

Memorandum 88-36

Subject: Study L-3010 - Fees of Corporate Trustees

At the March meeting, the Commission decided, at the urging of Assembly Member Harris, to reopen the study of corporate trustees' fees. This matter involves two basic questions: whether there is a problem suitable for legislative resolution; and, if so, what the response should be.

IS THERE A PROBLEM?

Some commentators have concluded that there is no problem, and hence no need for any legislation. The California Bankers Association argues that there is no problem under existing law. See Exhibit 2. The Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section also concludes that "any abuse which may exist is not of sufficient gravity to warrant corrective legislation." See Exhibit 3.

On the other hand, there is significant opinion that a problem exists requiring legislative solution. The Legislative Committee of the Probate, Trust and Estate Planning Section of the Beverly Hills Bar Association supports a legislative solution. See Exhibit 4. The Legislative Subcommittee on Estate Planning, Trusts and Probate of the San Diego County Bar Association also supports enactment of a simple procedure for changing corporate trustees. See Exhibit 5.

In addition, the survey of attorneys conducted by the Commission in 1987 leads to the conclusion that a significant number of attorneys have received complaints about trustee fees and believe that a problem exists that merits legislative solution. See *Summary and Analysis of Attorney Questionnaire* attached to this memorandum. The number of complaints, the number of attorneys reporting complaints, the nature of the complaints, and the supporting comments of many responding attorneys all lead to the conclusion that there is a widely perceived problem. For a complete overview of the results of the questionnaire,

you should read the attached summary. All of the remarks we received from the persons who responded to our questionnaire are set forth in the yellow pages at the end of the attorney study. A reading of these remarks gives a vivid sense of the varying opinions on this matter.

In order to get some factual information on the issue of whether fees had been increased following the 1982 legislation eliminating the necessity of continuing court jurisdiction over testamentary trusts, we also gathered information directly from corporate trustees. We received substantive responses from 24 corporate trustees concerning their fees and related policies, as well as their opinions on the matter. This information is collected and analyzed in a separate study. See *Summary and Analysis of Information from Corporate Trustees* attached to this memorandum. The obvious conclusion from this survey is that the fees of most corporate trustees have risen between 1982 and 1987, both in percentage amount and minimum fees, thereby having the greatest effect on smaller trusts. Much more detail is provided in the study on this topic. As in the case of the attorney questionnaire, all remarks we received from the corporate trustees are set forth on the yellow pages at the study.

One case where a corporate trustee was held to have charged "exorbitant and unjustified amounts" in trustee fees, and was surcharged and removed as trustee, is attached as Exhibit 8.

In response to Assembly Member Harris' request reported at the March meeting, and to suggestions made at that meeting, the staff is seeking additional information from other groups that may have some insight into the matter. Any additional information will be forwarded to the Commission when it is received.

ANALYSIS OF POSSIBLE APPROACHES

The following discussion considers eight possible approaches that were the subject of part of the questionnaire distributed to probate attorneys in the summer of 1987. These approaches are in the same order in which they appeared in the questionnaire. Two other detailed statutory proposals have been submitted to the Commission, one by the California Bankers Association, included in Exhibit 2, and another by

Ken Klug, included in Exhibit 3. These proposals are also considered below in paragraphs (i) and (j).

(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.

This approach would use a modified form of the existing mechanisms for removing a trustee and appointing a new trustee to fill the vacancy. See Prob. Code §§ 15642, 15660 (included in Exhibit 1 attached to this memorandum).

Advantages. This is an incremental change that preserves the traditional approach of using court procedures to deal with such issues. By providing a standard for replacement of a trust company, the procedure avoids the potential tax problems of giving an unrestricted power to the beneficiaries.

Disadvantages. Requiring a cotrustee or beneficiary to petition the court involves the expense of attorney's fees and court costs as well as some delay and the risk of failure. The remarks of Assembly Member Harris at the Commission's March 1987 meeting support the conclusion that the problem will not be solved by employing an impedimentary procedure.

Staff conclusion. This procedure can be useful and should be incorporated in a legislative proposal, but it should not be the only remedy.

(b) Permit transfer to another corporate trustee if the corporate trustee to be replaced and all trust beneficiaries agree.

This approach would rely on the consent of the affected persons. It is consistent with the procedure in existing law permitting a trustee to resign with the consent of all adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought. See Prob. Code § 15640 (included in Exhibit 1).

Advantages. By requiring the consent of the trust company to be replaced, this procedure avoids the adversarial nature of some other procedures. This procedure should be readily acceptable to corporate trustees.

Disadvantages. The presumed acceptability of this procedure to trust companies points up its defect. The trust company is in control of both the fees and the consensual replacement procedure.

Staff conclusion. This is not an adequate procedure standing by itself, but it is useful to make clear that the trustee and beneficiaries can agree to replace the trustee without the need to seek court approval.

(c) Permit transfer to another corporate trustee if all trust beneficiaries agree on the transfer (consent of existing corporate trustee not required).

This is the approach, combined with the approach set out in paragraph (d) below, that was drafted for Commission consideration at the July 1987 meeting but not considered because of the decision to distribute questionnaires to corporate trustees and persons on the Commission's probate mailing list. Replacement of a trust company by agreement of all beneficiaries takes the view that in most cases the trust company is not providing a unique service and thus may be replaced by action of the consumers involved, just as in the case of a broker, financial advisor, or attorney. This scheme requires that the beneficiaries find a successor trust company who is ready to take over administration of the trust before the existing trust company is removed. This procedure is akin to the power of all beneficiaries to compel modification of a trust as provided in Probate Code Section 15403, except that no court petition is required. (Copy of Section 15403 is included in Exhibit 1.)

Advantages. This approach is simple and avoids the expense and impediment of hiring an attorney and petitioning the court. Its simplicity might also have the effect of restraining fee increases. This procedure would facilitate the operation of the competitive market.

Disadvantages. There is a potential tax problem arising from the IRS view that the power to replace is equivalent to the power to control the trustee. (This point was discussed more fully in Memorandum 87-54.) Trust companies are concerned that services may suffer where fees are the sole basis for selecting or replacing a trustee. It is also argued that a potential successor trustee would

not want to get involved unless the existing trust company is willing to step aside. (See letter from Ken Klug attached as Exhibit 7.)

Staff conclusion. The tax problem will need to be dealt with in some fashion before this scheme can be proposed. If the action of the beneficiaries can only be taken if some standard is met, the revenue ruling should not apply. The problem is to draft a standard that can be fairly applied without the need in most cases to seek court review.

(d) Permit transfer to another corporate trustee upon the direction of all cotrustees other than the one to be replaced (consent of beneficiaries not required).

This scheme is primarily aimed at the situation where a trustee has one or more individuals selected as trustee by the settlor, presumably because of a relationship with or confidence placed in that person. As in the approach outlined in paragraph (c) above, this scheme treats the trust company cotrustee as a provider of services that can be provided equally well by some other trust company. The individual cotrustee may be in a better position than the beneficiaries to judge the fees and services of the trust company and to seek a replacement trust company.

Advantages. This procedure is even simpler than requiring the consent of all beneficiaries.

Disadvantages. As in the case of replacement by beneficiaries, there may be tax problems, particularly if the cotrustee is also a beneficiary. There may be a problem of the individual cotrustee "shopping" for a more compliant trust company. (See letter from Sandra Kass attached as Exhibit 6.) It may also be improper for a cotrustee to have such power without the consent or knowledge of the beneficiaries or the consent of a court.

Staff conclusion. The staff is persuaded that this scheme, as first proposed in Memorandum 87-54, is too broad. If there is interest in this approach, the cotrustee's power should be limited to individual trustees acting pursuant to some standard and with notice to the beneficiaries.

(e) Require prior court approval of any increase in the fees charged by a trustee.

Requiring prior court approval of fee increases would have the effect of returning this aspect of trust administration to the earlier statutory scheme where trust administration was viewed more paternalistically. It should be remembered, however, that prior law did not require court approval of fees in testamentary trusts, nor did continuing jurisdiction apply to living trusts.

Advantages. This would put a substantial brake on fee increases since the burden would be on the trustee to seek and obtain court approval.

Disadvantages. This scheme seems too restrictive since it might prevent justifiable fee increases to which no interested person objects. It is also a stricter scheme than that prevailing under the former statute providing continuing court jurisdiction which did not explicitly require prior court approval.

Staff conclusion. There is no problem with a trust company voluntarily seeking approval of a fee increase, but to require prior court approval seems too burdensome. Perhaps if a standard could be derived so that minor increases would not be subject to the requirement, this scheme could be made workable.

(f) Permit the trustee to increase fees if no objection is received after giving notice to all trust beneficiaries.

This scheme is analogous to the notice of proposed action procedure under the Independent Administration of Estates Act. If there is an objection under this scheme, then the trustee would have to decide whether to petition the court for an increase in fees or seek to resign as trustee. The beneficiaries would also be able to seek the removal and replacement of the trust company.

Advantages. This scheme uses a familiar mechanism in probate law to attempt to strain out acceptable fee increases without having to go to court. It also could impel trust companies to seek an acceptable fee level so that objections will not be encountered. The notice and power to object allows the beneficiaries to prevent the fee increase in the first instance without any need to go to court or hire an attorney.

Disadvantages. The staff has no way of knowing, but this procedure might not work as intended if beneficiaries routinely object to proposed fee increases, thereby rendering the procedure essentially the same as requiring court approval of fee increases. However, even if this is the likely result, this approach seems less onerous than the approaches outlined in paragraphs (a) and (e) above.

Staff conclusion. This appears to be a desirable procedure that balances the interests of the beneficiary and the trust company even though it is not known whether beneficiaries would routinely object.

(g) Provide specifically by statute for court review of the reasonableness of a trustee's fees on petition by any interested person.

This is a clarification of existing law which permits a beneficiary or trustee to petition the court concerning the internal affairs of a trust. See Prob. Code § 17200; see also Prob. Code §§ 15680 (increase or decrease of fees specified in trust instrument), 15681 (trustee entitled to reasonable compensation where trust silent), 15682 (determination of prospective compensation), 17200(b)(9) (petition fixing or allowing payment of trustee's compensation). (Copies of these provisions are included in Exhibit 1.)

Advantages. This would merely make crystal clear what is already the law.

Disadvantages. Belaboring the obvious is not a very creative response to the problem.

Staff conclusion. Legislation of this sort should not be necessary, but past experience supports the conclusion that lawyers and courts can find limitations and technicalities where none are apparent or intended.

(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 with court approval.

A statutory fee schedule would presumably be patterned after the statutory fee applicable in probate.

Advantages. This approach would adopt a familiar scheme and regularize fees. Based on information received from corporate

trustees, the major corporate trustees seem to have arrived at approximately the same minimum percentage fees, although where percentages are the same, the actual fee on a smaller trust may vary because of the bracket to which the minimum fee is applied. (For further information, see the attached corporate trustee study.) Statutory control of the amount of the fees would restrain future increases because of the difficulty of amending the statute.

Disadvantages. If it is assumed that there is competition under the current state of affairs, a statutory fee schedule would probably restrict or eliminate it. There is a perception in some quarters that fee schedules are unfair or excessive. Since statutory fees have been the subject of much discussion at recent Commission meetings, there is nothing that needs to be added here.

Staff conclusion. In light of current controversies concerning probate fees, a statutory fee schedule does not seem to be an ideal scheme for dealing with fees in trust administration. To the extent that trust companies can avoid the statutory fee schedule by overriding provisions in the trust instrument, other solutions would still be required. The percentage fees typically charged by trust companies, which are subject to some negotiation and court review, represent a better scheme than the more rigid statutory fee schedule. In other words, nothing would seem to be gained by adopting this scheme in place of some of the other proposals.

(i) CBA Draft (See Exhibit 2).

The draft submitted by the California Bankers Association would require the trustee to give notice to beneficiaries 60 days before increasing its percentage rate of compensation. If all beneficiaries object in writing, the trustee must seek a compromise, postpone the increase so that a petition can be filed by a beneficiary to review the fee, or resign as trustee. In any event, one or more beneficiaries could petition for court review of the fee increase.

A proposed fee increase may not be implemented until it is confirmed by the court if a petition is filed before the stated effective date. Petitions for review of the fee after its effective date relate only to prospective fees. The court would have discretion

to charge fees, costs, and expenses of proceedings under Section 17200 against the trust, although no standard is provided.

If the trustee resigns, the trustee is not liable to beneficiaries for resigning. In general, the beneficiaries who are given the power to consent under this scheme are those currently required or authorized in the trustee's discretion to distribution of income or principal.

The CBA draft combines aspects of the schemes outlined in paragraphs (a), (b), and (f) discussed above, with several added wrinkles. For additional details, you should consult the draft itself.

(j) Klug Draft (see Exhibit 3).

This draft would set a percentage fee standard which, if it is exceeded during a 12-month period, triggers a duty by the trustee to notify the beneficiaries of the right to replace the trustee. For the sake of discussion, the draft sets a standard of 1% of average fair market value during any 12-month period. ("Average fair market value" is defined in two ways, although the median definition does not seem to work as drafted.)

Court proceedings are not required if the trustee and all beneficiaries agree to the replacement. If all beneficiaries agree but the trustee does not consent, the beneficiaries must petition the court and the trustee is liable for attorney's fees and costs if the trustee unreasonably refused to resign. If all the beneficiaries do not agree, an interested person may petition for replacement. In court proceedings, the court must find that the 1% standard is exceeded, that a replacement trustee has consented in writing, and that the compensation that would be paid to a replacement trustee (including the cost of any bond) is sufficiently lower than the compensation paid to the current trustee to justify replacement. The court must also find that replacement is in the best interests of all the trust beneficiaries.

The new trustee is determined by the trust instrument, or if no successor or means of selection is provided, by the unanimous consent of the beneficiaries or on petition to the court if necessary. The draft explicitly provides that the trustee may charge a reasonable termination fee.

This draft combines aspects of the schemes discussed in paragraphs (a) and (b), subject to the percentage fee trigger. For additional details, you should consult the draft itself.

OTHER FACTORS

Standard for Removal

Some of the approaches discussed above can be adjusted by employing a different standard for action by the beneficiaries, cotrustees, or the court. The standard suggested in connection with the scheme for permitting replacement of the trustee with court approval is where it is shown to be to the advantage of the trust in light of the fees charged by the trustee. This is a typical standard in estate administration. A more mechanical standard could be applied, such as some percentage increase in fees that would trigger the opportunity to seek replacement of a trust company.

Beneficiaries Whose Consent is Required or Who Must be Given Notice

The above schemes that involve consent of or notice to beneficiaries are based on the assumption that unanimous action is required, as is the case for modification or termination of a trust. It would also be possible to provide for action by a majority of beneficiaries.

There is also an important question as to which beneficiaries must give consent or receive notice. A provision like the following could be adopted:

(1) Each adult beneficiary who receives or is entitled to receive income under the trust or would be entitled to receive a distribution of principal if the trust were terminated at the time the directive is executed or, if a conservator has been appointed for the adult beneficiary, the conservator.

(2) A parent of each minor beneficiary who receives or is entitled to receive income under the trust or would be entitled to receive a distribution of principal if the trust were terminated at the time the directive is executed or, if that minor beneficiary has a guardian of the estate, the guardian of the estate.

Replacement might also be appropriate by action of the same persons who may consent to the resignation of a trustee, described in Probate Code

Section 15640(a)(3) as follows: "[A]ll adult beneficiaries who are receiving or entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought."

Replacement of Trust Company by Individual Trustee

The suggestion has been made that a corporate trustee should be able to be removed and replaced with an individual trustee. See letter from Ken Klug in Exhibit 7. Comments received in response to the questionnaire on attorney's fees suggest that competition would be improved and the problem with the small trust solved if an individual could be substituted for a corporate trustee.

Replacement and Fees of Individual Trustees

Some bank representatives and others have suggested that any new procedures or standards for review of trustees' fees should apply to both individual and corporate trustees. See, e.g., California Bankers Association letter attached as Exhibit 2. The staff has no objection to applying the same rules concerning review of fees to individual trustees, but there is a problem with permitting easy removal of individuals under traditional trust doctrines. As a general rule, it is believed that an individual known to the settlor is chosen in part because of a personal confidence placed in that person. A trust company is not clothed with this personality, and thus we have proceeded on the assumption that most trust companies may be treated as essentially interchangeable. In any event, depending on the nature of any scheme recommended by the Commission, it may be appropriate to apply it to individual trustees. This question will necessarily arise when the nature of any proposal is determined.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

PROBATE CODE SECTIONS
relating to
TRUSTEES' FEES AND REMOVAL OF TRUSTEES

**§ 15403. Modification or termination of irrevocable trust
by all beneficiaries**

15403. (a) Except as provided in subdivision (b), if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust upon petition to the court.

(b) If the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust. Under this section the court does not have discretion to permit termination of a trust that is subject to a valid restraint on transfer of the beneficiary's interest as provided in Chapter 2 (commencing with Section 15300).

Comment. Section 15403 is drawn from Section 337 of the Restatement (Second) of Trusts (1957). Unlike the Restatement, however, subdivision (b) gives the court some discretion in applying the material purposes doctrine except in situations where transfer of the beneficiary's interest is restrained, such as by a spendthrift provision. See Section 15300 (restraint on transfer of beneficiary's interest). Section 15403 permits termination of an irrevocable trust with the consent of all beneficiaries where the trust provides for successive beneficiaries or postpones enjoyment of a beneficiary's interest. The discretionary power provided in subdivision (b) also represents a change in the California case-law rule. See, e.g., *Moxley v. Title Ins. & Trust Co.*, 27 Cal. 2d 457, 462, 165 P.2d 15 (1946). Section 15403 is intended to provide some degree of flexibility in applying the material purposes doctrine in situations where transfer of the beneficiary's interest is not restrained. For provisions governing judicial proceedings, see Section 17200 *et seq.* For provisions relating to obtaining consent of persons under an incapacity, see e.g., Civil Code §§ 2450, 2467 (statutory form of durable power of attorney); Prob. Code §§ 2580 (conservator), 15405 & 17208 (appointment of guardian ad litem). See also Section 15406 (no conclusive presumption of fertility). For provisions governing modification and termination of trusts where the consent of all beneficiaries cannot be obtained, see Sections 15408 (trust with uneconomically low

principal) and 15409 (modification or termination by court order in changed circumstances). Subdivision (a) limits the application of this section to irrevocable trusts since if the trust is revocable by the settlor, the method of revocation is governed by Section 15401. Compare Section 15404 (modification or termination by settlor and all beneficiaries).

Article 3. Resignation and Removal of Trustees

§ 15640. Resignation of trustee

15640. (a) A trustee who has accepted the trust may resign only by one of the following methods:

- (1) As provided in the trust instrument.
- (2) In the case of a revocable trust, with the consent of the person holding the power to revoke the trust.
- (3) In the case of a trust that is not revocable, with the consent of all adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought.

(4) Pursuant to a court order obtained as provided in subdivision (b).

(b) On petition by the trustee, the court shall accept the trustee's resignation. The court may also make any orders necessary for the preservation of the trust property, including the appointment of a receiver or a temporary trustee.

Comment. Subdivisions (a) (1), (a) (3), and (a) (4) of Section 15640 are similar to Section 106 of the Restatement (Second) of Trusts (1957), except that the class of persons whose consent is needed under subdivision (a) (3) is more restricted. For a provision governing acceptance of the trust, see Section 15600. Subdivision (a) (1) continues part of the second sentence of former Probate Code Section 1138.8 without substantive change. Subdivision (a) (2) is a new provision that recognizes that the person holding the power to revoke a revocable trust has control over the trust rather than the beneficiaries. See Section 15800. Subdivision (a) (3) supersedes former Civil Code Section 2282(d) which permitted discharge from the trust with the consent of "the beneficiary, if the beneficiary has capacity to contract." For provisions relating to consent by beneficiaries under an incapacity, see, e.g., Civil Code §§ 2450, 2467 (statutory form of durable power of attorney); Prob. Code §§ 2580 (conservator), 17208 (guardian ad litem). Subdivision (a) (4) restates the authority of the court under former law. See former Civil Code §§ 2282(e), 2283; former Prob. Code §§ 1125.1, 1138.1(a) (9), 1138.8. Under subdivision (a) (4) the court has authority to accept a resignation regardless of whether the trust provides a manner of resignation. Former Probate Code Section 1138.8 permitted the court to act where the trust was silent.

The provision that the trustee's resignation shall be accepted by the court in subdivision (b) restates part of the last sentence of the first paragraph of former Probate Code Section 1125.1 and part of the third sentence of former Probate Code Section 1138.8. The authority for protective orders in subdivision (b) restates part of the last sentence of the first paragraph of former Probate Code Section 1125.1 and part of the third sentence of former Probate Code Section 1138.8. See also Section 17206 (general authority to make necessary orders). For the procedure applicable to proceedings under subdivision (b), see Section 17200 *et seq.* See also Section 17200(b)(11) (petition to accept resignation of trustee).

§ 15642. Removal of trustee

15642. (a) A trustee may be removed in accordance with the trust instrument or by the court on its own motion or on petition of a cotrustee or beneficiary.

(b) The grounds for removal of a trustee by the court include the following:

(1) Where the trustee has committed a breach of the trust.

(2) Where the trustee is insolvent or otherwise unfit to administer the trust.

(3) Where hostility or lack of cooperation among cotrustees impairs the administration of the trust.

(4) Where the trustee fails or declines to act.

(5) For other good cause.

(c) If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court deems necessary.

Comment. Subdivision (a) of Section 15642 is the same in substance as Section 107 of the Restatement (Second) of Trusts (1957). The authority of the court to remove trustees continues authority found in former law. See former Civil Code §§ 2233, 2283; former Prob. Code §§ 1123.5, 1138.1(a)(10). The recognition that the trustee may be removed as provided in the trust instrument is new. See Restatement (Second) of Trusts § 107 comment h (1957). The authority for removal on the court's own motion is drawn from the third sentence of former Probate Code Section 1123.5. For the procedure applicable to judicial removal proceedings, see Section 17200 *et seq.* See also Section 17200(b)(10) (petition to remove trustee).

The statement of grounds for removal of the trustee by the court is drawn from the Texas Trust Code and the Restatement. See Tex. Prop. Code Ann. § 113.082(a) (Vernon 1984); Restatement (Second) of Trusts § 107 comments b-d (1957). Paragraphs (1) and (2) of subdivision (b) supersede parts of former Civil Code Sections 2233 and 2283 and part of the first sentence of former Probate Code Section 1123.5. The general language relating to a trustee being otherwise unfit to administer the trust subsumes the reference in former Section 1126 to a trustee who is incapable of acting. Paragraph (3) of subdivision (b) continues part of the second sentence of former Probate Code Section 1123.5 without substantive change, except that the reference to "ill feeling" is omitted as redundant with "hostility," and the word "continued" has been omitted since the test is whether the administration of the trust is impaired. Paragraph (4) of subdivision (b) continues part of the first sentence of former Probate Code Section 1126 and part of the first sentence of former Probate Code Section 1138.9 without substantive change. Paragraph (5) of subdivision (b) continues authority found in former Probate Code Sections 1126 and 1138.9.

Subdivision (c) continues former Probate Code Section 1138.2 without substantive change and restates former Probate Code Section 1123.6 without substantive change. See also Section 17206 (general authority to make necessary orders).

Article 4. Appointment of Trustees

§ 15660. Appointment of trustee to fill vacancy

15660. (a) If the trust has no trustee or if the trust instrument requires a vacancy in the office of a cotrustee to be filled, the vacancy shall be filled as provided in this section.

(b) If the trust instrument provides a practical method of appointing a trustee or names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.

(c) If the vacancy in the office of trustee is not filled as provided in subdivision (b), on petition of a cotrustee or beneficiary, the court may, in its discretion, appoint a trustee to fill the vacancy. If the trust provides for more than one trustee, the court may, in its discretion, appoint the original number or any lesser number of trustees. In selecting a trustee, the court shall give consideration to the wishes of the beneficiaries who are 14 years of age or older.

Comment. Section 15660 supersedes former Civil Code Sections 2287 and 2289 and former Probate Code Sections 1125, 1126, and 1138.9. For a provision governing the occurrence of vacancies in the office of trustee, see Section 15643. Subdivision (a) makes clear that the vacancy in the office of a cotrustee must be filled only if the trust so requires. If the vacancy in the office of cotrustee is not filled, the remaining cotrustees may continue

to administer the trust under Section 15621, unless the trust instrument provides otherwise. The provision in subdivision (b) relating to a "practical" method of appointing a trustee continues language found in former Civil Code Section 2287 and supersedes part of former Probate Code Section 1138.9.

The authority of the court to appoint the same or a lesser number of trustees in subdivision (c) continues the second sentence of former Civil Code Section 2289 without substantive change. The provision requiring the court to give consideration to the wishes of the beneficiaries in subdivision (c) supersedes the second sentence of former Civil Code Section 2287. See Restatement (Second) of Trusts § 108 comment i (1957). Subdivision (c) gives the court discretion to fill a vacancy in a case where the trust does not name a successor who is willing to accept the trust, where the trust does not provide a practical method of appointment, or where the trust does not require the vacancy to be filled. For a limitation on the rights of certain beneficiaries of revocable trusts, see Section 15800. For the procedure applicable to judicial proceedings, see Section 17200 *et seq.* See also Section 17200(b)(10) (petition to appoint trustee).

Article 5. Compensation and Indemnification of Trustees

§ 15680. Trustee's compensation as provided in trust instrument; different compensation

15680. (a) Subject to subdivision (b), if the trust instrument provides for the trustee's compensation, the trustee is entitled to be compensated in accordance with the trust instrument.

(b) Upon proper showing, the court may fix or allow greater or lesser compensation than could be allowed under the terms of the trust in any of the following circumstances:

(1) Where the duties of the trustee are substantially different from those contemplated when the trust was created.

(2) Where the compensation in accordance with the terms of the trust would be inequitable or unreasonably low or high.

(3) In extraordinary circumstances calling for equitable relief.

(c) An order fixing or allowing greater or lesser compensation under subdivision (b) applies only prospectively to actions taken in administration of the trust after the order is made.

Comment. Subdivision (a) of Section 15680 continues the first sentence of former Civil Code Section 2274 without substantive change and restates the first sentence of former Probate Code Section 1122 without substantive change. Subdivision (b) restates the second sentence of former Civil Code Section 2274 and the second sentence of former Probate Code Section 1122 without substantive change, except that subdivision (b) makes clear that the court can reduce the trustee's compensation when appropriate. Subdivision (c) makes clear that an order changing the amount of compensation cannot be applied retroactively to actions already taken. See also Sections 15682 (court determination of prospective compensation), 17200(b) (9) (petition to fix compensation).

§ 15681. Trustee's compensation where trust silent

15681. If the trust instrument does not specify the trustee's compensation, the trustee is entitled to reasonable compensation under the circumstances.

Comment. Section 15681 continues the third sentence of former Civil Code Section 2274 without substantive change and restates part of the third sentence of former Probate Code Section 1122 without substantive change. The trustee has authority to fix and pay its compensation without the necessity of prior court review. See Section 16243 (power to pay compensation and other expenses). See also Sections 15682 (court determination of prospective compensation), 17200(b) (9) (petition to fix compensation).

§ 15682. Court determination of prospective compensation

15682. The court may fix an amount of periodic compensation under Sections 15680 and 15681 to continue for as long as the court determines is proper.

Comment. Section 15682 is a new provision that makes clear that the court may fix compensation prospectively. This section supersedes the last part of the third sentence of former Probate Code Section 1122. See also Section 17200(b) (9) (petition to fix compensation).

CHAPTER 3. PROCEEDINGS CONCERNING TRUSTS

§ 17200. Petitioners; grounds for petition

17200. (a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(1) Determining questions of construction of a trust instrument.

(2) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right.

(3) Determining the validity of a trust provision.

(4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.

(5) Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers.

(6) Instructing the trustee.

(7) Compelling the trustee to report information about the trust or account to the beneficiary, if (A) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary and (B) no report or account has been made within six months preceding the request.

(8) Granting powers to the trustee.

(9) Fixing or allowing payment of the trustee's compensation.

(10) Appointing or removing a trustee.

(11) Accepting the resignation of a trustee.

(12) Compelling redress of a breach of the trust by any available remedy.

(13) Approving or directing the modification or termination of the trust.

(14) Approving or directing the combination or division of trusts.

(15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest.

(16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

(17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.

(18) Approving removal of a testamentary trust from continuing court jurisdiction.

(19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.

Comment. Section 17200 restates the substance of subdivision (a) of former Probate Code Section 1138.1 and supersedes parts of former Probate Code Section 1120. The reference to determining the existence of a trust in subdivision (a) is new. Subdivision (a) also restates without substantive change part of former Probate Code Section 1139.1 and the first sentence of former Probate Code Section 1139.2 (petition for transfer of trust to another jurisdiction) and part of former Probate Code Section 1139.12 (petition for transfer to California). The introductory clause of subdivision (a) is a new provision that has the effect of giving the right to petition concerning the internal affairs of a revocable living trust to the settlor (or other person holding the power to revoke) instead of the beneficiaries during the time that the settlor (or other person holding the power to revoke) is competent. See Section 15800 and the Comment thereto.

The list of grounds for a petition concerning the internal affairs of a trust under subdivision (b) is not exclusive and is not intended to preclude a petition for any other purpose that can be characterized as an internal affair of the trust. Paragraphs (1) and (2) of subdivision (b) are new and are drawn from Section 7-201(a) of the Uniform Probate Code (1977). Paragraph (3) is new. Paragraph (5) restates parts of subdivisions (b) and (d) of former Civil Code Section 2269 (review of exercise of discretionary powers) without substantive change. See Sections 16080-16081 (duties with regard to discretionary powers). Paragraph (9) supersedes the last sentence of former Civil Code Section 2274.

Various provisions elsewhere in this division relate to proceedings under this article. For limitations on the right of a beneficiary to compel the trustee to account or report under paragraph (7), see Sections 15800 and 16060-16064. As to granting powers to the trustee under paragraph (8), see Section 16201. As to the trustee's compensation under paragraph (9), see Sections 15680-15683. As to breaches of trust involved in paragraph (12), see Sections 16400-16462. As to modification and termination of trusts under paragraph (13), see Sections 15400-15410. As to combining or dividing trusts under paragraph (14), see Sections 15411 and 15412. As to transfers of trusts under paragraph (16), see Sections 17400-17405 and 17450-17457. As to transfers of certain testamentary trusts within California under paragraph (17), see Section 17304. As to removal of certain testamentary trusts from continuing court jurisdiction under paragraph (18), see Section 17352.

The procedure provided in this chapter is available to determine matters concerning the administration of trusts notwithstanding a purported limitation or exclusion in the trust instrument. The provision of former Probate Code Section 1138.1(b) to the effect that the trust could restrict the availability of remedies is not continued.

See also Sections 24 ("beneficiary" defined), 82 ("trust" defined), 17005 (venue).

03/24/88

EXHIBIT 2

California Bankers Association
Established 1891

March 7, 1988

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Suite D-2
4000 Middlefield Road
Palo Alto, California 94303-4739

Re: Trustee Fees

Dear Mr. DeMouilly:

The Trust State Governmental Affairs Committee of the California Bankers Association has received a copy of a letter from Assemblyman Elihu Harris to the Commission transmitting concerns that the Assemblyman apparently still has regarding trust industry practices.

We disagree with the factual premises of several of the assertions made by Mr. Harris. The following is a roughly sequential response to certain of the statements in Mr. Harris' letter.

1. The subject matter of the San Diego Union article (which we note is at this point over a year old), attached to Mr. Harris' letter does not illustrate any problem reasonably related to the reason behind the 1982 legislation (AB 3612) referenced in the first paragraph of his letter. Mrs. Hinman resolved her fee dispute with her then current trustee by asking that trustee to resign in favor of another corporate trustee, which in fact occurred. The solution to Mrs. Hinman's concern illustrates the method by which beneficiary disputes are frequently handled by corporate trustees: Voluntary agreement.
2. If a request is to be made to the California Law Revision Commission to explore the relationships between trustees and beneficiaries, then it is appropriate to have the scope of the inquiry reach all trustees and not merely "bank trustee departments". It strikes us as inherently unfair that corporate trustees be discriminated against by being the target of a vague and unstructured investigation. For instance, while the terms "consumer" may have some meaning when used in connection with the individual initially establishing the trust relationship, under the California

Trust Law, the term "beneficiary" is clearly defined in Probate Code Section 24, and nowhere is the term "consumer" used. What class of individuals is intended to be included by use of the term consumer? We also question the significance of the comment that some beneficiaries have chosen not to be represented by legal counsel. Such beneficiaries are neither compelled to retain counsel nor are they prohibited from retaining counsel. In addition, the Bankers are gravely concerned about the characterization of trust estates of under \$1,000,000 as being "small". The experience of the California Bankers Association with its member trust banks is that there is no consensus of what constitutes "small" trust estates. Indeed, at least one major corporate trustee markets trust services for accounts of \$50,000 in size. We also question use of the term "disproportionate" with respect to fees, regardless of the size of a trust estate. An appropriate fee for any trust is of necessity a function of the trustee's responsibilities and risks incurred under the governing agreement, the nature and complexities of the trust assets, and the needs of the beneficiaries.

3. We would like to respond to what amounts to an accusation that corporate trustees refuse to act as trustees of smaller trust estates. In examining what trust business should be accepted, corporate trustees should not accept accounts believed at the outset to be unprofitable. To do otherwise is to violate the trust and confidence imposed on the management of trust institutions by their boards of directors, and ultimately, their shareholders. Moreover, because it is widely known that the profitability of corporate trustees has been marginal at best, operating any unprofitable business (whether the account is, relatively speaking, small or large), is simply irresponsible.

4. Most trusts provide a mechanism for the removal of a trustee and the appointment of a successor, which may or may not call for court intervention. In the absence of such mandatory guidance, the trustee is frequently compelled to seek court assistance as a part of the process of having an account transferred from one trustee to another. To illustrate the point we offer the following hypothetical fact situation. An individual creates a trust and does not provide for the qualifications or identity of a successor trustee. Beneficiary/spouse of a subsequent marriage wants "X" to serve. Beneficiary/children of a prior marriage want "Y" to serve. The trustee is obligated under Probate Code

Section 16003 to deal impartially with the beneficiaries. Consequently, what choice other than seeking court intervention would satisfy that duty? Indeed, in general the intervention of the court has long been intended to provide continuity and order to the administration of trusts for the purpose of protecting the interests of all trust beneficiaries.

5. We take exception the statement that "a substantial number of trust beneficiaries" are "unaware of fee increases which would give them cause to complain". Most, if not all, corporate trustees provide prior written notice of fee increases. In addition, trust beneficiaries receive regular statements which disclose fees charged. Concerning Mr. Harris' comments as to the reasons for which a beneficiary does not seek the advice of an attorney, we do not feel it is appropriate for the California Bankers Association to address the issues of the costs of legal services or the factor of the intimidation of beneficiaries by attorneys. It is said that banks have made fee increases which they represented to the Legislature would not be made. While it is true that fee increases may have been initiated in response to inflation and increased operating costs, the competitive pressures of the marketplace have kept these increases to reasonable levels and there has been no immediate explosion in fees as charged by the opponents of AB 3612. This fact is the essence of what was represented to the Legislature and the California Bankers Association has remained true to its word.

6. We do not understand why Mr. Harris has chosen to raise the issue of executor and administrator fees in the context of the discussion of trustee fees. For an objective analysis of the issues, we refer to the Law Revision Commission Staff memoranda considering the subject. Memorandum 88-12 dated 1/22/88 (Attorney fees in Probate), and Memorandum 88-13, dated 2/1/88 (Fees of Personal Representatives).

7. The "problem" referenced in the second full paragraph of the second page of Mr. Harris' letter focuses on the refusal of corporate trustees to accept appointment as executor or administrator unless an estate is a "sizable one". We are unclear as to the intended meaning of this statement. Corporate trustees evaluate each estate on its own merits in terms of size, complexity, and risk. Take a hypothetical example: A corporate fiduciary is nominated in a will to serve as an executor. While the estimated fair market value of the estate, which consists primarily of real estate, is

\$8,000,000, the institution might decline to act upon being advised that one of the properties of the estate was an abandoned dump site selected by the Environmental Protection Agency for hazardous waste clean up. The risks and complexities of administering this type of asset could well outweigh any fee considerations based on the size of the estate, and would bear careful analysis as a condition precedent to accepting the business or turning it down.

8. The California Bankers Association has been advised by Wells Fargo Bank that the example used in Mr. Harris' letter regarding Wells' probate practices is not accurate. The CBA is further advised that Wells Fargo Bank has addressed this subject in a separate letter to Mr. Harris.

9. The characterization of corporate fiduciaries' policies of determining what estates they can act in profitably as "skimming the cream" is highly inflammatory and unjustified. No negative connotation should be attached to the business decision to accept estates which are considered to be profitable and for which no unreasonable risks of liability are likely to be assumed. We do not understand the reference to the so called "Robin Hood theory". Whatever is intended by the reference to the "Robin Hood theory", we cannot accept a "compensation scheme" that adopts as its philosophical foundation the inequitable charging of larger probate estates to offset the uncompensated or undercompensated costs of administering smaller estates. Every probate estate must stand on its own and adequately compensate the personal representative for the services being performed.

10. Beneficiaries are not unprotected and have recourse to the courts on trust fees. If by "automatic protection" it is meant that statutory trustee fees would be appropriate, the California Bankers Association would oppose vigorously any such proposal.

11. With respect to the request that questionnaires be sent to bar associations for the ostensible purpose of surveying the "appropriate consumer population," it would appear that such an inquiry is unfocused and unnecessary in view of both the previous questionnaire directed to those attorneys most directly involved in, and most familiar with, the issues of trustee services and fees, as well as the questionnaire directed to corporate fiduciaries who voluntarily completed and submitted responses in good faith to the Law Revision Commission. We question the public benefit of additional

Mr. John DeMouilly
March 4, 1988
Page 5

surveys of a broad population which, more than likely, has little interest or familiarity with the issues.

We have formally advised Assemblyman Harris that the California Bankers Association believes that there is no problem regarding trust administration issues which require a legislative solution. The CBA has not changed its very strong belief in this regard. Nevertheless, we recognize that there is a perception that such a problem exists, as evidenced by Mr. Harris' subject January 26, 1988 letter. Accordingly, in the spirit of further promoting the interests of trust beneficiaries, the CBA has drafted a legislative proposal, a copy of which is enclosed.

Thank you for your consideration of our views on this most important area of the law. If we can supply additional information, we welcome the opportunity to meet with you.

David W. Lauer
L. Bruce Norman
Co-chairmen, Trust State
Governmental Affairs Committee

David W. Lauer

cc: The Honorable Elihu Harris
Stan Wieg

March 7, 1988

Existing: Increase in Compensation

15681 (a) existing

15681 (b) The trustee may increase its rate of percentage compensation or its stated minimum fee (hereinafter "compensation") only after compliance with the requirements of this Section.

(1) The trustee shall provide notice in the form specified in this Section in writing at least sixty days prior to the stated effective date of the increase to all beneficiaries, as defined in Section 15681(b)(4), of trusts affected by the increase.

(2) The notice shall contain the following information:

(a) The effective date of the increase.

(b) The current and the proposed compensation.

(c) The name, address and telephone number of the person or persons representing the trustee to whom questions may be addressed.

(d) A statement that if all of the beneficiaries as defined in Section 15681(b)(4) advise the trustee in writing prior to the effective date of the increase specified in the notice of their objection to the increase, no increase will be implemented until the trustee complies with Section 15681(b)(3).

(e) A statement that any beneficiary may petition the court pursuant to Section 17200 to review the increase to the trustee's compensation, and that if the petition is filed and notice is given to the trustee prior to the effective date of the increase, such increase shall not be implemented until confirmed by order of the court.

(3) If all of the beneficiaries as defined in Section 15681(b)(4) object to the proposed increase, and advise the trustee in writing prior to the effective date of the increase, the trustee shall do one of the following:

(a) Withdraw or compromise the proposed increase to compensation; or

(b) Postpone the proposed increase for a period not to exceed 30 days subsequent to the effective date of the increase to enable the beneficiaries to file a petition under Section 17200 to review the proposed increase and to serve notice on the trustee; or

(c) Resign as trustee pursuant to Section 15640. The trustee shall incur no liability to the beneficiaries by reason of the exercise of this power to resign.

(4) For purposes of this Section, the term beneficiary shall include those beneficiaries specified in Section 16062(a), subject to the limitations in Section 15800. If such beneficiary is a ward or conservatee, the notice required by Section 15681(b)(1) shall be sent to the guardian or conservator, as the case may be, of such beneficiary. If such beneficiary is a minor for whom no guardian has been appointed, notice shall be sent to the parent having legal custody of the minor. The guardian, conservator or parent of such a beneficiary shall represent the interests of the beneficiary for all purposes under this Section.

(5) If any beneficiary petitions the court under Section 17200 to review the increase prior to the effective date of the increase, such increase shall not be implemented until confirmed by order of the court.

(6) If any beneficiary petitions the court under Section 17200 subsequent to the effective date of the increase to review the increase, any determination of the court shall relate only to the prospective application of the increase to compensation.

(7) The court, in its discretion, may charge fees, costs and expenses of a proceeding under Section 17200 to review the increase in the trustee's compensation against the trust estate.

(8) This Section shall be applicable only to those trusts as defined in Section 82(a).

(?)

EXHIBIT 3

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

Chair
D. KEITH BILTER, *San Francisco*
Vice-Chair
IRWIN D. GOLDRING, *Los Angeles*

Advisors
KATHRYN A. BALLSUN, *Los Angeles*
HERMIONE K. BROWN, *Los Angeles*
THEODORE J. CRANSTON, *La Jolla*
LLOYD W. HOMER, *Campbell*
KENNETH M. KLUIG, *Pasadena*
JAMES C. OPEL, *Los Angeles*
LEONARD W. POLLARD, II, *San Diego*
JAMES V. QUILLINAN, *Mountain View*
WILLIAM V. SCHMIDT, *Costa Mesa*
HUGH NEAL WELLS, III, *Freemont*
JAMES A. WILLETT, *Sacramento*

Section Administrator
PRES ZABLAN-SOBERON, *San Francisco*



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

Executive Committee
D. KEITH BILTER, *San Francisco*
OWEN G. FIORE, *San Jose*
IRWIN D. GOLDRING, *Los Angeles*
JOHN A. GROMALA, *Emeryville*
LYNN F. HART, *San Francisco*
ANNE K. HILKER, *Los Angeles*
WILLIAM L. HOISINGTON, *San Francisco*
BEATRICE LAIDLEY-LAWSON, *Los Angeles*
JAY ROSS MACMAHON, *San Rafael*
VALERIE J. MERRITT, *Los Angeles*
BARBARA J. MILLER, *Oakland*
BRUCE S. ROSS, *Los Angeles*
STERLING L. ROSS, JR., *Mill Valley*
ANN E. STODDEN, *Los Angeles*
JANET L. WRIGHT, *Pasadena*

Reply to: P.O. Box 1461
Fresno, CA 93716
(209) 442-0600

February 8, 1988

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Suite D-2
4000 Middlefield Road
Palo Alto, California 94303-4739

Re: Memo 88-19

Dear John:

The Executive Committee of the Estate Planning, Trust and Probate Law Section has considered the issue of whether or not the size of corporate trustees' fees poses a problem to trust beneficiaries. It is the consensus of the members of the Executive Committee that any abuse which may exist is not of sufficient gravity to warrant corrective legislation. Generally, it has been our experience that where beneficiaries have a reasonable complaint about the size of the corporate trustees' fees, corporate trustees have willingly stepped aside in favor of either another corporate trustee whose fee schedule is lower, or in favor of an individual trustee. That informal practice has eliminated a great many of the fee problems.

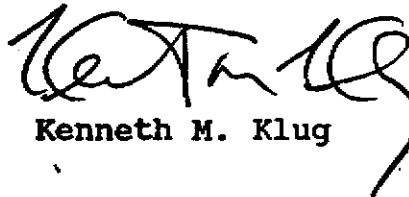
Nonetheless, our Executive Committee recognizes that our experience may not be the universal experience. Indeed, Assemblyman Harris indicates in his February 1, 1988, letter to you that "arguably a greater number [of trust beneficiaries] who do not contact counsel have been adversely affected by increases in fees. . . ." In the event that the Commission perceives a problem needing a legislative solution, our Executive Committee is willing to work with you to draft a solution.

Mr. John H. DeMouilly
February 8, 1988
Page 2

I am enclosing for your review a rough draft of tentative legislation which takes one approach towards a legislative solution. This legislation could be added as Article 6 of Chapter 1 of Part 3 of Division 9 of the Probate Code. This approach would formalize the established informal practice, and provide an economical method of replacing an existing trustee in the event the existing trustee's fees exceed a certain threshold. (For our draft purposes, the threshold is tentatively set at 1 percent of the fair market value of the trust.) The enclosed draft goes somewhat further than merely addressing the problem raised by Assemblyman Harris: it provides an inexpensive means of appointing a successor trustee in those cases where the existing trustee agrees to resign. The enclosed draft is the product of three members of the Executive Committee, and has not yet been reviewed or approved by the entire Executive Committee. Accordingly, it does not represent the views of the Executive Committee.

Furthermore, this draft is not yet intended to be offered as legislation in its present form. There are still a number of practical problems with this approach which will need to be resolved by further refinements. Before working further to refine this draft, we would like the Commission's views as to whether the approach taken by this draft provides an appropriate solution. If so, we will be happy to undertake the work necessary to further refine this draft into workable legislation. If the Commission endorses this approach, we could have our final product to you by the end of April.

Very truly yours,



Kenneth M. Klug

Enclosure

cc: The Honorable Elihu M. Harris
L. Bruce Norman
David W. Lauer
John L. McDonnell, Jr.

To be Added to Probate Code, Division 9, Part 3, Chapter 1

ARTICLE 6

Replacement of Trustees

§15690. Right to Replace Trustee. If the reasonable compensation to which the trustee is entitled pursuant to §15681 during any 12-month period exceeds one percent (1%) of the average fair market value of the trust estate during such 12-month period, the trustee may be replaced as provided in this Article.

§15691. Notice of Excess Compensation. If the compensation received or to be charged by the trustee during any 12-month period exceeds 1% of the average fair market value of the trust estate during such period, then the trustee shall notify all beneficiaries of their right to replace the trustee as provided in this Article. The notice required by this Section shall be given not later than the earlier of (a) 30 days after the receipt by the trustee of such excess compensation or (b) 30 days after the trustee knows its compensation will exceed such 1%.

§15692. Form of Notice. [To be drafted.]

§15693. Procedure for Replacement. (a) If the trustee and all beneficiaries consent to replacement of the trustee, the

Draft, 12/11/87

trustee to be replaced may resign as provided in Article 3 and deliver the assets to the successor trustee, if any, named in the trust instrument. If there is no successor trustee named in the instrument, a successor trustee shall be selected as provided in §15694. A trustee who resigns pursuant to this subsection (a) shall be entitled to a reasonable termination fee.

(b) If all beneficiaries consent to a replacement trustee pursuant to this Article, and the trustee refuses to resign, the beneficiaries may petition the court for replacement of trustee as provided in §15695. If the court determines that the trustee unreasonably refused to resign, it shall award attorneys' fees and costs against the trustee.

(c) If some but not all beneficiaries consent to a replacement trustee, any person interested in the estate may petition the court for replacement of trustee as provided in §15695.

§15694. Selection of Replacement Trustee. A replacement trustee shall be selected as follows:

(a) If the trust instrument names a successor trustee who consents to act, the successor trustee shall be the replacement trustee.

(b) If the trust instrument does not name a successor trustee but provides a practical method of appointing a trustee, the replacement trustee shall be appointed as

provided in the trust instrument.

(c) If neither subsection (a) nor subsection (b) is applicable, a replacement trustee shall be selected by the unanimous consent of all beneficiaries.

(d) If unanimous consent of all beneficiaries cannot be obtained, a replacement trustee may be appointed by the court on petition by any person interested in the trust.

(e) If the replacement trustee is not a corporate trustee, the court may require bond unless waived by the trust instrument or unless all beneficiaries consent to waiver of bond.

§15695. Court Findings. Upon petition by any beneficiary, the court shall replace a trustee if it finds all of the following:

(a) The compensation received or to be charged by the trustee for any 12-month period exceeds 1% of the average fair market value of the trust estate during such period.

(b) There is a replacement trustee qualified to administer the trust who has consented in writing to appointment as trustee.

(c) The compensation to be paid to the replacement trustee plus the premium to be charged to the trust estate for any bond required by the court are reasonably expected to be sufficiently lower than the compensation paid or to be paid the existing trustee to justify replacement.

Draft, 12/11/87

(d) Replacement of the existing trustee is to the best interest of all beneficiaries.

§15696. Definitions.

(a) "Average fair market value" means the greater of (i) the median of the fair market value on the first day of any 12-month period and the fair market value on the last day of the 12-month period; or (ii) the mean of the fair market values determined on a regular cycle.

(b) "All beneficiaries" means the person, if any, holding the power to revoke the trust; or, if none, the holder of a presently exercisable general power of appointment or power to withdraw property from the trust, to the extent of the holder's power over the trust property; or, if none, all adult beneficiaries who are receiving or are presently entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought.

EXHIBIT 4**ABBITT & BENNETT**

A PROFESSIONAL CORPORATION

SUITE 1100

12121 WILSHIRE BOULEVARD

LOS ANGELES, CALIFORNIA 90025

OCT 19 1987**RECEIVED** AREA CODE 213
624-0471

FAX 213 620-5960

DIANE ABBITT
ROBERTA BENNETT*
MARK E. LEHMAN
MITCHELL A. JACOBS*
JEFFREY G. GIBSON
KARYN S. BRYSON
MARIELLEN YARC

OF COUNSEL
KENNETH G. PETRULIS

*CERTIFIED FAMILY LAW SPECIALIST

October 8, 1987

California Law Revision Commission
4000 Middlefield Road, No. D2
Palo Alto, CA 94303-4739

Re: Memorandum 87-70
Corporate Trustee's Fees

Commissioners:

The Beverly Hills Bar Association Probate and Estate Planning Legislative Committee has reviewed the above Memorandum and submits the following comments.

We have discussed the subject memorandum and feel that all of the following should be permitted methods of changing trustees:

1. 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 trustee.

2. Permit transfer to another corporate trustee if the corporate trustee to be replaced and all trust beneficiaries (parent, guardian, conservator or other fiduciary responsible for a minor or incompetent person) agree.

3. Permit transfer to another corporate trustee if all trust beneficiaries agree on the transfer and that good cause exists for the transfer, including increase in trustee's fees and neglect or negligence by the trustee in the conduct of its duties (consent of existing corporate trustee not required).

Discussion: We recommend that a standard similar to the above language be used.

4. Permit the trustee to increase fees received after giving notice to all trust beneficiaries. Trust beneficiaries would then have the right to object to any fee increase in court.

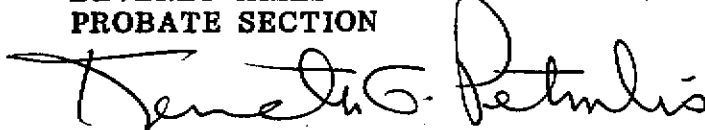
5. Provide specifically by statute for court review of the reasonableness of trustees fees upon petition by any interested person.

Conclusion: The other alternatives raised by the staff were rejected. We feel that the problem of corporate trustee's fees does merit some examination and clarification in the code. We would also suggest that the code define or authorize the Rules Committee to define the normal duties of trustees to be included within the fee schedule and guidelines on when extraordinary fees should be allowed.

In any case, where consents are required, all adult beneficiaries would be necessary, but interests of minors or incompetents would not require the appointment of guardian ad litem, etc. If there was a parent guardian of the estate or person, conservator or other fiduciary already present and identifiable, that person's consent would also have to be obtained.

Yours very truly,

LEGISLATIVE COMMITTEE
BEVERLY HILLS BAR ASSOCIATION
PROBATE SECTION

A handwritten signature in dark ink, appearing to read "Kenneth G. Petrulis", is written over the typed name below.

KENNETH G. PETRULIS, Chairman

KGP/ar

cc: James J. Stewart
Melinda J. Tooch
Marc B. Hankins
Jeffrey A. Altman
David Gutman
Ralph Palmieri
Phyllis Cardoza

CITY COMM

SEP 23 1987

RECEIVED

733 Kline Street #304
La Jolla, CA 92037-4307
September 21, 1987

Re: Memorandum 87-54
Study L-3010 - Replacement of Corporate Trustees

Stan G. Ulrich, Esq.
Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Dear Mr. Ulrich:

This letter is submitted on behalf of the Legislative Subcommittee on Estate Planning, Trusts and Probate of the San Diego County Bar Association.

The Subcommittee endorses the proposed simple procedure for replacement of a corporate trustee but urges the addition of a proviso that a corporate trustee which is removed because of a fee increase may not receive a termination fee nor any other compensation related to the termination of fiduciary responsibility.

Respectfully submitted,

Grace K. Banoff
Grace K. Banoff
For the Subcommittee

cc: Daniel B. Crabtree, Esq.
Subcommittee Chair

EXHIBIT 6**SHEA & GOULD**

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

1800 AVENUE OF THE STARS-SUITE 500

LOS ANGELES, CALIFORNIA 90067

(213) 277-1000

TELEX 910 490-2597

CABLE "SHEGOU"

TELECOPIER (213) 553-4647

July 28, 1987

NEW YORK OFFICE
330 MADISON AVENUE
NEW YORK, NEW YORK 10017
(212) 370-8000
TELEX: 423973
CABLE: HOLMANG
TELECOPIER (212) 661-2314

WASHINGTON, D.C. OFFICE
1627 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 833-9880
CABLE: MIRGO
TELECOPIER (202) 833-1992

MIAMI OFFICE
801 BRICKELL AVENUE
MIAMI, FLORIDA 33131
(305) 372-2000
TELECOPIER (305) 372-2088

ALBANY OFFICE
111 WASHINGTON AVENUE
ALBANY, NEW YORK 12210
(518) 449-3320
TELECOPIER (518) 499-5812

BRADENTON OFFICE
1301 SIXTH AVENUE WEST
BRADENTON, FLORIDA 33506
(813) 747-3025

LONDON
37 PARK STREET
LONDON W1Y 3HQ ENGLAND
01-493-8513
TELEX 289488

Stan G. Ulrich, Esq.
Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Memorandum 87-54; Replacement
of Corporate Trustees

Dear Stan:

I just received the staff draft of a Tentative Recommendation relating to the replacement of corporate trustees. I have absolutely no problem with the concept of permitting the beneficiaries of a trust to substitute the trust company of their choice for the trust company selected by the settlor. However, I have significantly more problem with the idea of permitting the co-trustees to substitute trust companies.

Since the trust is intended to benefit the beneficiaries, the law should have sufficient flexibility to permit their wishes to override the strict language of the trust instrument, at least on matters which would not defeat the underlying purpose of the trust. I would not permit the beneficiaries to terminate the trust since that would clearly defeat the settlor's purpose unless they can demonstrate sufficiently changed circumstances. I would, however, permit the beneficiaries, acting together, to override less essential provisions of the trust instrument. While I would be extremely reluctant to permit them to substitute an individual trustee for the corporate trustee named by the settlor, I would not oppose permitting them to select another corporate trustee. The definition of "trust company" in Section 83, as amplified by the Comment, is sufficiently specific to offer adequate protection.

Permitting co-trustees, without the consent or even the knowledge of the beneficiaries, to change trust companies is another matter. Based upon my experience with co-trustees, I can readily see them "shopping" trust companies until they find one which will not be as quick to object to discretionary distributions with no evidence of need (frequently to the co-trustee's side of the family), questionable investments, sizeable fees to the co-trustee, etc.

Even where the motives of the co-trustee are proper and pure, a co-trustee occupies a position entirely different from that of a beneficiary. With a beneficiary, it is basically his money; a co-trustee, on the other hand, is an employee retained by the settlor to work for the beneficiary. Permitting a co-trustee to change any of the terms of the trust instrument without the consent of either the beneficiaries or the court is an unnecessary and indeed radical expansion of the role of a trustee. If the co-trustee has a valid reason for desiring to change corporate trustees, he should either seek the consent of the beneficiaries or the approval of the court.

I would therefore delete subsection (d) of Section 15691, and the introductory portion of subsection (e), and change the reference to subsections (d) and (e) in subsection (c). Otherwise, I think the procedure described in Sections 15691 and 15692 is workable and could be very useful.

Please note that the above comments express only my personal views and not those of either of the organizations which I have previously represented before the Commission.

Very truly yours,



SANDRA S. KASS

SSK/mb

EXHIBIT 7

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



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

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P.O. Box 1461
Fresno, CA 93716
(209) 442-0600

July 21, 1987

Mr. Irwin D. Goldring
Attorney at Law
1888 Century Park East
Suite 350
Los Angeles, California 90067

Re: LRC Memo 87-54 - Replacement of Trustee

Dear Irv:

These are my personal comments on the above memo. The memo was received in my office too late to schedule a conference call with the other members of Team 2.

As you know, I had some preliminary discussions with Michael Harrington of Wells Fargo Bank. During those preliminary discussions, he and I exchanged some ideas which he indicated he would run past the California Bankers' Association. Basically, Memo 87-54 follows the general approach of the ideas that Mr. Harrington and I discussed. The approach of Memo 87-54 goes somewhat further, because it would allow the beneficiaries to replace a trustee without any triggering mechanism. The approach that Mr. Harrington and I discussed would allow for a replacement only where there is a fee increase exceeding a certain threshold. He and I did not discuss what that threshold ought to be.

From my viewpoint, I favor a statutory procedure which would allow for a transfer to a successor corporate trustee without the involvement of the Court if everyone is in agreement. Mechanically, my approach would be as follows. If the trustee proposes a substantial fee increase, the trustee will advise the beneficiaries (similar to an advice

Mr. Irwin D. Goldring
July 21, 1987
Page Two

of proposed action). If the beneficiaries consent to the increase, nothing further need be done. If a beneficiary objects, then the fees cannot be increased without court approval. Alternatively, the trustee and the beneficiaries may agree to replace the trustee. If the trustee refuses to step aside, then a court proceeding may be utilized to replace the trustee. If the court determines either that the proposed fee increase is unreasonable, or if the court determines that the trustee has acted unreasonably in refusing to step aside, then the court shall award attorneys' fees against the trustee (not to be paid by the trust). I believe in most cases the trustee and the beneficiaries would agree.

The procedure proposed by Memo 87-54 would allow the trustee to be replaced at the beneficiaries' discretion. It also allows for the beneficiary to obtain a commitment from a successor trustee without first dealing with the existing trustee. As a practical matter, a successor trustee is not likely to want to get involved unless the replaced trustee has indicated a willingness to step aside. If the trustees and the beneficiaries all consent to replacing the existing trustee, the beneficiaries can then locate a successor trustee.

If there is not unanimous consent by the beneficiaries and the trustee, then I believe the Court ought to be involved. The Court ought to be authorized to award attorneys' fees against a trustee if the trustee unreasonably withheld its consent. On the other hand, if there is a dispute among the beneficiaries concerning replacement of the existing trustee, then the Court should resolve the dispute, and not have the burden placed on the trustee.

Again, I believe there should be some triggering mechanism (e.g., a substantial increase in fees) before the beneficiaries have the right to replace the trustee. A right to replace the trustee which arises only with a proposed fee increase should go a long way to minimizing the tax risk raised in Revenue Ruling 79-353 cited in the note following Section 15691.

Finally, I believe there should be some mechanism for replacement of a corporate trustee with an individual

Mr. Irwin D. Goldring
July 21, 1987
Page Three

trustee. Perhaps this mechanism ought to require approval of the Court and the setting of a bond. Memo 87-54 does not allow for replacement of a corporate trustee by an individual trustee, but such should not be precluded. In many small trusts, a family member can serve as responsibly as a corporate trustee, at a lesser cost.

I believe that Memo 87-54 is a start in the right direction. There are many other issues which need to be addressed. My recommendation is that the Law Revision Commission defer further action on this memo until its September meeting. Hopefully, by that time Mike Harrington will have obtained the bankers' suggestions, and we will be in a position to provide a more complete study to the Law Revision Commission.

Very truly yours,



Kenneth M. Klug

cc: Michael Harrington
James F. Rogers
Owen G. Fiore
James R. Goodwin
Jay R. MacMahon
William H. Plageman, Jr.
Charles A. Collier, Jr.
D. Keith Bilter
James C. Opel
James D. Devine
Lloyd W. Homer
Theodore J. Cranston
James V. Quillinan

EXHIBIT 8

ROBERT H. CORNELL
J. KENNETH LYNCH
ANDREW G. LANGE
ROGER C. PETERS
FREDERICK A. PATTERSON
JAMES F. HALLEY

LAW OFFICES OF
HALLEY, CORNELL & LYNCH
A PROFESSIONAL CORPORATION
25TH FLOOR
50 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94111-4787

JAMES W. HALLEY
(1921-1976)
(415) 981-7700

13 August 1987

John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Dear John:

Enclosed please find a copy of the Court opinion in Pam's case.

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 Pam's sister, 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.

I hope this is of some help.

Best regards,



Robert H. Cornell

ncc.001
enc.

THIS IS A MEMORANDUM DECISION AND
DOES NOT CONSTITUTE A JUDGMENT

FILED

SEP 3 1986

Office of the County Clerk
San Mateo County

MARVIN CHURCH, County Clerk

By Christal Davis
DEPUTY CLERK

Hon. Clarence B. Knight

Judge of the Superior Court

Redwood City, California Sept. 3, 1986

No. 29246

G. Bates and P. Cornell v Crocker National Bank

On the court trial

heretofore

submitted in the above-entitled action, the Court has this day rendered the following decision:

The Court finds that Respondent bank breached its fiduciary duty to Petitioners by charging exorbitant and unjustified amounts for its trustee fees for the years 1983, 1984, 1985 and 1986. The Respondent will be surcharged in regard to the trustee's fees for all amounts in excess of \$4,800. per year for each trust (the highest amount of the last fee approved by the Court).

It is further ordered that the Petition for removal as trustee is granted. Respondent will be removed as trustee upon the appointment

I declare under penalty of perjury that on the following date I deposited in the United States Post Office mail box at Redwood City, California, a true copy of the foregoing decision, enclosed in an envelope, with the proper and necessary postage prepaid thereon, and addressed to:

Roger Peters
Attorney at Law
50 California St., 25th Floor
San Francisco, Calif.
94111

George Malloch
Attorney at Law
580 California St., Ste. 1600
San Francisco, California
94104

Executed on September 3, 1986 at Redwood City, California.

MARVIN CHURCH, Clerk

By Christal Davis
Deputy Clerk

ENTERED

by

of a new trustee or trustees herein. Petitioners are requested to determine if all of the beneficiaries and contingent beneficiaries of the said trusts can agree upon a new trustee or trustees for the said trusts and to provide the names of proposed trustee or trustees for consideration by the court within 21 days of the signing of the judgment herein. If the said beneficiaries and contingent beneficiaries are unable to agree upon a trustee or trustees the court requests a list of suggested trustees for its consideration.

Attorney for the petitioners are to prepare the judgment herein.

#L-3010

STATE OF CALIFORNIA
California Law Revision Commission

CORPORATE TRUSTEES' FEES:

Summary and Analysis of
ATTORNEY QUESTIONNAIRE

October 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

ATTORNEY QUESTIONNAIRE CONCERNING CORPORATE TRUSTEES' FEES**Summary and Analysis**

(Prepared by Stan G. Ulrich, Staff Counsel
California Law Revision Commission)

Background

In July, a questionnaire concerning corporate trustee fees was distributed to approximately 700 persons on the Commission's mailing 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 of mid-September, we had 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 COMPLAINTS**Number 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. While recognizing that the sample is not scientific, 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 or for additional information concerning the number or nature of the complaints reported. All of these comments are reproduced in the exhibit. 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. (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. (See comment 569.) Another suggested that the fees indicated that the corporate trustees have a sense of invulnerability. (See comments 909, 984, 1008)

(2) There were many complaints about lack of service, particularly in relation to the fees charged. (See, e.g., comments 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. (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. (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. (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. (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. (See comments 151, 447, 587, 668, 686, 983, 1035, 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. (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. (See comments 184, 188, 587.) Computers were also blamed for other sins. (See comments 719, 914.)

(9) Several respondents reported that trustees were cooperative in relinquishing a trust when requested. (See comments 300, 421, 923.) Others had a different experience and found that the trustees were not cooperative. (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. (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. (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 the tables at the end of this memorandum. 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 for or against 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.

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 their opposition to any court involvement.

B. Transfer by Beneficiaries and Trustee

The staff would have expected this approach to receive a very high rate of approval, but 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. 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.

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 respondents 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, is distinguished by having the lowest number of approvals (100), though not the lowest approval rate, and by stirring up the greatest 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 apathy 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 know whether the 25 naysayers would change their opinion if the standard were phrased in terms of "unconscionable" or "shocks the conscience." 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. (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."

Overview of Opinions on Legislative Approaches

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 the exhibit. 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. (See comments 637, 1031.)

(2) A number of respondents urge a return to the former regime of court supervision. (See comments 93, 303, 386, 444, 666, 1039.) None

of them suggests why this court supervision should apply only to testamentary trusts. Respondents also suggest that fees should be controlled by local court rules (See comment 199) or Judicial Council rules (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. (See comments 173, 184, 300, 370, 466, 949, 1086.) It may be anticipated that, where appropriate, legislation would apply to both types of trustees. For example, if fees are reviewable based on a standard of reasonableness, this should apply to both corporate and individual trustees.

(4) One respondent suggested that the statute should require annual written and signed fee agreements. (See comment 337.) Another would require trustees to publish fees. (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. (See comment 983.) Others also suggest that charges should be based on time actually spent. (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. (See comments 333, 456, 691.) Problems of obtaining the consent of certain classes of beneficiaries are also noted. (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. (See comments 543, 923, 956, 980.)

(7) While one respondent describes the services of corporate trustees as "fungible" (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 (see comment 370).

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

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

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

(11) A statutory trust form is advocated by one respondent. (See comment 182.)

(12) Several persons want more information on the economics of corporate trustees as a basis for determining an appropriate fee structure. (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. (See comment 923.)

(13) Regulation of set-up and wind-up fees was also urged. (See comment 686.)

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

(15) An industry (presumably) panel or review board was also suggested. (See comment 743.)

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

TABLES

Tables 1 and 2 give an overview of the opinions expressed on legislative approaches.

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

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 165 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 certainly 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.

267. If Trust Departments were receiving "reasonable fees" under court supervision, are the new fees unreasonable? Potential class action?

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).*

345. Most corporate trustee have limited their practice to larger estates. Comments I have received in past concern the poor investment strategies employed by corporate trustees rather than concern our excessive fees.

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.

354. [A Superior Court judge writes:] In one word -- outrageous! Fees charged have no relation to the work done. Unsatisfactory explanations are given for charges. Usually the statements are "these are our standard charges." Unfortunately the lay person has no way of countering such statements. If the lay person goes to another corporate trustee, that person will discover the same, if not identical, charge with the same explanation. Many attorneys have told me, privately, how appalled they are at these charges. Unfortunately, they get business from these corporate trustees and cannot or will not criticize publicly.

•The worst legislation to occur in years was that which took away probate court supervision of trusts. There are several reasons for this, including the unsupervised gouging by corporate trustees in setting fees. Even with individual trustees, I have seen many instances of no accountings, funds lost or worse stolen, and assets wasted. Most of this could be prevented by requiring bonds and court supervision.

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.

550. Because of high fees, constant turnover of trust personnel, and poor investment records, the great majority of my clients no longer use corporate trustees. Some still use corporate trustees from Eastern

institutions, who seem to place more emphasis on stability in their trust department personnel.

•Why not go back to the old system of requiring court approval of all trustees fees of testamentary trusts?

Let trustee fees for living trusts be a contractual matter between the trustor(s) and trustee.

Clients who use California corporate trustees are those who feel they have no other recourse, or for record keeping purposes only.

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.

579. Their work is very superficial. Funds are usually lumped in with other funds. The trustees frequently are not professional in money management.

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.

590. Often fees are charged on the "carry value" of assets that may be higher than actual market value. Scheduled rates have almost uniformly increased above the customary 3/4 of 1% which court supervised trustees received when subject to court supervision.

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 truster 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.

705. In the 2 cases I heard, the objecting parties would have objected to any corporate fee at all. They wanted an individual trustee to act, citing the bank's fees, which were not out of line.

.I am concerned to preserve the testator's or grantor's intention to employ a corporate trustee. There are good reasons for that decision in most cases. If the corporate trustee's fees are reasonable, they should not be taken into account by a court considering any petition to remove the trustee.

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.

790. Generally the fees are reasonable and trustors, beneficiaries and remaindermen do not complain. They do complain about the practice of some banks with court supervised trusts of transferring venue for supervision to some central county, ex parte, for easier computer accounting by the trustee.

.You should understand how Bank of the West computes fiduciary fees to understand why your phrase "increase fees" is ambiguous/meaningless.

Restoring the trust accounting rules, which had no mandatory account periods and no statutory fees, would be an improvement over the present system.

In my experience corporate trustees waste more by investing in their own common diversified trust funds or other bad investments than the overcharge in fees.

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.

928. *Require corporate trustees to handle smaller estates (under \$200,000) for a statutory fee. The corporate trustees should be required to accept a specified numbers of smaller estates for a reasonable fee. The appointment would be by court on a rotating basis. Anyone who had a small estate could avail themselves of a corporate trustee by including specific statutory language in a testamentary instrument minimum estate would be 100,000.*

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 trustees 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.

1140. We have worked with some corporate trustees who are willing to negotiate fees based upon a variety of factors. Others have fixed schedules which may not be altered.

1141. It is difficult to answer this question without knowing their overhead

1143. I think that they are too high and that they discourage the use of corporate trustees. I believe that representatives of the banks know that this is the case. I believe major banks have made a conscious business decision that trust business is not profitable, particularly smaller trusts, and are curtailing or eliminating trust services.

I would permit trustors to change trustees whenever they want to whomever they want, even if the trust is irrevocable. Unless the trust agreement specifically forbids this.

I would permit beneficiaries by unanimous vote to change trustees to another corporation or to an individual other than themselves upon court approval unless the trust agreement specifically forbids this.

#L-3010

STATE OF CALIFORNIA
California Law Revision Commission

CORPORATE TRUSTEES' FEES:
Summary and Analysis of
INFORMATION FROM CORPORATE TRUSTEES

October 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

INFORMATION FROM CORPORATE TRUSTEES CONCERNING FEESSummary and Analysis

(Prepared by Stan G. Ulrich, Staff Counsel
California Law Revision Commission)

The Commission sent letters to 53 corporate trustees whose addresses were supplied by the California Bankers Association at the Commission's request. As of September 15, we received 24 substantive responses. (Five other institutions had nothing to report because they do not currently pursue an active trust business.) This memorandum analyzes the data the Commission received from these 24 corporate trustees in response to the following questions:

1. What percentage fees (based on estate value or other basis) did your institution charge for administering a trust on July 1, 1982, and on July 1, 1987?

2. What was your institution's minimum annual fee for administering a trust on July 1, 1982, and on July 1, 1987?

3. Are your standard fee schedules subject to negotiation on an individual account basis? What considerations determine whether a negotiated fee is available?

4. Estimate the percentage of your living and testamentary trust accounts in which your institution:

(a) Charges less than your standard fee schedule.

(b) Charges more than your standard fee schedule (excluding fees for extraordinary services).

5. Does your institution charge additional fees for extraordinary services? If so, please estimate what percentage of your accounts was charged an additional fee in 1986 and characterize the types of services that typically result in an additional fee.

6. As to trusts where your institution charges additional fees for extraordinary services, what is the average percentage by which the fees actually charged exceed the applicable minimum or basic percentage fees?

7. Does your institution charge sweep fees? If so, how is the fee determined?

8. Does your institution offer common trust funds for investment of trust accounts? If your institution has a separate fee schedule for such trusts, please indicate in what manner it is different.

9. If your institution has raised its fees since July 1, 1982, would you care to give a reason for the increase?

10. Feel free to make any additional comments concerning your institution's trust fees or the fees charged by other corporate trustees.

The responses are detailed in the attached exhibit which follows the order of the above questions. The information is generally coded by an ID number so that you can track certain data from a given trustee. However, most textual responses have not been identified even by an ID number because the information was sought on an assurance that the names of a responding institutions would not be disclosed nor otherwise identified.

The following analysis compares fees that apply to stock in a trust where the trustee has investment responsibility. Fees that apply to other situations are noted in the exhibit for many of the corporate trustees.

1. What percentage fees (based on estate value or other basis) did your institution charge for administering a trust on July 1, 1982, and on July 1, 1987?

Fifteen of the eighteen corporate trustees for which we have both 1982 and 1987 fee data raised their fees. Two common methods are by increasing the percentage fee that applies to a given bracket and by increasing the ceiling of a bracket to which a higher percentage applies. (As for small trusts, higher fees also result when minimum fees are increased. See the discussion under question #2 below.)

For example, corporate trustee #15 increased the fee on the first \$1,000,000 from .8% to 1.15% and also increased percentages on higher brackets. As a consequence, the fee on a \$500,000 trust jumped from \$4000 to \$5750, representing a 43.8% increase. On a \$10,000,000 trust, the fee jumped from \$33,000 to \$49,500, representing a 59.1% increase. At the same time, this trustee increased its minimum fee from \$1200 to \$3000, so that a \$100,000 trust, which is subject to the minimum fee in either year, saw a 150% increase.

For example, corporate trustee #10 combined its first and second fee brackets, eliminating the .75% applicable in 1982 to amounts from

\$250,000 to \$1,000,000 in favor of the 1% fee on the first \$1,000,000 in 1987. In other respects, the brackets and percentages stayed the same. The effect on a \$500,000 trust is that fees increased from \$4375 to \$5000, up 14.3%. On a \$10,000,000 trust, the increase is from \$40,625 to \$42,500, up 4.6%. Corporate trustee #10 also increased its minimum fee from \$1300 to \$3000, representing a 130.8% increase for a \$100,000 trust that is subject to the minimum fee in both years.

Table 1 shows the change in the ad valorem percentage fee applicable to the first bracket of securities value where the trustee has full management responsibility. The size of the first bracket, i.e., the amount to which the percentage applies, is disregarded in Table 1. (In 1982, first brackets ranged from \$250,000 to \$2,000,000 or were unlimited. In 1987, first brackets ranged from \$500,000 to \$3,000,000 or were unlimited.) Table 1 includes only those corporate trustees for which we have information from both years.

Table 1

<u>Changes in First Bracket Percentage Rates</u> [Through #24, 09/16/87]			
<u>ID#</u>	<u>1982 %</u>	<u>1987 %</u>	<u>% Change</u>
1	0.75	0.75	0%
2	1.0	1.0	0%
3	1.0	1.0	0%
9	1.0	1.0	0%
10	1.0	1.0	0%
16	1.0	1.0	0%
22	1.0	1.0	0%
23	1.0	1.0	0%
4	0.725	0.8	10.3%
11	0.75	0.875	16.7%
12	0.75	0.9	20.0%
13	0.9	1.1	22.2%
17	0.8	1.0	25.0%
18	0.8	1.0	25.0%
6	0.75	1.0	33.3%
21	0.75	1.0	33.3%
24	0.75	1.0	33.3%
15	<u>0.8</u>	<u>1.15</u>	43.7%
AVG:	0.863	0.976	- 13.2%
		AVG % Change:	14.6%

The overall magnitude of the increase in percentage fees can be judged by the averages at the end of Table 1. The first average figure (13.2%) is the percentage increase of the 1987 average rate over the 1982 average rate. The second average figure (14.6%) is the average of the percentage increases in the fourth column. It should be remembered that fees may also increase by means of an increased minimum or an increase in the amount included in the bracket. Four out of the seven trustees showing no increase in Table 1 used one or both of these methods to increase fees. Corporate trustees that were not in business in 1982 have all adopted the 1% rate for their first brackets.

Table 2 illustrates the average effect of changes in percentage fees for trusts of different sizes. This table is based on the rates applicable to fully managed trusts consisting of securities.

Table 2

<u>Percentage Fee Changes (with applicable minimum fees)</u>			
[Through #24, 09/16/87]			
<u>Trust Amount</u>	<u>1982</u>	<u>1987</u>	<u>% Change</u>
\$50,000	\$1535	\$2923	90.4%
\$100,000	\$1622	\$2944	81.5%
\$200,000	\$2278	\$3256	42.9%
\$500,000	\$4587	\$5629	22.7%
\$1,000,000	\$8080	\$9884	22.3%
\$10,000,000*	\$53,379	\$56,737	6.4%

*\$10,000,000 trusts do not reflect "negotiable" rates.

The fourth column in Table 2 indicates the impact of fee changes over the past five years on smaller trusts as compared to larger trusts. As shown by Table 2, the percentage change is quite dramatic for a small trust when the effects of minimum and percentage fee changes are considered.

2. What was your institution's minimum annual fee for administering a trust on July 1, 1982, and on July 1, 1987?

Fifteen out of the eighteen corporate trustees for which we have data from both 1982 and 1987 raised their minimum fees. Two corporate trustees (#1 & # 23) kept their minimum fee the same; another (#4)

reduced its minimum fee from \$1900 to \$1200. Changes in minimum fees are summarized in the following table:

Table 3 shows the change in minimum fees by the 18 corporate trustees for which we have 1982 and 1987 data. (These tables are based on the rates applicable to fully managed trusts consisting of securities.)

Table 3

<u>Minimum Fee Changes</u>			
[Through #24, 09/16/87]			
<u>ID#</u>	<u>1982</u>	<u>1987</u>	<u>% Change</u>
4	\$1900	\$1200	-36.3%
1	\$750	\$750	0%
23	\$750	\$750	0%
11	\$750	\$1000	33.3%
12	\$700	\$950	35.7%
22	\$1000	\$1750	75.0%
16	\$2000	\$3500	75.0%
3	\$800	\$1500	87.5%
6	\$375	\$750	100.0%
2	\$500	\$1000	100.0%
17	\$750	\$1500	100.0%
18	\$1000	\$2000	100.0%
9	\$11,500	\$25,000	117.4%
10	\$1300	\$3000	130.8%
15	\$1200	\$3000	150.0%
21	\$750	\$2000	166.7%
13	\$1000	\$3000	200.0%
24	\$600	\$2000	233.3%
AVG:	\$1535	\$3036	→ 97.8%
		AVG % Change:	92.7%

The following averages eliminate the effect of trustee #9 whose minimum fees are very high:

AVG:	\$949	\$1744	→ 83.9%
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The following averages include the six trustees for which we have 1987 data, but not 1982 data:

AVG:	\$1535	\$2923	→ 90.4%
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The average minimum fees of the six corporate trustees for which we have only 1987 data is \$2583; their fees range from \$1500 to \$3500. As noted earlier, these new corporate trustees all set their first bracket percentage fees at 1%. This data does not support the argument that companies entering into the market in recent years have a downward effect on fees. These six trustees have not challenged the trend in first bracket rates from .75% to 1% and their average minimum fees are 43.8% higher than the average minimum fees of the other trust companies (excluding the \$25,000 fee of trustee #9).

A \$100,000 trust in 1982 was subject to the minimum fee of 12 out of 18 corporate trustees (67%). By 1987, a \$100,000 trust is subject to a minimum fee in 22 out of 24 cases (92%).

A \$200,000 trust in 1982 was subject to the minimum fee in 3 out of 18 cases (17%). By 1987, it is subject to the minimum fee in 13 out of 24 cases (54%).

3. Are your standard fee schedules subject to negotiation on an individual account basis? What considerations determine whether a negotiated fee is available?

Larger trusts (i.e., over \$1,000,000, \$2,000,000, or \$5,000,000, depending on the trustee) may be large enough to negotiate a lower percentage fee, depending on the duties and risks undertaken. In 1982, only 3 out of 18 fee schedules provided that fees for trusts over \$1,000,000 or \$5,000,000 were subject to agreement. As of 1987, 9 out of 24 fee schedules provide for negotiation for larger trusts.

4. Estimate the percentage of your living and testamentary trust accounts in which your institution:

- (a) Charges less than your standard fee schedule.**
- (b) Charges more than your standard fee schedule (excluding fees for extraordinary services).**

Estimates of the percentage of accounts in which less than the standard fee schedule is charged ranged from none to 40%. Almost all respondents reported that no accounts are charged more than the standard fee schedule (ignoring fees for extraordinary services). Two reported that less than 1% were charged over the standard fee.

5. *Does your institution charge additional fees for extraordinary services? If so, please estimate what percentage of your accounts was charged an additional fee in 1986 and characterize the types of services that typically result in an additional fee.*

All institutions appear to charge additional fees for certain services. We do not have sufficient information to determine whether in 1987 services are charged separately that in 1982 were included in the standard fee. Remarks of several attorneys who responded to the questionnaire on corporate trustees' fees indicate their perception that extraordinary fees are being charged more frequently now than five years ago. (See the Summary and Analysis of Attorney Questionnaire.)

6. *As to trusts where your institution charges additional fees for extraordinary services, what is the average percentage by which the fees actually charged exceed the applicable ~~minimum~~ or basic percentage fees?*

Most corporate trustees did not, or were unable to, answer this question. Three trustees that answered this question reported that extraordinary fees added .25%, .6%, and 3.5%, respectively, to the base fee.

7. *Does your institution charge sweep fees? If so, how is the fee determined?*

The corporate trustees who answered this question overwhelmingly reported that they did not charge sweep fees. Three trustees reported charging sweep fees of 1% on money market accounts, of .001% per day, and of 1¢ per thousand of cash balance, respectively.

8. *Does your institution offer common trust funds for investment of trust accounts? If your institution has a separate fee schedule for such trusts, please indicate in what manner it is different.*

Eight out of 21 who responded do not offer common trust funds. Most corporate trustees who offer common trust funds apply a lower percentage or minimum fee.

CORPORATE TRUSTEE FEE INFORMATION

Note. The information in this exhibit is keyed to the questions set out in the memorandum to which it is attached. The full text of the relevant question as submitted to the corporate trustees is set out in the memorandum.

Question #1. Percentage fees (on managed accounts, based on fair market value unless otherwise stated):

<u>ID #</u>	<u>Percentage fees in July 1982</u>	<u>Percentage fees in July 1987</u>
#1.	.75% 1% on income producing real property	Same
#2.	1% on first \$500,000 .75% on \$500,000 to \$1,000,000 .5% over \$1,000,000 [.3%, .2%, & .1% respectively on custodial accounts]	Same
#3.	Not reported--may be the same	1% on accounts less than \$225,000 in liquid securities or mutual funds. <u>Over \$225,000 or individual securities:</u> .66% on first \$500,000 .5% on \$500,000-\$1,000,000 .4% on \$1,000,000-\$2,000,000 .2% over \$2,000,000 Separate real estate schedule
#4.	.725% on first \$1,000,000 of securities in managed account .3 in non-managed account [.7% & .25% respectively on custody accounts] Mutual agreement over \$1,000,000 Real estate subject to agreement	.8% on first \$1,000,000 of securities in managed account .4 in non-managed account [.8% & .4% respectively on custody accounts] Mutual agreement over \$1,000,000 Real estate subject to agreement
#5.	Not in business	1% on first \$1,000,000 .75% on \$1,000,000-\$3,000,000 .65% on \$3,000,000-\$5,000,000 Negotiable over \$5,000,000 Separate real estate schedule
#6.	.75% on first \$1,000,000 .5% on \$1,000,000-\$2,000,000 .25% over \$2,000,000	1% on first \$1,000,000 .8% on \$1,000,000-\$2,000,000 Negotiable over \$2,000,000 [.6% & .4% respectively on self-directed accounts]

#7. Not in business

1% on first \$1,000,000
.75% on \$1,000,000-\$5,000,000
.5% over \$5,000,000

#8. Not given

1% on first \$1,000,000
.6% on \$1,000,000-\$1,500,000
.4% on \$1,500,000-\$2,000,000
.3% over \$2,000,000
Trustor residence \$150
Improved real property 1%
Unimproved real property .5%
On directed accounts:
.5% on first \$1,000,000
.3% on \$1,000,000-\$3,000,000
.2% over \$3,000,000
.3% over \$2,000,000

#9. Individual securities:

1% on first \$2,000,000
.75% on \$2,000,000-\$5,000,000
.55% on \$5,000,000-\$50,000,000
.275% over \$50,000,000

Inv't co. advised by trustee:

.5% on first \$2,000,000
.35% on \$2,000,000-\$5,000,000
.25% on \$5,000,000-\$50,000,000
.15% over \$50,000,000

Income producing real property:
1%

Nonincome producing: \$300 + .1%
Other assets as quoted

Individual securities:

1% on first \$3,000,000
.75% on \$3,000,000-\$5,000,000
.55% on \$5,000,000-\$50,000,000
.275% over \$50,000,000

Inv't co. advised by trustee:

.5% on first \$3,000,000
.375% on \$3,000,000-\$5,000,000
.275% on \$5,000,000-\$50,000,000
.225% over \$50,000,000

Income producing real property:
1.5%

Nonincome producing: \$500 + .15%
Other assets as quoted

#10. Securities, cash equivalents,
notes, mortgages, partnerships:

1% on first \$250,000
.75% on \$250,000-\$1,000,000
.5% on \$1,000,000-\$5,000,000
.25% over \$5,000,000

Separate real estate schedule

No investment responsibility:

.5% on first \$250,000
.375% on \$250,000-\$1,000,000
.25% on \$1,000,000-\$5,000,000
.125% over \$5,000,000

Securities, cash equivalents,
partnerships:

1% on first \$1,000,000
.5% on \$1,000,000-\$5,000,000
.25% over \$5,000,000

Separate real estate schedule

No investment responsibility:

.5% on first \$1,000,000
.25% on \$1,000,000-\$5,000,000
.125% over \$5,000,000

#11. .75% on first \$500,000

.5% on \$500,000-\$1,000,000
.375% on \$1,000,000-\$5,000,000
Quotation over \$5,000,000

Managed real property: 1%

Title held on real property: .5%

.875% on first \$500,000

.625% on \$500,000-\$1,000,000
.5% on \$1,000,000-\$5,000,000
Quotation over \$5,000,000

Managed real property: 1%

Title held on real property: .5%

#12. Living trusts:

.75% on non real estate
Income producing real property: 1%
of value or 5% of income
Residence: .1%

Accounts:

.75% on first \$200,000
.625 on \$200,000-\$400,000
.5% on \$400,000-\$600,000
.375% on \$600,000-\$800,000
.25% over \$800,000

Testamentary trusts:

.75% on bonds, stocks, savings
accounts, & cash
1% on other

#13. Living trusts:

Personal property:

1.2% on first \$100,000
1.1% on \$100,000-\$250,000
1% on \$250,000-\$500,000
.8% on \$500,000-\$1,000,000
.6% on \$1,000,000-\$2,000,000
.5% over \$2,000,000

Testamentary trusts:

Personal property:

.9% on first \$1,000,000
.6% on \$1,000,000-\$8,000,000
.5% over \$8,000,000

Real property:

6%-10% of gross income based on
time and complexity

Tax services:

\$55/hour, \$125 minimum

#14. Not in business

.9% on first \$500,000
.75% on \$500,000-\$1,000,000
.5% on \$1,000,000-\$1,500,000
.4% over \$1,500,000
Managed real property: 1%
Title held on real property: .5%
\$250 annual general service fee

No investment discretion:

25% discount

No extraordinary services fee

Personal property:

1.1% on first \$500,000
1% on \$500,000-\$1,000,000
.95% on \$1,000,000-\$2,000,000
.9% on \$2,000,000-\$3,000,000
.8% on \$3,000,000-\$4,000,000
.75% on \$4,000,000-\$6,000,000
.6% over \$6,000,000

Real property: 1.25%

Tax services:

\$65/hour, \$250 minimum

1% on first \$1,000,000
.75% on \$1,000,000-\$2,000,000
.375% over \$2,000,000

Oil & gas properties:

5% of gross proceeds on royalty
interest

5% on gross proceeds & expenses
paid on working interests

Real estate:

6% of gross rents collected
6% of annual collections for
servicing mortgages

- | | |
|--|--|
| <p>#15. .8% on first \$1,000,000
 .6% on \$1,000,000-\$2,000,000
 .3% on \$2,000,000-\$5,000,000
 .2% over \$5,000,000</p> <p>#16. 1% on first \$1,000,000
 .8% on \$1,000,000-\$3,000,000
 .6% over \$3,000,000</p> <p>#17. <u>Living trusts:</u>
 .8% if investment responsibility
 .375% if not</p> <p><u>Testamentary trusts:</u>
 .8%</p> | <p>1.15% on first \$1,000,000
 .8% on \$1,000,000-\$2,000,000
 .5% on \$2,000,000-\$5,000,000
 .3% over \$5,000,000</p> <p>1% on first \$1,000,000
 .8% on \$1,000,000-\$3,000,000
 Negotiable over \$3,000,000</p> <p><u>Investment responsibility:</u>
 1% on first \$1,000,000
 .8% on \$1,000,000-\$5,000,000
 Negotiable over \$5,000,000</p> <p><u>No investment responsibility:</u>
 .5% on first \$1,000,000
 .375% on \$1,000,000-\$5,000,000
 Negotiable over \$5,000,000</p> <p><u>Real property:</u> 6%-10% gross
 income as alternative fee</p> |
| <p>#18. <u>Investment responsibility:</u>
 .8% on first \$1,000,000
 .4% over \$1,000,000
 Real property: 1%</p> <p><u>No investment responsibility:</u>
 .35% on first \$1,000,000
 .2% over \$1,000,000</p> | <p><u>Investment responsibility:</u>
 1% on first \$1,000,000
 .8% on \$1,000,000-\$2,000,000
 .7% over \$2,000,000
 Real property: .25% plus 3%-10%
 of gross income depending on
 type of property</p> <p><u>No investment responsibility:</u>
 .45% on first \$1,000,000
 .35% on \$1,000,000-\$2,000,000
 .2% on \$2,000,000-\$4,000,000
 .16% over \$4,000,000</p> |
| <p>#19. Not in business</p> | <p>1% on first \$200,000
 .8% on \$200,000-\$500,000
 .7% on \$500,000-\$1,000,000
 .4% on \$1,000,000-\$5,000,000
 Real property: 1% for full
 managment; \$100 for title
 holding</p> |
| <p>#20. Not in business</p> | <p>1% on first \$1,000,000
 .75% on \$1,000,000-\$2,000,000
 .5% over \$2,000,000</p> |

#21. Living trusts:

.75% on first \$500,000
.5% on \$500,000-\$1,000,000
.4% on \$1,000,000-\$2,000,000
.3% on \$2,000,000-\$4,000,000
.2% over \$4,000,000

Testamentary trusts:

.75% on first \$500,000
Negotiable over \$500,000

Real property:

.75% on first \$500,000
Negotiable over \$500,000

Common trust funds:

.7% on first \$300,000
.5% on \$300,000-\$500,000
.4% over \$500,000

#22. 1% on first \$750,000

.6% on \$750,000-\$1,500,000
.4% on \$1,500,000-\$2,000,000
.3% over \$2,000,000

Income real property:

1%

Common trust funds:

.75% on first \$250,000
.6% over \$250,000-\$500,000
.5% over \$500,000

Annual fee increased \$300 for
management subject to approval or
when acting as cofiduciary

#23. 1% on first \$500,000

.75% on \$500,000-\$1,000,000
.6% on \$1,000,000-\$2,000,000
.5% on \$2,000,000-\$3,000,000
Negotiable over \$2,000,000

#24. .75%

1% on first \$1,000,000

.75% on \$1,000,000-\$2,000,000
.6% on \$2,000,000-\$3,000,000
.5% on \$3,000,000-\$4,000,000
.3% over \$4,000,000

Common trust funds:

10% discount on above

Real property:

1% on income property;
negotiable on vacant residential

1% on first \$1,000,000

.7% on \$1,000,000-\$2,000,000
.4% on \$2,000,000-\$3,000,000
Negotiable over \$3,000,000

Nonincome real property:

\$300

Common trust funds:

.8% on first \$1,000,000
.5% over \$1,000,000

Annual fee increased \$500 for
management subject to approval
or when acting as cofiduciary

Same

1% (.3% if no investment
responsibility)

Trustor residence:

\$200

Annual fee increased \$300 for
advisory or consult account

Question #2. Minimum annual fees (fully managed unless otherwise indicated):

<u>ID #</u>	<u>Minimum fees in July 1982</u>	<u>Minimum fees in July 1987</u>
#1.	\$750	\$750
#2.	\$500	\$700 if invested in institution "products", otherwise \$1000
#3.	\$700-800	\$1200-\$1500
#4.	\$1900 for managed accounts \$950 for non-managed accounts	\$1200 for managed accounts \$950 for non-managed accounts
#5.	Not in business	\$3000
#6.	\$375	\$750
#7.	Not in business	\$3000
#8.	"Not available"	\$2000 for managed accounts \$1000 for directed accounts
#9.	\$10,000 for administrative & investment services \$1500 account maintenance charge for each account or sub-account	\$25,000 for individual securities investment \$10,000 for investment companies advised by trustee \$2000 maintenance charge for some sub-accounts
#10.	\$300 administration fee \$1000 for securities, etc. No investment responsibility: same	\$500 administration fee \$2500 for securities, etc. No investment responsibility: \$500 administration fee \$1500 for securities, etc.
#11.	\$750	\$1000
#12.	\$700	\$950
#13.	\$1200 for living trust \$1000 for testamentary trust	\$3000 (including \$500 base fee) Less on smaller accounts based on "rule of thumb that fee should not exceed 30% of income"
#14.	Not in business	\$3500
#15.	\$1200	\$3000
#16.	\$2000	\$3500
#17.	\$750	\$1500 Related accounts \$750 each

#18. \$1000	\$2000
\$750 if no investment responsibility	\$1200 if all common trust fund
	\$1000 if no investment responsibility
#19. Not in business	\$1500
#20. Not in business	\$2500
#21. \$750	\$2000
\$500 for common trust fund	\$1200 for common trust fund
#22. \$1000	\$1750
\$750 for common trust fund	\$1000 for common trust fund
#23. \$750	\$750
#24. \$600	\$2000
	\$1000 if no investment responsibility

Question #3. Negotiability:

#1. "Accounts over \$2,000,000 would be considered for a sliding fee reduction dependent on nature of assets and individual account considerations."

#2. "No, most of the time, only negotiation to the fee schedule would be where a client has a large concentration of single assets."

#3. "Not generally. Negotiated fees are only used when accounts are sufficiently different in responsibility than our customary duties."

#4. "Our standard Fee Schedules are only subject to negotiation when there are unusual incidences insofar as an account is concerned, i.e., if an account of \$1,000,000 might have one large holding, say worth half a million, one company, i.e. General Motors. For accounts over \$1,000,000 our fees are subject to mutual agreement and usually involve a graduated scale sliding downward."

#5. "No"

#6. "Standard fee schedules are negotiated for accounts valued at \$2,000,000 or more. Special concessions apply in the case of investment concentrations."

#8. "[S]tandard schedules are subject to negotiation based on the total size, complexity, and anticipated activity of the account."

#9. "Our standard fee schedules are generally not subject to negotiation on an individual account basis. We would consider negotiating on fees only in the case of an extremely large account (e.g. \$100 million +)."

#10. "Yes; the size of the account, the property held in it and multi-account relations."

#11. "Yes, but only for either very large accounts or a group of accounts for the same group of beneficiaries. Occasionally a special fee will be negotiated for a client who has a strong relationship with other areas of the bank."

#12. "Charges of Trust Services cannot be completely standardized because of variations in the type of property placed in trust, the particular duties involved in administration, and the characteristics and needs of the individuals involved. The standard fees are intended to indicate the compensation which the Bank will probably receive under normal conditions, but it is to be expected that in a certain number of cases there will be variations because of unusual circumstances and duties. Each fee schedule is based on current estimates of the cost of rendering the various services and may be subject to revision from time to time after giving consideration to the then current cost of operation."

#13. Institution "standard fee schedules are subject to negotiation on an individual account basis. In determining whether a negotiated fee would be appropriate, consideration is given to a number of factors, including: Account size; complexity; nature of assets; and, other account relationships."

#14. "For the very large accounts, we would negotiate the fee."

#15. "Yes -- size of account, type of assets, block holdings."

#16. "The standard fees are subject to negotiation on an individual account basis. Some of the considerations which determine whether or not a negotiated fee will be applied to a particular account include the size of the account, i.e. over \$3,000,000, or substantial concentrations of a particular assets such as an individual security holding or a private company holding comprising a large portion of the portfolio."

#17. "Fee schedules are sometimes negotiated on an individual account basis dependent upon anticipated volume, number and type of assets and the complexity of the assets."

#18. "Yes. The main considerations are size of account, complexity of assets and overall administration, and other trust accounts with same individuals or his family members."

#20. "Standard fee schedules are subject to negotiation on individual accounts. We take into consideration size of the account and the existing relationship of the client with [the institution]."

#22. "Yes, the [institution] negotiates fees on all accounts in excess of \$3 million. In addition, minimum fees are often reduced where service is needed on smaller accounts and the standard minimum fee would represent a disproportionate amount of the trust's income."

#23. "They are not subject to negotiation."

Question #4. Percentage of accounts under or over standard schedule:

<u>ID #</u>	<u>Under standard fees</u>	<u>Over standard fees</u>
#1. None		None
#2. 1%		None
#3. Less than %1		None
#4. 20%		None
#5. None		None
#6. Less than 1%		None
#8. 5%		None
#9. None		None
#10. 24% testamentary trusts 14% private trusts		None
#11. Approximately 5%		None
#12. Estimated at 10%		None
#13. Estimated at 25%-30%		Estimated less than 1%
#14. Less than 1%		None
#15. 40%		None
#16. Estimated at 19%		None
#17. Estimated at 10%-15%		Estimated at less than 1%
#18. "11.5% or 285 accounts including 69 accounts for charitable organizations which enjoy a 20% fee discount as a matter of policy"		None
#20. "N/A due to newness of Trust Department"		"N/A due to newness of Trust Department"
#21. Estimate 15%-20%		None
#22. 30%-35%		None
#23. None		None

Question #5. Additional fees for extraordinary services:

- #1. "Less than 5%. Additional fees charged when extraordinary services and administrator times warrant."
- #2. "YES, less than 1%, sale of Real Estate, Personal Property, and litigation."
- #3. "Yes. The number of accounts being billed for these services was 1-3% of the total. Services for which accounts were billed extra are usually 'bill paying, handling securities transactions that are not part of the account and litigation.'"
- #4. "Generally speaking, we do not charge extraordinary fees for services rendered. To the best of my recollection, we have only done so in perhaps two or three incidences since our bank was organized."
- #5. "Yes. Real Estate transactions buying or selling on an hourly rate of \$75.00 per hour, etc. In 1986 none of the Living Trusts were charged extraordinary fees."
- #6. "Fees are charged for extraordinary services at a rate of \$75 per hour. Perhaps 5% of accounts were charged for extraordinary services during 1986. The typical reason for additional fees will be excessive client demand for consultation or for discretionary requests."
- #7. "For extraordinary services, such as may be provided in the administration of real estate and services incident to taxation or litigation, a reasonable compensation as determined upon providing such services."
- #8. "Extraordinary fees are billed at the rate of \$75 per hour, as noted on our fee schedule which is enclosed. These fees are billed primarily for real estate transactions, including negotiations for property lease, sale, and specific on-site property management. In 1986, extraordinary fees were charged to approximately 10% of . . . administered accounts."
- #9. "We charge additional fees for extraordinary services, typically tax-related services; 90% of our accounts elect to use this type of service."
- #10. "Yes. About 75% of our trust accounts were charged an extraordinary fee in 1986. These charges were primarily for the preparation of fiduciary income tax returns, death tax returns and additional services rendered in real estate management."
- #11. "Yes, rarely. Most extraordinary fees relate to probates. Less than 2% of accounts have them, usually for extra tax work. We currently do not charge for fiduciary returns but this will change later this year."
- #12. "We estimate not more than 10% of our accounts were charged an extraordinary fee in 1986."

"What constitutes extraordinary services is a matter of judgment but it would include those acts of a trustee over and above what would be considered normal for the account in question.

"The following includes those services that may be considered as eligible for additional compensation when determining the fee for any trust:

- A. Discretionary Payments.
- B. Payment of bills for beneficiaries under disability.
- C. Additional duties re death of trustor or beneficiary.
- D. Termination of account due to death or by the terms of the agreement.
- E. Revocations involving substantial or complicated distributions.
- F. Transfer of trust property to a Successor Trustee.
- G. Investigation, valuation and/or sale of closely held companies, or interests therein.
- H. Time consuming problems regarding the trust requiring excessive correspondence, meetings, etc.
- I. Sale or acquisition of real property.
- J. Lease negotiations.
- K. Tax preparation re: Death taxes, fiduciary tax returns.
- L. Payroll quarterly returns.
- M. Large or complex real estate holdings.
- N. Major repair or reconstruction projects."

#13. Institution "charges additional fees for extraordinary services. The percentage of accounts charged an additional fee in 1986 is not information readily available However, it is estimated 10% of the gross fees taken in 1986 were for extraordinary services rendered to the subject trust accounts. The types of services that typically result in an additional fee include: Sale or purchase of real and tangible personal property; negotiation of real estate leases, loans and repairs; management, sale of purchase of closely held business interests; and, complex security assets that require specialized handling."

#14. "In testamentary and living trusts, we do not charge extraordinary fees. We do charge \$200 annually for a tax letter."

[Fee explanation also noted that in "special situations charges based on work performed."

#15. "Yes -- 10% -- Additional professional time spent on individual situations, i.e. property transactions, closely-held business, etc."

#16. Institution "cannot estimate the percentage of accounts charged an additional fee in 1986. Typical services which can generate an additional fee to a particular trust include the sale or exchange of real estate, particularly active involvement in the management of commercial real estate, or active management of a private company holding."

#17. "Estimate less than 5% of our accounts were charged an extraordinary fee in 1986. Generally such fees are for real estate sales, sales of businesses, or unusual asset management problems."

#18. "Yes. Not including fees for tax services (preparation of fiduciary tax and payroll returns) or real estate services (sales, leases, repairs or improvement supervision), the extraordinary fees we charged in calendar 1986 were \$50,000 on a base of \$7,337,000, or 6/10ths of 1%."

#19. "Additional charges may be made for assets and activities not listed above, including all tax work and discretionary payments."

#20. Institution "charges additional fees for extraordinary services. Balance of question does not apply."

#21. Institution "does charge additional fees for extraordinary services. Approximately 85% to 90% of accounts are charged an extraordinary fee for tax service in preparation and filing of fiduciary tax reports. Putting aside this fee, I have insufficient data to comfortably support any estimate of what percentage of the accounts were charged an additional fee in 1986. The areas developing extraordinary fees generally fall in those accounts holding real estate requiring special services. With this premise in mind, I would suggest that percentage would be less than 20%."

"Typical extraordinary services include:

- a. Real estate sales and leases.
- b. Major remodeling, fire damages settlement, unlawful detainer, etc.
- c. Litigation.
- d. Death tax services.

#22. "Yes -- 6% to 8% of total accounts. Extraordinary fees are charged for unusual services such as time consuming real estate repairs, lease negotiations, special sales of real estate and real estate development. Extraordinary fees are also charged for tax services and unusual use of trust administrative time."

#23. "3%+ -- usually for the sale of real estate an extraordinary time spent on the case."

#24. "Reasonable compensation is chargeable for any additional or extraordinary services rendered including travel, special disbursements, preparation of fiduciary returns based on time and out of pocket expense."

Question #6. What percentage extraordinary over standard:

#1. .25%

#2. "Our extraordinary service fees are charged on an hourly basis only, not a percentage of assets. Small amounts have been charged in the past." [This respondent did not understand the question.]

#3. "Not sure."

- #4. Unable to answer; occurrence too rare.
- #5. None
- #6. "In cases where fees for extraordinary services were charged, they exceeded the standard or minimum rate by less than 5%."
- #8. \$75 per hour charge, when required. \$35 per hour for clerical services.
- #9. "Approximately 3.5%."
- #10. "Our fiduciary income tax service charge exceeds our minimum fee by approximately 8%. We do not maintain records indicating the average percentage by which extraordinary real estate fees exceed our minimum fee."
- #11. Data unavailable.
- #12. "Each trust is reviewed individually for extraordinary fees based on the size of the trust, fees and profitability. It would be difficult to give you an average percentage by which the fees actually charged exceed the minimum or basic percentage fees because of various factors involved in each trust."
- #13. Data "not readily available."
- #14. "N/A"
- #15. "N/A"
- #16. "Fees for additional services are typically for a specific service as delineated in the answer to question number 5. They are normally computed at an hourly rate or on some other logical measure. The fees for additional services bear no relation to either the percentage or minimum fees charged for a particular account."
- #17. "Minimal, dependent upon the type of services rendered, time involved and results achieved."
- #18. .6%
- #20. "We do charge extraordinary fees, although no extraordinary fees have yet been charged."
- #21. "I am unable to gather adequate, reliable data to support any estimates of what average percentage by which extraordinary fees actually charged exceed the applicable or minimum basic percentage fees. The average \$250.00 to \$275.00 tax service fee is certainly less than the ongoing management fee, so this leaves again, real estate extraordinary fees, most of which are for sales and leases which would leave the percentage figure you request at a very low number."
- #22. 5%-8%

Question #7. Sweep fees:

- #1. No.
- #2. No.
- #3. No.
- #4. No.
- #5. "Not on accounts where we have sole management responsibility."
- #6. No.
- #8. "[D]oes not charge sweep fees for its cash management services."
- #9. "Sweep fees are included in our standard fee schedules."
- #10. No.
- #11. "Yes, 1% of monthly income on money market accounts subject to sweep."
- #12. No.
- #13. Institution "does charge a cash sweep fee. . . . [T]he cash sweep charge is 1 cent per day per \$1,000 of invested balance." [Equal to .001% rate/day.]
- #14. No.
- #15. No.
- #16. Institution "does not charge sweep fees on fully managed testamentary or living trusts."
- #17. "No sweep fees are charged even though all cash earns interest on a daily basis."
- #18. No.
- #20. "No sweep fee is charged, although one is under consideration."
- #21. Institution "does not charge sweep fees."
- #22. "No."
- #23. "Yes. 01^c per thousand of cash balance."

Question #8. Common trust funds:

- #1. No.

#2. No.

#3. No.

#4. "We do not believe in, and therefore do not offer, common trust funds for customers."

#5. "Yes. See attached fee schedule." [Schedule did not refer specifically to common trust funds.]

#6. No.

#8. "Common trust funds are available for the management of trust investment. There is no separate fee schedule for trust funds, as they are included under the fees quoted in our managed investment accounts. Trust fees are reduced by 25% for accounts that are invested entirely in common trust funds."

#9. "We do not offer common trust funds for accounts. However, we do offer a family of investment companies managed by an affiliate . . . when authorized by a co-fiduciary or co-investment advisor, provided the pertinent document does not prohibit such an investment."

#10. "Yes. We do not have a separate fee schedule for Common Trust Fund accounts; however, for accounts under \$60,000 market value we do not charge a minimum fee but charge 1% of market value plus an annual administration fee of \$300."

#11. No.

#12. "We do offer Common Trust Funds for investment in trust accounts but we do not have a separate fee schedule for Common Trust Funds."

#13. Institution "does not offer common trust funds. There is no separate fee schedule for accounts invested in common trust funds."

#14. "We do offer Common Trust Funds. Annual fees are the same, but minimum fee is \$2,500."

#15. "Yes -- lower minimum fee only for trusts 100% invested in collective investment funds."

#16. Institution "offers common trust funds for the investment of its trust accounts. No fee is charged for the management of the funds themselves. The only fees are those charged at the account level. The fee schedule currently charged by [Institution] for fully managed trusts invested in its common trust funds is as follows:

First \$1,000,000 of asset value (per \$1,000)	\$10.00
Next \$2,000,000 of asset value (per \$1,000)	8.00
Balance of asset value (per \$1,000)	Negotiable
Minimum annual fee	\$2,000"

#17. "Common Trust Funds are utilized on a very limited basis and a separate fee schedule is not utilized."

#18. "Yes. On accounts where all assets are in common trust funds our annual fees are:

\$9 per \$1,000 on 1st \$1 million of asset value

\$5.50 per \$1,000 on all over \$1 million of asset value"

#20. Institution "offers several mutual fund families. We currently do not have a separate schedule for those funds."

#21. Institution "does offer and manages its own common trust funds for investment of trust accounts. See breakdown under question No. 1, i. e., 10% discount from ordinary fee schedule."

#22. "Yes. 8/10ths of 1% on first \$1 million, 5/10ths of 1% on the balance, minimum fee: \$1,000 per year."

#23. None.

Question #9. Reason for any increase since 1982:

No change.

Institution has "increased fees to our clients once in 7 years. Since that period of time, salaries and expenses have increased substantially, therefore fees have been adjusted accordingly."

"Yes, we raised minimum fees due to increase occupancy expenses, personnel expenses, depository charges, additional Federal regulatory tax reporting, shareholder communications compliance, higher data processing costs, improved investment management and on and on. Nothing is the same as 1982. Why should our fees stay the same?"

"We have raised certain fees in certain areas and lowered them in others, as you will note by the schedule. Where raises have occurred, we have tried to do so to reflect experience in those areas where we found additional work being involved, such as labor intensity type work in custody accounts, IRA plans and Keogh accounts."

"New fees were adopted effective March 1, 1987. Fees had not been reviewed for close to five years and the 1982 fee schedules were not reflective of current costs of doing business."

"Based on increased costs of doing business, . . . has instituted one across-the-board fee increase since 1982."

"Rising costs."

"To provide adequate compensation for services rendered."

"Increased overhead."

"[R]evised its Fee Schedule for Living/Testamentary Trust in January 1983, prior to that date it was in 1980."

"Traditionally, bank trust departments were not intended, nor operated, as profit centers. Consequently, the fees charged held little or no relationship to the cost or value of services actually rendered. (It hasn't been that many years ago, for example, that trusts were being accepted with flat fees of \$50 to \$100 per year.) The luxury of such an attitude has passed; to continue operating a business without an eye to the bottom line today would be irresponsible and intolerable to bank management and shareholders. Nationally, a profitable trust business for a successful financial institution should generate an after tax profit of 20% or better. . . .

"[This institution's] commitment to its trust customers is to provide the finest services available at a reasonable charge. To realize this commitment requires perpetual reinvestment in technological improvements to enhance customer service benefits and upgrading of personnel while containing costs (regulatory compliance, exposure to punitive damages claims and risk of environmental impairment liability, just to name a few)."

"Increased costs of doing business, esp. occupancy and personnel as well as increased expenditures on automation enhancements to improve service."

Institution "has increased its fees because the cost of doing business has increased in the five year period covered by this questionnaire. Salaries have increased, there have been costs for technological development, etc. Further, more regulatory responsibilities have been imposed on trustees, such as compliance with the Shareholders Communication Act."

"Our minimal fee increase in the last five years has resulted from increased costs primarily in the computer area and the salary and fringe benefit area. Our goal has been to continue to provide quality personalized service at a reasonable cost. We believe that our trust and investment fees are quite reasonable when compared to our competitors which include not only other bank trust departments but individual trustees, investment counselors, attorneys, CPAs, stock brokerage firms, insurance companies and mutual funds. We believe in view of the number of competitors in the trust industry that the free market system will continue to maintain trustee's fees at a reasonable level."

"Escalating personnel and other expenses. Salaries and benefits are 71.7% of our expenses."

"A compelling reason for raising fees since July 1, 1982 is to offset raising costs of doing business, i.e., salaries, office supplies, computer hardware, computer systems, rent, insurance, etc. An additional consideration for adjustment of fees is the recognition of increasing business risk. This addresses the increased litigious propensity of the public in general, couples with the added proclivity of the courts and juries to award damages (actual and punitive) predictably well in excess of what would have been reasonable in 1982."

"Increases in fees since 1982 have been necessary because of increases in the following: Rent, salary expense, cost of supplies,

telephone and telegraph charges, errors and omissions premiums, litigious business climate and all other expenses."

"N/A"

Question #10. Other comments:

"It seems we are expected to continue subsidizing the accounts by providing a high level of technical skills, and buying a lot of liability without being compensated correctly if we are put under statutory fees. If this is the case, I believe many smaller departments will be closed in favor of the giant departments who are generally less accessible and personal in delivering their services. We believe that the customer should choose the optimum level of service and price that best suits them. To artificially regulate this process will be a detriment to customers who will lose this choice. Rather than focusing in the issue of fees perhaps more needs to be done to facilitate the beneficiary's ability to change trustees without the litigation that is often necessary."

"We feel our fees are very fair in line with the personalized service we tend to provide within our community bank. We currently feel our schedule is very adequate, though at times we have certain concerns about the significant activity we have in custody accounts and I would anticipate at some point in time we may review our fees in that area."

"I do not feel that it is in the interest of our society to have any kind of legislative control over amounts of fees trustees may charge. I would much rather see the option for beneficiaries acting in concert to have the right to switch corporate trustees, if they feel fees are outlandish for work being performed. This type of effect would, I think, have the same influence on institutions who would keep fees at reasonable rates. If fees are legislated, I feel that the trend will be for everybody to charge the maximum and, in effect, justify it based upon the law . . . certainly in those instances of smaller sized accounts."

"We would strongly urge that the trust industry not be placed in a position of having its fees set by statute or regulation."

"The establishment of fees for compensation for providing trust services is a balance between the value of the service to the client and the cost of providing the service for the institution. Like any enterprise, profit is required for the institution to successfully offer the service today and remain in business to continue to offer the service in the future. It should be noted that many private trusts often have declining asset values, as withdrawals and distributions for the benefit of the trustors and/or beneficiaries often exceed the growth in assets made available through effective management. Consequently, as expenses rise through increases over time for rent, salaries, utilities, and taxes it is often necessary to evaluate the appropriateness of the current fee structure."

"The combination of an increase in minimum fees, coupled with a

decline in assets managed in a particular trust may result in what appears to be a large increase on a comparative basis. . . . [W]e are pleased that we have increased fees only once during the period of your study, and note that even at that time accounts were evaluated individually to ensure that the increase was warranted based on the activity in the account and its longevity"

"We believe that the free market system is the most effective means of insuring fees are not excessive."

Institution "has a strong belief in the effectiveness of the free market system to keep corporate trustee fees to reasonable levels over time.

"To validate the results of the corporate trustee fee survey requires comparison of fees charged by individual trustees to provide equivalent services (quantity and quality). [Institution] is of the that when the cost to provide all services (custody of assets, investment advice, trust accounting and tax preparation, etc.) has been aggregated, [institution's] charges will compare favorably."

"a. Non-bank providers of trust services should also be included in the survey.

"b. Survey should be expanded to cover non-California based institutions now opening offices in California."

Institution "believes that the fee increases it has made have been modest in light of the services currently available to customers. [Institution] now provides expanded investment opportunities to customers and has provided the most sophisticated technology available for the management of personal trust accounts."

"Speaking personally, I feel it is in the public interest that corporations be available to act as fiduciaries for all the traditional reasons -- continuing existence, impartiality, skilled staff and financial responsibility. The imposition of statutory trustee fees could reduce the number of corporations willing to provide fiduciary services and prevent others from entering the field. I believe market forces, combined with oversight by State and Federal regulatory agencies, will ensure that trustee fees are fair and that, at the same time, corporate fiduciaries remain viable."

"I am really concerned that you would think of legislation in the fee area. Let the market place govern trustee's fees. I know of two banks from Massachusetts and Illinois who will be soon opening trust companies in California with more to come after 1991. We are happy with the competition. If you wish to cap something, why not start on attorney's fees?"

Institution "has never refused to resign a trust position where it can be shown that the benefit or purpose of management services are outweighed by the size of our fee. Nor will [institution] remain as a fiduciary on an account where the majority (or only) beneficiary seeks our resignation in favor of a qualified (usually confined to corporate), competent successor. I suggest this philosophy is followed

by far and again the majority of corporate trustees.

"Asset management has become highly competitive with investment managers, financial planners, CPA's, brokers, insurance companies and even retail stores all offering management services with competitive fee structures.

"Before considering governmental controls, it would seem appropriate to compare these 'voluntary' fees with corporate trustee fees, after adding for the trustee's service and cost of:

- a. Custody of assets.
- b. Transaction reporting and asset accounting.
- c. Fiduciary risk.
- d. Services agreed upon within the trust document.

"Legislative or judicial control of fees, direct or indirect, will serve to generate mediocre service and investment performance -- the last result this commission should wish to recommend."

"Fees charged by corporate trustees have always been much lower than fees charged by other professionals rendering similar services. Obtaining the tax services, investment advice, accounting services and personal services all under one roof, that of a corporate trustee, for the sum of 1% is much less than what an individual would pay a CPA, an attorney, an investment advisory service and an accounting service. Fees are reasonable because service is very competitive and is offered by many institutions in each area.

"An increase in fees should be expected since the major expense of a trust operation (more than 50% to 65% of gross revenue) must be paid out of staff salaries."

"I believe there is more than sufficient competition in the market place to allow trustors and trust beneficiaries to seek and find a qualified banking institution to serve their trust needs, based both upon price and quality of service. I say this from the point of view of the manager of relatively small trust department, who enjoys the opportunity (which occurs frequently) of accepting successor trusteeships from the larger institutions because of perceived or actual per services and/or excessive fees. This experience is shared by my colleagues in 14 other relatively small trust departments located in both Northern and Southern California. Leave the problem to the market place. We appreciate the 'kind' efforts of Wells Fargo and others in sending new business to our smaller institutions."

Set-up and Wind-up Charges:

<u>ID #</u>	<u>Set-up charges</u>	<u>Wind-up charges</u>
#2.	\$200 for securities and cash; \$100 for non-owner occupied real property; no charge if inst. was executor	.2% of fair market value of property withdrawn plus pro rata annual fee

#5. \$300 acceptance fee	.5% fair market value excluding liabilities for property withdrawn; minimum fee of \$500 on final distribution or transfer to successor
#6. \$75 per hour	\$75 per hour
#7.	Out of pocket expenses to transfer account assets; minimum \$250
#8. \$150 plus \$30 per asset \$250 minimum	Revocable trust: \$150 plus \$30 per asset \$250 minimum Irrevocable trust: 1% of trust value \$300 minimum
#10.	\$100 + reasonable fee for transfer and delivery
#12.	Reasonable termination fee depending on duration of trust and effort and responsibility in terminating. Not to exceed 1%. Partial revocation fee of 1% for revocations in excess of 5%
#17. \$20 per securities issue \$75 per unit of real property, trust deed notes, contracts of purchase \$200 minimum	\$20 per securities issue \$75 per unit of real property, trust deed notes, contracts of purchase \$500 minimum Distribution: 1% of principal distributed to ultimate beneficiaries other than settlor
#18. \$25 per securities issue \$25 per note secured by trust deed \$250 minimum \$100 residence title holding \$200 nonresidence title holding	Revocable: \$25 per asset other than real property Irrevocable: 1%, \$150 minimum
#19. \$200 minimum plus transaction charges \$25 for stocks and bonds processed through depository environment; \$30 if physically handled	\$200 minimum for termination or revocation plus transaction charges \$25 for stocks and bonds processed through depository environment; \$30 if physically handled
#21. \$100 plus \$20 per security and \$100 per real estate, loans, mineral interests	\$500 plus per recipient, \$20 for securities and \$100 per real estate, loans, mineral interests

- | | |
|-------------------------------|----------------------------------|
| #22. \$250 minimum | Same as set-up fees on |
| \$25 per asset | termination; no charge for |
| \$100 for residence | principal distributions, except |
| \$150 for other real property | irrevocable trust where fee is |
| | 1% with \$300 minimum |
| #23. | \$150 for termination of account |
| | \$50 for distribution of assets |
| | \$100 for division of trust |
| | pursuant to terms |
| #24. \$250 minimum | \$250 minimum |

Miscellaneous Information:

#2. Charges \$20 for security transactions in non-managed accounts, \$150 per year for trustor or beneficiaries home if occupant is responsible for all maintenance and pays taxes and insurance. Income tax returns and appraisals at "usual and customary rates" for living trust.

#5. Extraordinary fee for "any unusual or extraordinary services rendered (e.g., matters involving litigation, foreclosures, valuations and reports, preparation of special documents, etc.); such compensation to be based upon Bank's best estimate of time involved at an hourly rate, and out-of-pocket expenses for special appraisals, attorneys fees and safekeeping services." [Note that no such fees had been charged living trusts during 1986.]

Additional charge for preparation of fiduciary tax returns required by state or federal law.

Standard fee provides for two quarterly statements and one annual valuation. Additional copies at \$7.50 per copy.

#6. Compensation of cotrustees is in addition to bank charges.

Fiduciary income tax returns prepared as necessary at an additional charge.

#10. "In 1982 we did not have a published testamentary trust fee schedule. These fees were subject to court approval and there were minor differences among them, depending on which court had jurisdiction."

#12. "If [institution] is a co-fiduciary, its fee shall not be diminished thereby, and the [institution] shall hold all property of the trust under its control and/or custody."

#17. "An additional reasonable Extraordinary Fee will be charged for the lease, rental, and sale of real estate."

#18. Tax returns: \$60/hour for private trusts, \$75/hour for charitable trusts

36 beneficiary related disbursements (12 for common trust fund accounts) included in annual fee. Each additional check or transfer is \$5.50.

Full investment responsibility (Consult) is \$500 more than full investment responsibility (Discretionary).

Reasonable compensation for the performance of unusual duties, such as real estate purchases or sales, litigation, business management, estate planning, etc.

#19. Directed payments other than monthly distribution to beneficiaries charged at \$3 per check.

#21. "All fees are based on fair market value of assets in each trust account. As do most major trust institutions, [institution] uses a pricing service for valuing security holdings. Our in-house real estate division appraises real property holdings at least annually for fee purposes. If the property is unique we may insist on an outside professional appraisal."

#22. First 36 payments per year of bill paying at no charge, more at \$20 per. Tax services at \$75/hour with \$75 minimum. Extraordinary services at \$75/hour for officers and administrators and \$35/hour for clerical staff. Statements more than quarterly at \$50/year and \$16 for more than 2 copies per statement. Same fee for each multiple account but minimum annual fee of \$1250.

#23. \$750 for preparation of federal estate tax return. \$75 for employment services and payment of personnel. \$50 for amendments to agreements.