Objection	46	86	29	69	11	241
G Court Review of Fees	111	87	9	25	9	241
H Statutory Fee Schedule	73	60	19	86	3	241

Table 2

<u>Approach</u>	<u>PERCENTAGES</u>				
	<u>Best</u>	<u>OK</u>	<u>No Op</u>	<u>Not OK</u>	<u>No Ans</u>
A Transfer by Court Order	41%	37%	8%	10%	4%
B Transfer by Benes & Trustee	26%	31%	10%	27%	6%
C Transfer by Beneficiaries	48%	28%	6%	14%	5%
D Transfer by Cotrustees	12%	29%	21%	32%	5%
E Prior Court Approval of Fee	24%	21%	10%	39%	5%
F Increase if No Objection	19%	36%	12%	29%	5%
G Court Review of Fees	46%	36%	4%	10%	4%
H Statutory Fee Schedule	30%	25%	8%	36%	1%

Tables 3 and 4 compare the positive and negative comments on each legislative approach. In this information, the "no opinion" and "no answer" categories have been removed. Thus, counts and percentages reflect only the "best," "acceptable" (OK), and "unacceptable" (Not OK) opinions that were circled on the forms.

**Table 3**

**POSITIVE V. NEGATIVE:  
"Best," "OK," and "Not OK"**

Approach	Best		OK		Not OK	
	Count	%	Count	%	Count	%
A Transfer by Court Order	99	46%	90	42%	24	11%
B Transfer by Benes & Trustee	63	31%	75	37%	65	32%
C Transfer by Beneficiaries	115	53%	68	31%	33	15%
D Transfer by Cotrustees	29	16%	71	40%	77	44%
E Prior Court Approval of Fee	59	29%	50	25%	95	47%
F Increase if No Objection	46	23%	86	43%	69	34%
G Court Review of Fees	111	50%	87	39%	25	11%
H Statutory Fee Schedule	73	33%	60	27%	86	39%

**Table 4**

**POSITIVE V. NEGATIVE  
"Best" + "OK" versus "Not OK"**

Approach	Best + OK		Not OK		Total Count
	Count	%	Count	%	
A Transfer by Court Order	189	89%	24	11%	213
B Transfer by Benes & Trustee	138	68%	65	32%	203
C Transfer by Beneficiaries	183	85%	33	15%	216
D Transfer by Cotrustees	100	56%	77	44%	177
E Prior Court Approval of Fee	109	53%	95	47%	204
F Increase if No Objection	132	66%	69	34%	201
G Court Review of Fees	198	89%	25	11%	223
H Statutory Fee Schedule	133	61%	86	39%	219