

Second Supplement to Memorandum 88-45

Subject: Study L-3010 - Fees of Corporate Trustees (status of efforts to obtain consumer input)

As requested by the Commission, the staff has been attempting to obtain information relating to the experience and opinions of "consumers" of the services of corporate trustees, particularly relating to fees.

State Department of Banking

We contacted the State Department of Banking but they do not collect and classify complaints. If a complaint is made by a beneficiary, it is investigated and resolved one way or another and the file closed. The officials the staff contacted could not give us any useful information or statistics.

Comptroller of the Currency

The Consumer Examinations Division of the Comptroller of the Currency has been kind enough to supply us some data on consumer complaints against corporate trustees. The Comptroller does not segregate data by states; this information relates to the Western District covering Alaska, California, Colorado, Idaho, Guam, Hawaii, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. The number and types of complaints received by the Comptroller relating to trust services from January 1986 through May 1988 are as follows:

- 2 Administration of trust
- 5 Amount of service charge/fees
- 1 Attachments--freezes (legally initiated)
- 4 Bank does not honor customer's request for discretionary payments of trust cash
- 2 Calculation of service charge or fee
- 2 Conflict of interest
- 1 CRA
- 1 Credit factors
- 1 Depository relationship

26 Disbursement--coupon redemption--time to close
 1 Disclosure of rates--change in terms--fees--service charge
 6 Discrepancy in account
 1 Discrepancy in account--deposit not credited
 1 Escheat--inactive account
 3 Forgery--embezzlement--theft
 8 General category--does not fit in others
 1 Income cash is not invested pending payment to customer
 2 Investment made which is not within the terms of the trust or local law
 5 Investment performance poor
 5 Monthly statement--erroneous charges--not received
 2 Payment of interest calculation
 1 Problem with dividend/interest check
 5 Refusal to provide accounting
 6 Response for information
 1 Securities order not executed in timely manner
 2 Securities transfer problem
 11 Specific asset, i.e. real estate, mismanaged
 1 Unauthorized recipient
 7 Unfair and deceptive practice
 114 (111 complaints were resolved)

A variety of conclusions might be drawn from this data: Not many complaints reach the Comptroller of the Currency, considering the number of trusts in force in the Western District. Not many of the complaints that are received involve fees. We don't know to what extent the complaints to the Comptroller represent the actual experience of beneficiaries. The relative lack of complaints does not prove that there is no problem. We do not know from this information the real nature of the complaints.

American Association of Retired Persons

We are working with the American Association of Retired Persons in an effort to learn of the experience of AARP members, or at least of those who receive the AARP Legislative Newsletter. As of the date of this memorandum, we have not received any information.

Probate Judges

As suggested at the March meeting, probate judges throughout the state have been polled for their opinions and experience. Letters we have received to date are attached as Exhibits 2 through 9. A brief

analysis of the judges' responses to the questionnaire on legislative options is attached as Exhibit 1.

Several of the probate judges indicated that they felt problems increased as a result of the repeal of the "supervised administration" scheme of former law. Judge Spellberg in Contra Costa County wrote:

. . . There's no question in my mind the legislation which removed supervision of trust accounting from the courts has resulted in enormous increases in fees charged by the banks. In this county alone, fees have more than doubled as a result of the legislation. Our standard fee provision was one-half of one percent unless the trustee gave us a declaration under penalty of perjury describing special services rendered.

[Increase] in no way has improved the quality of the banks' performances and in many instances my information is that the banks are still depositing the trust money in their own bank investment funds generating relatively low interest rates compared to what was potentially available in the marketplace.

If the assemblyman is truly interested in assisting the beneficiaries of trusts, the requirement that trust accounting be returned to court supervision, unless the settlors' will or trust instruments specifically declares that the trust is not to be subjected to court supervision.

None of the alleged safeguards in the existing legislation is worth anything. Most people are reluctant to become involved with the courts. They are reluctant to file petitions, questioning the banks' fees and fee victimized by the entire system.

When the legislation was originally passed, many of us wrote to Assemblyman Harris seeking to prevent the passage of this legislation. Our predictions of the outcome have come to pass. [See Exhibit 6.]

Probate Examiner Curry in San Diego County also reported concern over the removal of testamentary trusts from court supervision:

San Diego is acutely aware of fee increases by corporate trustees, including their refusal to even serve as trustees unless the corpus is very large. Bank of America even sold its trust business.

We are not aware of problems in changing trustees when the beneficiaries are unhappy. There may be isolated cases of trustees fighting removal, but for the most part they seem to withdraw willingly when there are objections to their fees.

San Diego Probate Court still has its doubts as to the wisdom of removing testamentary trusts from the court's jurisdiction. We haven't kept close track of the number of petitions we receive under Prob. Code 17200, and previously

under 1120 & 1138, but it is clear that trust matters which do come to the court's attention are problems and the problems appear to be increasing. It may be that the previous practice of routine review of the probate court kept many problems from developing.

I confess that Probate Examining in San Diego takes a very conservative attitude about letting any matter loose from the court's review and this attitude is reflected in my comments. [See Exhibit 8.]

Judges in smaller counties indicated that they had seen no problem in this area. Judge Brown in Humboldt County has found that although "fees have increased somewhat, the corp. trustees have been willing to resign upon request of the beneficiaries." (See Exhibit 3.) Judge Stevens in Plumas County wrote that the "issue has never arisen in our probate court." (See Exhibit 5.) Judge Barrett in Merced County did "not recall any such proceeding since periodic court review of the accountings was eliminated." However, he believes "there have been and will continue to be excessive fees charged and there should be some relatively simple method by which the matter can be heard before a Court and the fees fixed or the trustee replaced or both." (See Exhibit 7.)

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

Judges' Opinions on Legislative Approaches

The following tables give an overview of the opinions of the 13 judges and other judicial officers who responded to our questionnaire on legislative proposals concerning corporate trustees' fees.

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: JUDGES' PREFERENCES (13 Responses) | | | | | |
|---|------|----|-------|--------|--------|
| Legislative Approach | Best | OK | No Op | Not OK | No Ans |
| A. Transfer by Court Order | 6 | 3 | 3 | 1 | - |
| B. Transfer by Benes & Trustee | 2 | 3 | 3 | 4 | 1 |
| C. Transfer by Beneficiaries | 5 | 2 | 3 | 3 | - |
| D. Transfer by Cotrustees | 0 | 1 | 5 | 6 | 1 |
| E. Prior Court Approval of Fee | 4 | 3 | 2 | 4 | - |
| F. Increase if No Objection | 0 | 4 | 2 | 7 | - |
| G. Court Review of Fees | 4 | 6 | 1 | 2 | - |
| H. Statutory Fee Schedule | 5 | 3 | 3 | 2 | - |

| TABLE 2: JUDGES' PREFERENCES (Percentages) | | | | | |
|--|------|-----|-------|--------|--------|
| Legislative Approach | Best | OK | No Op | Not OK | No Ans |
| A. Transfer by Court Order | 46% | 23% | 23% | 8% | 0% |
| B. Transfer by Benes & Trustee | 15% | 23% | 23% | 31% | 8% |
| C. Transfer by Beneficiaries | 38% | 15% | 23% | 23% | 0% |
| D. Transfer by Cotrustees | 0% | 8% | 38% | 46% | 8% |
| E. Prior Court Approval of Fee | 31% | 23% | 15% | 31% | 0% |
| F. Increase if No Objection | 0% | 31% | 15% | 54% | 0% |
| G. Court Review of Fees | 31% | 46% | 8% | 15% | 0% |
| H. Statutory Fee Schedule | 38% | 23% | 23% | 15% | 0% |

Tables 3 and 4 compare the positive and negative comments on each legislative approach. In these tables, 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: JUDGES' PREFERENCES (Positive v. Negative: "Best, "OK," and "Not OK") | | | | | | |
|---|-------|-----|-------|-----|--------|-----|
| Legislative Approach | Best | | OK | | Not OK | |
| | Count | % | Count | % | Count | % |
| A. Transfer by Court Order | 6 | 60% | 3 | 30% | 1 | 10% |
| B. Transfer by Benes & Trustee | 2 | 22% | 3 | 33% | 4 | 44% |
| C. Transfer by Beneficiaries | 5 | 50% | 2 | 20% | 3 | 30% |
| D. Transfer by Cotrustees | 0 | 0% | 1 | 14% | 6 | 86% |
| E. Prior Court Approval of Fee | 4 | 36% | 3 | 28% | 4 | 36% |
| F. Increase if No Objection | 0 | 0% | 4 | 36% | 7 | 64% |
| G. Court Review of Fees | 4 | 33% | 6 | 50% | 2 | 17% |
| H. Statutory Fee Schedule | 5 | 50% | 3 | 30% | 2 | 20% |

| TABLE 4: JUDGES' PREFERENCES (Positive v. Negative: "Best" + "OK" versus "Not OK") | | | | | |
|---|-----------|-----|--------|-----|----------------|
| Legislative Approach | Best + OK | | Not OK | | Total Count |
| | Count | % | Count | % | |
| A. Transfer by Court Order | 9 | 90% | 1 | 10% | 10 |
| B. Transfer by Benes & Trustee | 5 | 55% | 4 | 44% | 9 |
| C. Transfer by Beneficiaries | 7 | 70% | 3 | 30% | 10 |
| D. Transfer by Cotrustees | 1 | 14% | 6 | 86% | 7 |
| E. Prior Court Approval of Fee | 7 | 64% | 4 | 36% | 11 |
| F. Increase if No Objection | 4 | 36% | 7 | 64% | 11 |
| G. Court Review of Fees | 10 | 83% | 2 | 17% | 12 |
| H. Statutory Fee Schedule | 8 | 80% | 2 | 20% | 10 |

If you have any additional comments, please note them below.

Be very suspicious of information regarding administrative overhead that is provided by corporate fiduciaries. On close analysis we find that the allocation of overhead charges is controlled by the people at corporate headquarters and frequently has little connection with the actual cost of operating a trust department. We have seen charges of \$25/hour for "clerical".

~~It is~~ Our court requires "hours/rate" declarations in support of fee requests, and it is my candid opinion that these declarations are highly "creative." I suspect that in most cases the determination is made as to what a reasonable fee would be, and then the supporting documentation is created to support that fee. Do I sound paranoid?? That's what the probate calendar does to you!!

Jim Smel - Presiding Probate Judge
Orange County Superior Ct.

•Your response will be a public record and will be discussed at a Commission meeting when the Commission decides what action to take on this matter.


Please return your response to:

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

If you have any additional comments, please note them below.

In my experience, although corp. fees have increased somewhat, the corp. trustees have been willing to resign upon request of the beneficiaries.

If there is a problem in the metropolitan counties, a reasonable fee schedule may be the answer.



J. Michael Brown

Humboldt County Superior Ct.

•Your response will be a public record and will be discussed at a Commission meeting when the Commission decides what action to take on this matter.

Please return your response to:

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

The Superior Court

County of Plumas

QUINCY, CALIFORNIA 95971-6015

STANLEY C. YOUNG
JUDGE

POST OFFICE BOX 10688
(916) 283-2365

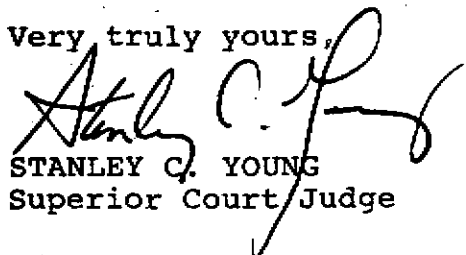
May 4, 1988

Stan G. Ulrich
Staff Counsel
4000 Middlefield Rd., Ste. D-2
Palo Alto, CA 94303-4739

Dear Mr. Ulrich:

Our trusts are almost non-existent. We can provide no useful information except to say legislation is needed to provide a simple, cheap way to test trustee fees. Such a procedure would necessitate some formula for ordinary fees and allowance for extraordinary fees.

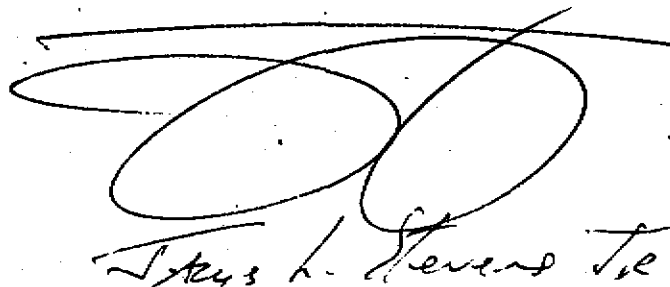
Very truly yours,


STANLEY C. YOUNG
Superior Court Judge

SCY/ec

If you have any additional comments, please note them below.

This issue has never arisen in our Probate Court.



James L. Stevens Jr

•Your response will be a public record and will be discussed at a Commission meeting when the Commission decides what action to take on this matter.

Please return your response to:

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

NORMAN SPELLBERG
JUDGE
DEPARTMENT 14
(415) 372-4014

Superior Court
State of California
COUNTY OF CONTRA COSTA
COURTHOUSE
MARTINEZ, CALIFORNIA 94553



May 6, 1988

Stanley Ulrich, Esq.
Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303

Re: Trust Law Revisions

Dear Mr. Ulrich:

I am enclosing herewith your questionnaire regarding Corporate Trustees' Fees. The executed document is self-explanatory.

I am including this letter because I think the matter requires more discussion. There's no question in my mind the legislation which removed supervision of trust accounting from the courts has resulted in enormous increases in fees charged by the banks. In this county alone, fees have more than doubled as a result of the legislation. Our standard fee provision was one-half of one percent unless the trustee gave us a declaration under penalty of perjury describing special services rendered.

I know that the banks are now charging a minimum of one percent and in many instances as much as one and a quarter to one and a half percent. This in no way has improved the quality of the banks' performances and in many instances my information is that the banks are still depositing the trust money in their own bank investment funds generating relatively low interest rates compared to what was potentially available in the marketplace.

If the assemblyman is truly interested in assisting the beneficiaries of trusts, the requirement that trust accounting be returned to court supervision, unless the settlors' will or trust instruments specifically declares that the trust is not to be subjected to court supervision.

None of the alleged safeguards in the existing legislation is worth anything. Most people are reluctant to become involved with the courts. They are reluctant to file petitions, questioning the banks' fees and feel victimized by the entire system.

When the legislation was originally passed, many of us wrote to Assemblyman Harris seeking to prevent the passage of this legislation. Our predictions of the outcome have come to pass.

Very truly yours,

Norman Spellberg

NS:mrc

enc.

THE SUPERIOR COURT

CHAMBERS OF
GEORGE C. BARRETT
JUDGE



MERCED, CALIFORNIA 95340

COUNTY COURTS BUILDING
(209) 385-7823

May 12, 1988

CA LAW REV. COMM'N

MAY 16

RECEIVED

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

Dear Mr. Ulrich:

Judge Michael Hider has asked me to reply for him to your letter of April 26, 1988, to him. I assume he did this because I am much older than he.

We three Judges rotate our calendars every six months so none of us has the big picture as to any problems regarding corporate trustee fees. I do not recall any such proceeding since periodic court review of the accountings was eliminated.

We did have some objection under the prior law when the Court was asked to fix the fees.

Most trustees operating in this area traditionally based their requests for fees on the value of the corpus usually about 3/4 of one percent. The trustees, however, did periodically on their own, adjust the value of real property which usually resulted in a higher fee.

Since I have no experience in recent times of claims, maybe I'm not the one to comment. I do believe there have been and will continue to be excessive fees charged and there should be some relatively simple method by which the matter can be heard before a Court and the fees fixed or the trustee replaced or both.

Very truly yours,

GEORGE C. BARRETT
Presiding Judge

GCB:gc

Enc.

xc: Judge Hider


If you have any additional comments, please note them below.

San Diego is acutely aware of fee increases by corporate trustees, including their refusal to even serve as trustees unless the corpus is very large. Bank of America even sold its trust business.

We are not aware of problems in changing trustees when the beneficiaries are unhappy. There may be isolated cases of trustees fighting removal, but for the most part they seem to withdraw willingly when there are objections to their fees.

San Diego Probate Court still has its doubts as to the wisdom of removing testamentary trusts from the court's jurisdiction. We haven't kept close track of the number of petitions we receive under Prob. Code 17200, and previously under 1120 & 1138, but it is clear that trust matters which do come to the court's attention are problems and the problems appear to be increasing. It may be that the previous practice of routine review by the probate court kept many problems from developing.

I confess that Probate Examining in San Diego takes a very conservative attitude about letting any matter loose from the court's review and this attitude is reflected in my comments.


Barbara A. Curry
Chief Probate Examiner

*Your response will be a public record and will be discussed at a Commission meeting when the Commission decides what action to take on this matter.

Please return your response to:

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Superior Court of the State of California
County of Sacramento

A. RICHARD BACKUS
JUDGE

SACRAMENTO, CALIFORNIA

June 7, 1988

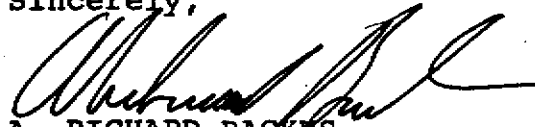
Mr. Stan Ulrich
Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303

Dear Mr. Ulrich:

I am enclosing herewith the questionnaire on the corporate trustees' fees included within your letter of April 26, 1988. I am sorry I have not answered this letter sooner. I have only been handling a probate calendar since the first of the year and it has been approximately ten years before that when I was in private practice that I had any substantial connection with probate matters and trustee fees.

I have not noted any real problems since I have been handling the probate calendar since January 1.

Sincerely,



A. RICHARD BACKUS
Judge of the Superior Court

ARB:sfh
Enclosure