

Second Supplement to Memorandum 88-36

Subject: Study L-3010 - Fees of Corporate Trustees

Attached to this supplement is a letter from Hall Palmer, Executive Vice President and Senior Trust Officer with the University National Bank and Trust Company, expressing the bank's views on the questions surrounding fees of corporate trustees.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

University National Bank & Trust Company
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HALL PALMER
EXECUTIVE VICE PRESIDENT
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April 27, 1988

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

Dear Mr. Ulrich:

I am writing to pass along our Bank's observations on the subject of fees of corporate trustees and the resolution of any problems in this regard.

It is our belief that there currently exists a relatively efficient and competitive marketplace for fiduciary services and that the prospective trust customer who shops this market today will find a fairly priced service available for any economically viable trust account.

The market is significantly less efficient, however, over the duration of a trust relationship. Many trust accounts have a duration of several decades during which the costs of doing business, values of assets, nature of services being rendered, and fees charged by trustees may all change profoundly. The price competition between prospective trustees is generally a factor present only at the time of the trust's inception and it ceases to operate as a price control mechanism at the individual account level when a trust becomes irrevocable by its terms; especially where the beneficiaries lack the power to make a substitution of trustees.

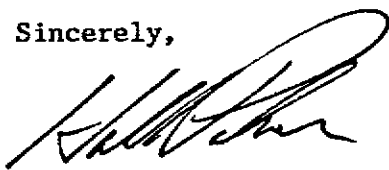
We observe that significant relative overpricing of trust services probably does exist affecting large numbers of irrevocable trusts. This is most evident concerning accounts formerly subject to continuing court supervision. Many of these may have appeared to have been economically viable and attractive arrangements to both customers and trustees at the time of their creation and funding, but have since diminished in size or at least have not appreciated in value in proportion to the minimum fees now charged them by their current trustees. In many cases the minimum fee now charged may well be a multiple of that the customer anticipated or the

court would have allowed under continuing court jurisdiction.

We suggest that there is no easy solution to this problem. The question of what amount constitutes reasonable compensation for a trustee's services is quite complex, varies from case to case, and not well suited to a statutory fee mechanism. Changing corporate trustees is a relatively costly and burdensome process which one tends to see as a last resort.

We do strongly endorse the proposal for a statutory mechanism to enable the beneficiaries of a trust to return to the market to take advantage of price competition. There are considerable differences in minimum fees charged by corporate trustees as well as differences in other aspects of their services, and we believe there is less potential for any abusive fee practices when the beneficiaries have some measure of choice in the selection of the provider and the related leverage in negotiation of the fees to be charged.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Elihu Harris', written in a cursive style.

cc: The Honorable Elihu Harris