
**The
American
College of
Trust
and Estate
Counsel**

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ACTEC



STUDIES



The summary of each state's laws reflected in this study has been based on an opinion received from a reporter for that state. With rare exceptions, reporters are Fellows of the College from that state. Following the reporter's name is the date as of which that state's material was most recently reviewed. Neither the College nor the individual reporters and editors (who have volunteered their time and experience in the preparation of the studies) assume any responsibility for the accuracy of the information contained in any study.

Study 5:

A Survey of State Statutes and Practices Regarding Fees of Executors, Administrators and Testamentary Trustees

Compiled by

**Lloyd G. McAlister
Edmond, Oklahoma**

PREFACE

The fees of executors, administrators, and testamentary trustees vary in the 50 states and sometimes in different cities in the same state and with different corporate trustees in the same city. The fees are intended to be based upon the reasonable value of the services rendered by the fiduciary in the particular case. Necessarily, the extent of the services required will vary from case to case.

Usually, the services of the executor or administrator extend over a period of one to three years during which the fiduciary collects the properties and preserves and safeguards them from waste, loss, or deterioration, determines and pays debts and claims, files the necessary tax returns and engages in the audit thereof, and upon the settlement of the estate, distributes the property in accordance with the directions of the will or the rules of intestate succession. Thus, in the usual estate, the fiduciary is paid one or more fees based upon the income collected and/or the disbursements made in paying debts and claims and on the amount of the principal involved.

The testamentary trustee, on the other hand, usually renders services extending over a long period of years, as directed in the trust instrument, including investment of the assets and, in some cases, the management of businesses. In order to compensate the trustee for such services, an annual fee is usually charged based on a schedule as to income received and as to the principal or the corpus of the trust. At times there also are fees for the distribution of principal or the termination of the trust.

In almost all instances, provision is made that the fiduciary is entitled to additional compensation, over and above scheduled rates, where unusual or extraordinary services are rendered in the particular estate or trust. If the fees and charges are not initially authorized and approved by the court, a provision is usually made that any interested party may have the charges reviewed by a court for final determination.

PAYMENT OF ATTORNEY FEES BY FIDUCIARY

A survey was made as to whether the executor, administrator, or testamentary trustee is expected or required to pay attorney fees out of the fiduciary fees allowed. The answer to this question is almost unanimously in the negative. In lieu of referring to this subject in the following schedule, we will briefly comment here, giving any reported exceptions to the general rule.

Generally, it is the rule that fiduciaries are not expected or required to pay their attorney fees out of the fiduciary fees authorized or allowed. If the allowance must be made by the court, the application for attorney fees is usually, but not always, made by the fiduciary, but specifically for payment of the attorney fees.

In **DELAWARE**, the old rule, which required special representative to pay attorney fees out of the fiduciary fees, has been changed to provide that commissions for personal representatives and the attorneys that represent them shall be allowed in a reasonable amount.

In **MARYLAND**, the combined fiduciary commissions and attorney fees for standard services are expected not to exceed maximum fiduciary commissions allowable. While there is some variation in this position taken by various orphans' courts of the state, the courts may allow additional counsel fees for legal services, beyond standard administrative services. By statute, and rule of court, compensation shall be fair and reasonable in light of all the circumstances. The petitions for approval of counsel fees for the attorney and of commissions for the personal representative are considered by the court at the same time and must recite the amount of previously allowed, presently requested, and anticipated fees and commissions. For decedents dying on or after January 1, 1998, a Petition for Attorneys' Fees is not required if each unpaid creditor and interested person consents in writing, filed with the Register of Wills, and provided the combined sum of the personal representative commissions and attorneys' fees do not exceed the statutory maximum commissions.

In **WEST VIRGINIA**, payment of separate attorney fees is allowed if reasonable. If an attorney acts as fiduciary, he or she is entitled to compensation only as fiduciary, with no extra compensation for legal services. However, if the overall services are out of the ordinary, the attorney may be awarded compensation in excess of 5 percent.

We express our sincere appreciation to the Fellows of The American College of Trust and Estate Counsel, who have furnished opinions as to the fees in their states upon which this study is based.

ALABAMA

Leonard Wertheimer, III
Birmingham, Alabama
December 28, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

Statute provides for reasonable compensation for services, considering a variety of factors such as novelty and difficulty, required skills, the amount involved and the results obtained. The fee shall not exceed 2.5% of receipts and 2.5% of disbursements, plus actual expenses, and many courts reduce the amount of fees from these percentages. Code of Ala. §§ 43-2-848 (1975).

Court approved additional compensation may be allowed for extraordinary services.

Examples of customary fees of a corporate fiduciary are as follows:

1. Some corporate fiduciaries now charge a "responsibility fee" of approximately .75 of 1% per year, plus hourly charges at \$125 per hour for services rendered for specified tasks such as preparation of estate and income tax returns and specialized or extraordinary services.
2. Executor's fees are becoming more negotiable and sometimes based on a much reduced percentage of asset value (such as .75 of 1% per year) and an hourly charge for time involved.
3. Corporate fiduciaries frequently charge minimum fee within a range of \$5,000 to \$15,000.

TESTAMENTARY TRUSTEE'S FEE

No statutory rates. The fee schedules of the various corporate fiduciaries vary significantly. Examples of customary corporate fiduciary rates are as follows:

1. The following annual charged based on principal:

<u>Asset Value</u>	<u>Compensation Percentage</u>
First \$1,000,000	1.25%
Next \$1,500,000	.80%
Next \$2,500,000	.60%
Next \$5,000,000	.35%

Minimum Annual Compensation: \$5,000

When special or unusual services are required, charged will be increased by an hourly charge and out-of-pocket expenses.

ALABAMA, cont.

2. The following annual charged based on principal:

<u>Asset Value</u>	<u>Compensation Percentage</u>
First \$250,000	1.25%
Next \$250,000	1.00%
Next \$500,000	.80%
Next \$1,000,000	.65%
Next \$2,000,000	.35%

Minimum Annual Compensation: \$3,000

When special or unusual services are required, charged will be increased by an hourly charge of \$125. Preparation of fiduciary income tax returns will be charged at an hourly rate of \$125 (\$350 minimum charge).

Out-of-pocket expenses will be charged at cost.

Some corporate fiduciaries charge a termination fee of .5% to 1% under certain circumstances.

ALASKA

Trigg T. Davis
Anchorage, Alaska
January 23, 2002

PERSONAL REPRESENTATIVE'S FEE

Statute Alaska Statutes 13.16.430 and 13.16.440 provide for reasonable compensation, subject to court review. Additional reasonable compensation is allowed for services of attorneys, auditors, investment advisors, and other specialized agents or assistants whose services are reasonably required.

Effective July 15, 1995, the State Supreme Court adopted Probate Rule 7.1 which specifies factors that may be considered in determining the reasonableness of the fee. Those factors are:

- (1) the time and labor reasonably required of the personal representative;
- (2) the complexity of the estate;
- (3) the skill and training required to perform the personal representative's duties;
- (4) the amount and degree of individual liability to which the personal representative may be exposed during the performance of the personal representative's duties;
- (5) the amount of time taken from the personal representative's profession;
- (6) the expenses and costs incurred by the personal representative and whether those expenses and costs were charged to the estate;
- (7) whether the personal representative retained agents and fees charged, if any, by those agents;
- (8) if the personal representative served in more than one capacity as attorney, accountant, appraiser, property manager, investment advisor, or another capacity, whether the personal representative charged separately for those other services or did not charge for those services;
- (9) whether one or more persons or corporate trustees are appointed personal representative; and
- (10) other equitable factors deemed relevant.

TESTAMENTARY TRUSTEE'S FEE

There is no statutory fee schedule. Statute provides only for review upon interested person's petition of reasonableness of compensation for trustee's services. It is expected that in determining reasonableness, the courts would look to many of the same factors specified in Probate Rule 7.1 with respect to the reasonableness of personal representatives' fees.

ARIZONA

Gordon G. Waterfall
Tucson, Arizona
November 30, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

A modified version of the Uniform Probate Code has been adopted, effective January 1, 1974. The statute does not establish a fee schedule for personal representatives, but provides for "reasonable compensation." This is subject to court review on the petition of an interested person.

An example of customary fees of a corporate fiduciary: Generally 4% on estates up to \$200,000; 2% on amounts over \$100,000. Minimum fee: \$5,000.

TRUSTEE'S FEE

No statutory fee schedule. Reasonableness of fees of trustee, testamentary or inter vivos, may be reviewed by judicial proceedings.

Following is an example of typical annual fees charged by corporate fiduciaries for full management administration:

On the first \$1,000,000	1.00%
On the next \$4,000,000	0.40%
On the next \$5,000,000	0.25%
On the balance over \$10,000,000	Negotiable

Minimum fees: \$4,000.

ARKANSAS

William D. Haught
Little Rock, Arkansas
December 17, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

As determined by the court.

Statute provides for reasonable compensation not to exceed:

10%	of first	\$1,000
5%	of next	\$4,000
3%	of excess over	\$5,000

based on "personal property passing through the hands of the personal representative" which has been fully administered. Additional compensation may be allowed for substantial duties performed with respect to real property, and for services of accountants, engineers, appraisers, and other persons whose services are reasonably required.

TESTAMENTARY TRUSTEE'S FEE

No statutory provision.

Acceptance fee: None ordinarily.

Minimum annual fee: \$250.

Extraordinary services: Reasonable charge to be based on analysis of work and responsibility.

Termination fee: 1% to 2% of the value depending on the circumstances and difficulties involved.

CALIFORNIA

K. Bruce Friedman
San Francisco, California
December 4, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

Statutory rates are as follows:

4.00%	of first	\$100,000
3.00%	of next	\$100,000
2.00%	of next	\$800,000
1.00%	of next	\$9,000,000
0.05%	of next	\$15,000,000

Reasonable amount to be determined by court for excess over \$25,000,000

Additional allowance may be made for extraordinary services.

TESTAMENTARY TRUSTEE'S FEE

There is no statutory schedule for trustees' fees. A trustee is entitled to reasonable compensation.

Testamentary trusts having a trust company as a trustee and other trusts created by wills executed after June 30, 1977 are not subject to continuing court jurisdiction. A trustee or a beneficiary nevertheless has the right to petition the court for the purpose of fixing or allowing payment or reviewing the reasonableness of the trustee's compensation. In the case of trusts under pre-July 1977 wills that have not been removed from continuing court jurisdiction, compensation is awarded by the court upon settlement of the trustee's periodic accounts.

There is a range of compensation charged by trust companies for serving as trustee. Up to 1.25% on the first \$1,000,000 of principal, with declining rates applied to succeeding increments, would be representative.

Trustees of trusts with real property or other assets requiring extra management usually seek additional compensation.

COLORADO

Susan R. Harris
Denver, Colorado
December 17, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

Uniform Probate Code was adopted effective July 1, 1974, and revised substantially in 1994. Fees of fiduciaries are now based on "reasonable compensation." The factors to be used as guides in determining reasonableness include:

- (a) The time and labor required, the novelty and difficulty of questions involved, and the skill requisite to perform the service properly,
- (b) The likelihood, if a parent to the fiduciary, that the acceptance of the particular employment will preclude the person employed from other employment,
- (c) The fee customarily charged in the locality for similar services,
- (d) The amount involved and the results obtained,
- (e) The time limitations imposed by the fiduciary or the circumstances, and
- (f) The experience, reputation, and ability of the person performing the services.

15-12-721, C.R.S.

Under the Code, if a will provides for compensation and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation. 15-12-719, C.R.S. In estate litigation, the personal representative is entitled to be reimbursed for expenses including reasonable attorneys' fees if the prosecution or defense is in good faith. 15-12-720 C.R.S.

The court may review the reasonableness of the fees of the fiduciary or attorneys. The Code sets forth the above factors to be considered as guides in determining the reasonableness of a fee.

TESTAMENTARY TRUSTEE'S FEE

Under the Uniform Probate Code, the fee is based on "reasonable compensation." Because of minimum or base fees charged by trustees and the unbundling of trust services, with separate fees for different services, comparisons are complicated. The following fee schedule represents fees charged by one large national bank in Denver:

Basic annual fee on market value of assets:

1.2%	on the first	\$500,000
0.8%	on the next	\$500,000
0.5%	on the balance over	\$1,000,000

Minimum annual fee: \$1,200.

CONNECTICUT

Martin Wolman
Hartford, Connecticut
December 18, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

No statutory provision for fiduciary fees. The fiduciary is entitled to reasonable compensation for services depending upon the circumstances of the Case. *Hayward v. Plant*, 98 Conn. 374. The following fee schedule is representative of bank charges located around the state. However, there is no particular uniformity of fees. Not only are different rates applied by the various banks, but different types of assets (such as life insurance) are given special treatment. The following fee schedule of a local bank is based on the value of the gross taxable estate for Connecticut succession tax or federal estate tax purposes (whichever is greater):

A charge on principal:

4.75%	of first	\$500,000
4.25%	of next	\$500,000
3.50%	of next	\$1,000,000
3.00%	of next	\$1,000,000
2.00%	of balance	
Minimum fee:		\$5,000

When administration includes additional or unusual duties, such as managing real estate, or an unusual amount of time is required, an adjustment in fees may be made. Generally, the fee is not reduced because of the appointment of a co-fiduciary.

TRUSTEE'S FEE

No statutory provision. The fee schedules of the various corporate fiduciaries vary, making a generalization difficult. The following is a fee schedule by one of the local banks for individually invested accounts:

A fee based on principal:

1.3275%	of first	\$500,000
0.9225%	of next	\$500,000
0.7200%	of next	\$1,000,000
0.5625%	of balance	

Fee based on income:

6.30%	of first	\$120,000
5.40%	of balance	

Minimum fee: Typically about \$5,000.

Trusts created under will require accounting to the probate court and attendance at court hearings. These trusts may be assessed a separate charge annually.

DELAWARE

F. Edmund Lynch
Wilmington, Delaware
December 7, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

Effective September 1, 1996, Rule 192 was rewritten to affect decedents dying after September 1, 1996. Rule 192 revises the old rule whereby the commissions and attorney fees are not to exceed a certain percentage of the commissionable estate without court approval. The Rule now permits the payment of reasonable commissions and attorney fees with the court having the right, upon an exception filed by a beneficiary, to determine if the commissions and fees are unreasonable. Rule 192 provides as follows:

- (a) Commissions of personal representatives, and fees of the attorneys who represent them, shall be allowed in a reasonable amount.
- (b) In determining what constitutes reasonable commissions and fees, consideration may be given to the time spent, the risk and responsibility involved, the novelty and difficulty of the questions presented, the skill and experience of the personal representative and the attorney, any provisions of the will regarding compensation, comparable rates for similar services in the locality, the character and value of the estate assets, the character and value of assets which are not part of the probate estate but which must be valued and reported on any federal, state, local, or foreign death tax return, the time constraints imposed upon the personal representative and the attorney, the loss of other business necessitated by acceptance of the administration, and the benefits obtained for the estate by the administration. Commissions and fees shall not be considered unreasonable merely because they are based exclusively on hourly rates, exclusively on the value of the probate estate, or exclusively on the value of the assets includible in the estate for the purpose of any tax.
- (c) If a trust permits or requires personal representative commissions or attorneys' fees to be paid from the trust, such commissions and fees may be paid from the trust in accordance with the provisions of this rule.
- (d) Subject to the provisions of the following sentence, commissions of personal representatives and attorney fees shall be presumed reasonable unless a beneficiary files an exception to the account of the personal representative pursuant to 12 Del. C. § 2302(d) alleging that the commissions or fees are unreasonable. The Court shall have the power in all cases to reduce the amount of commissions or fees, even if no exception is filed pursuant to paragraph (e) hereof, if the amount of commissions or fees is determined to be unreasonably high by the Court for cause appearing sufficient to it.
- (e) The notice in writing of the filing of the account required to be mailed by the Register of Wills pursuant to 12 Del. C. § 2302(b) shall include the following statement:

“Personal representatives of estates and attorneys who represent them are entitled to reasonable commissions and fees. In determining what constitutes reasonable commissions and fees, consideration may be given to time spent, the risk and responsibility involved, the novelty and difficulty of the questions presented, the skill and experience of the personal representative and the attorney, any provisions of the will regarding compensation, comparable rates for similar services in the locality, the character and value of the estate assets, the character and value of assets which are not part of the probate estate but which must be valued and reported on any federal, state, local, or foreign death tax return, the time constraints imposed upon the personal representative and the attorney, the loss of other business necessitated by acceptance of the administration, and the benefits obtained for the estate by the

DELAWARE, cont.

administration. Commissions and fees shall not be considered unreasonable merely because they are based exclusively on hourly rates, exclusively on the value of the probate estate, or exclusively on the value of the assets includible in the estate for the purpose of any tax.

Unless you file an exception to the account alleging that the commissions of the personal representative(s) or the fees of the attorney(s) for the personal representative(s) as set forth in the account are unreasonable, you shall be deemed to consider such commissions and fees reasonable.”

- (f) This rule will apply to the administration of estates of decedents dying on or after its effective date: September 1, 1996. (Added, effective Dec. 25, 1974; amended, effective Nov. 15, 1976; Sept. 1, 1996.)

TESTAMENTARY TRUSTEE'S FEE

A trustee is entitled to reasonable compensation in accordance with the terms of the instrument creating the trust. 12 Del. C. § 3560. If the instrument does not establish compensation, reasonable compensation is allowed. § 3561. For “qualified trustees,” that is, banks and trust companies, reasonable compensation is the amount shown on a schedule to be filed with the Register in Chancery by the trustee. The compensation set by a qualified trustee may be reviewed by the court of chancery upon the objection of a person having an equitable interest in the trust. § 3562. For trustees other than qualified trustees, reasonable compensation is established by rule of the court of chancery that provides as follows:

- (a) *Income Commissions.* A charge on gross income during each trust accounting year collected by the trustee calculated at the following rates:

Based on income:

6.0%	of first	\$20,000
3.5%	of next	\$10,000
3.0%	of next	\$270,000
2.0%	of excess over	\$300,000

- (b) *Periodic Principal Commissions.* A charge on the principal or corpus of the trust estate, computable and payable at the times and in the manner hereinafter set forth at the following annual rates:

Based on principal:

0.5 of 1%	of first	\$100,000
0.3 of 1%	of next	\$100,000
0.2 of 1%	of next	\$500,000
0.1 of 1%	of excess over	\$700,000

The principal commissions shall be computed for each commission period on the basis of the fair value of the trust estate, which shall be determined either (1) for any commission period less than annually by an appraisal made by the trustee and certified to the court as of the last business day of the commission period selected; or (2) by the value theretofore determined as part of a periodic review of trusts by the trustee, such review to be of a date not more than 12 months prior to the date of making such annual charge. Periodic reviews to be eligible for use for valuation purposes under clause (2) shall be made approximately at 12-month intervals and the date of such reviews shall not vary more than 60 days from one year to the next until the termination of the trust, as of which date a final valuation shall be made.

DELAWARE, cont.

Principal received or withdrawn during any commission period shall be included in the total valuation of the trust estate, but, as to commission periods in excess of three months, its value shall be adjusted proportionately for each three-month period in such commission period that preceded the date of its receipt or followed the date of its withdrawal.

A trustee shall, with respect to any particular trust, select one of the commission periods permitted by these rules and shall adhere to the period selected in computing successive periodic principal commissions for that trust; provided that a trustee may thereafter change such commission period upon notice to the beneficiaries of the trust who are then entitled to receive distributions of income or principal, and to any co-trustees or trust advisors for the trust involved. In any periodic accounting which a trustee is required to file under Rule 114, such fair value so computed shall be certified to the court in the form of written statements by the trustee, one for each commission period for which principal commissions are claimed. Each such certification shall contain a complete list of assets of the principal of the trust estate, the amount of the fair value of each asset, a statement showing which of the methods above referred to has been adopted as a basis of the valuation and the date of such valuation.

The charge and collection of principal commissions for one or more commission periods may at any time from time to time be deferred; in such case, a notation shall be entered on the account submitted to the court showing the accumulated amount of such principal commissions as computed but not actually charged.

A trustee may not compute or charge periodic principal commissions in which event the trustee shall, at the time of distribution or of termination of the trust or of transfer to a successor trustee, be allowed principal commissions computed under the provisions of paragraph (e) of this rule, or in lieu thereof the trustee may at such time or times apply to the court for appropriate commissions on principal, which the court in its discretion may allow and which need not be limited to the amount of principal commissions at termination set forth by paragraph (e) of this rule.

Notwithstanding an earlier election not to compute or charge periodic principal commissions, a trustee may elect prospectively to compute, charge and collect such commissions at any time during the administration of the trust estate.

Periodic principal commissions may be collected less frequently than the commission period selected for their computation and charge.

- (c) *Additional Charges in Special Cases.* When the trust includes one or more mortgages, an additional commission shall be allowed at the annual rate of .25 of 1% of the total face value of all mortgages held in the trust as of the times of the valuation of the trust assets required by paragraph (b) of this rule or, if the trustee is not charging periodic principal commissions, of the total face value of such mortgages held in the trust on the last business day of each fiscal year of the trust.

When the trust includes real estate, the income commission specified in paragraph (a) of this rule shall apply to gross rents collected by an outside agent and paid to the trustee. If such rents are collected directly by the trustee, the trustee shall be allowed a commission of 8% of gross rentals received.

In the discretion of the court, additional and special commissions may be allowed for unusual and extraordinary services.

DELAWARE, cont.

- (d) *Decrease of Commissions In Certain Cases.*
- (1) *Control In Person Other Than Trustee.* If the direction and control of investments in any trust, the corpus of which exceeds \$300,000 in value, rest solely with a person other than the trustee, the principal commissions set forth in paragraph (b) of this rule shall be reduced by 15%, so long as such condition exists.
 - (2) *Large Blocks of Securities.* In a trust with limited diversification and a fair value of \$1,000,000 or more, three fourths or more of the fair value of which is invested in not more than two blocks of stocks and/or bonds, the income commission set forth in paragraph (a) of this rule shall be reduced by 25%, so long as such condition exists.
- (e) *Principal Commissions Upon Distribution or Transfer.* Upon partial or complete distribution of any trust, or upon transfer to a successor trustee, the aggregate principal commissions allowable shall be calculated at the following rates:

5.0%	of principal of first	\$50,000
3.6%	of principal of next	\$50,000
2.3%	of principal of next	\$900,000
1.0%	of principal on all over	\$1,000,000

Provided, however, that if at the time of distribution or transfer the trust shall have been administered by the trustee for a period of less than 10 years, such principal commissions shall be reduced to the following percentages of the rates here in above specified:

30%	if termination occurs within	3 years;
40%	if termination occurs after	3 and before 4 years;
50%	if termination occurs after	4 and before 5 years;
60%	if termination occurs after	5 and before 6 years;
70%	if termination occurs after	6 and before 7 years;
80%	if termination occurs after	7 and before 8 years;
90%	if termination occurs after	8 and before 9 years;
100%	if termination occurs after	9 years.

There shall be deducted from such principal commissions the sum of all periodic principal commissions theretofore charged and collected by the trustee with respect to the trust estate or, in the case of a partial distribution, with respect to the distributable portion of the trust estate. If such sum exceeds the aggregate principal commission allowable under this paragraph, the trustee shall not be obligated to repay such excess but shall not ordinarily be allowed any additional principal commission upon termination of the trust.

Such aggregate principal commission shall be computed on the fair value of the trust estate at the time of partial or complete distribution or of transfer to a successor trustee. Such fair value shall be determined by an appraisal made by the trustee as of the date of partial or complete distribution or transfer. In any accounting which a trustee is required to file, such fair value so determined shall be certified to the court in the form of written statements by the trustee filed with and as a part of the final account of the trustee, or in the case of partial distribution or transfer, as a part of the next account of the trustee required under these rules. Each such certification shall contain a complete list of the assets of the principal of the trust estate, the amount of the fair value of each asset, the date of such valuation,

DELAWARE, cont.

and a statement of the amounts previously allowed the trustee as periodic principal commissions under this rule. The time or date of partial or complete distribution or transfer shall mean the date of the event that caused the partial or complete termination or transfer of the trust: e.g., the date a beneficiary dies, the date a beneficiary comes of age, or the date on which a written instrument is delivered to the trustee or a court order is entered authorizing or directing the transfer to a successor trustee.

- (f) *Apportionment of Commissions.* Except to the extent that the governing instrument or a court order shall otherwise provide, principal commissions shall be paid out of principal, and income commissions shall be paid out of income. Additional commissions on mortgages and real estate shall be charged to income.
- (g) *Perpetual Trusts.* If a trust is or becomes perpetual (e.g., a charitable trust), the trustee shall be entitled to the total commissions set forth under paragraphs (a) and (b) of this rule, which shall be charged entirely against income.
- (h) *Co-trustees.* The compensation to be allowed to each of two or more trustees shall be as the court in its discretion may determine, considering the amount and character of the trust property, the extent of the risk and responsibility of each trustee, the character of the services rendered by each trustee, the degree of difficulty in administering the trust, the skill and success of the administration, and any other relevant and material circumstances. The compensation allowed each trustee, upon petition of any of them, shall be computed in a manner consistent with the above schedule, but the amounts allowed in the aggregate may exceed the amounts allowed a single trustee at the rates set forth above for normal services.
- (i) *Certain Payments Income for Commission Purposes.* For the purposes of determining commissions upon income allowable under this rule, income shall be deemed to include (without being limited to) periodic payments of insurance, annuities, pensions, social security and railroad retirement board benefits and the like, whether received from public, private or governmental sources; provided that payments shall have been received at substantially regular intervals over a period of at least 12 months during the continuance of the trust and provided further that the court may in its discretion, when the circumstances are such that the allowance of such commissions upon such payments would work an undue hardship, enter an order modifying the extent to which the provisions of this paragraph shall be applicable to the allowance of commissions on such payments.
- (j) *Trustee's Fee for Review of Accountings of an Executor or an Administrator Other Than Trustee.* When a trustee receives property from an executor or administrator other than itself, a fee equal to the reasonable costs actually incurred by the trustee shall be charged against principal and allowed to the trustee as compensation for review of the actions, administration and accounting of the executor or administrator. In no event, however, shall this fee exceed the sum of \$1,000 without special allowance of the court.
- (k) *Successor Trustees' Fees for Review of Accountings of Former Trustee.* When a successor trustee receives property from a former trustee, a fee equal to the reasonable costs actually incurred by the successor trustee shall be charged against principal and allowed to the successor trustee as compensation for review of the actions, administration and accounting of the former trustee. In no event, however, shall this fee exceed the sum of \$1,000 without special allowance of the court.
- (l) *Minimum Commissions.* A trustee shall be entitled to a minimum commission of \$400 for services in any one accounting year to be charged against income to the extent collectible as computed under paragraph (a) of this rule and the balance, if any, to be charged against principal.

DISTRICT OF COLUMBIA

Virginia A. McArthur
Washington, D.C.
May 7, 1998

PERSONAL REPRESENTATIVE'S COMMISSION

Decedents dying on or after July 1, 1995:

The default form of probate is unsupervised. In either supervised or unsupervised probate, a personal representative is entitled to reasonable compensation. Probate Rule 424 provides in relevant part: "Whether administration is supervised or unsupervised, reasonable compensation may be paid to personal representatives, attorneys and other providers of services to or contractors with the estate without prior Court approval. The need for any such employment and the reasonableness of the compensation paid therefor will not be reviewed by the Court except on petition of any interested person who has not consented after fair disclosure and after notice to all interested persons and hearing." Reasonableness, if challenged, would be evaluated on the basis of the factors considered under pre-1975 law, below.

For estates of decedents who died on or after January 1, 1981, and before July 1, 1995, the following rules apply:

Statute provides for reasonable compensation (and such compensation may, if approved by the court, exceed compensation stated in the will) to be paid for work performed by a personal representative, special administrator or attorney with respect to the administration of the estate, upon approval by the court of a written request setting forth (1) the reasonable relationship of the proposed compensation to the nature of the work performed, (2) a statement by the attorney that as soon as feasible the attorney gave to the personal representative an estimate of costs (including fees) and any change in costs for work to be performed with respect to administration of the estate, (3) the reasonableness of the time spent, including the number of hours spent and the usual hourly compensation for the work performed, (4) the results achieved, and (5) a statement by the personal representative that all of the time limitations imposed by the statute or the court rules have been met or, if not, the dates upon which compliance was due, the dates of actual compliance and the reasons for delay. Copies of such requests and supporting documents must be sent by certified or registered mail to all interested persons who may file exceptions to any such request within 20 days of the date of mailing. Authorization and payment of compensation may be made in whole or in part before or after the expiration of the period for presentation of claims but prior to approval of the final account. An attorney acting as personal representative can aggregate time for compensation without distinguishing between legal and administrative activities.

Court rules permit a request for compensation to be approved by the court (in the absence of objection) if the request is submitted in an abbreviated form (as set forth in the rules) without additional documentation, if the aggregate compensation sought by the personal representative and the attorney (exclusive of compensation for litigation) falls within the range of 4.5% to 8% of the estate's assets and income.

TESTAMENTARY TRUSTEE'S FEE

No statutory provision. Bank rates in the area are stated as a percentage of assets, on a sliding scale starting at 1 percent or 1.2 percent, with a minimum annual fee generally in excess of \$2,000. Banks to a lesser extent than formerly take commissions on income, but impose other charges, including termination fees.

FLORIDA

Rohan Kelley
Fort Lauderdale, Florida
January 1, 2002

PERSONAL REPRESENTATIVE'S COMMISSION

Personal representative's commissions may be paid without court order, but are required to be disclosed during in any accounting and also in the petition for discharge, and are then subject to objection.

For estates of decedents dying after October 1, 1993, Florida Statutes §733.617, provides for a presumed reasonable personal representative's commission based upon the value of the probate estate as determined by the probate inventory and all income earned on the probate assets during administration. Statutory commissions for ordinary services are computed on a sliding scale percentage of the inventory value of the estate, including income earned by the estate, as follows:

3.0%	of first	\$1,000,000
2.5%	of next	\$4,000,000
2.0%	of next	\$5,000,000
1.5%	of next	\$10,000,000 +

No distinction is made between corporate and individual fiduciaries. These amounts are presumed reasonable but are subject to adjustment, by increase or decrease, as provided in Florida Statute §733.617(5), based on 9 specific factors provided in the statute.

This last statute was amended effective January 1, 2002 to make it very similar in form and operation to the statute providing a presumed reasonable fee for the attorney for the personal representative, Florida Statutes § 733.6171, except the presumed reasonable percentage is slightly higher for the personal representative.

If there is an objection to the commission charged or paid to the personal representative, the personal representative is entitled to his attorney's fees in defense of the commission, payable from the estate, unless the commission claimed or paid is determined to be substantially unreasonable. Expert testimony is not required in proof of a reasonable commission. Florida Statute § 733.6171.

Additional compensation may be awarded for extraordinary services including, but not limited to, the sale of real or personal property, litigation, tax adjustment proceedings, and carrying on the decedent's business.

The statute indicates the decedent's will may provide for a different basis for personal representative's commissions, however, unless the reference in the will is to the regularly published schedule of fees in effect at the decedent's date of death, or words of similar import, or there is a written contract with the decedent regarding compensation, a personal representative may renounce the provisions contained in the will and obtain compensation as provided in the statute.

For estates under \$100,000, only one full commission is allowed, and if there are multiple personal representatives, the one commission must be apportioned according to the services rendered by each of them respectively. On estates with a value of \$100,000.00 or more, two full commissions are allowed. If there are more than two personal representatives, the personal representative who has possession of and primary responsibility for the administration of the assets, shall receive a full commission, and the remaining commission will be apportioned among the remaining personal representatives according to the services rendered by each of them respectively.

The value of the homestead, if passing to heirs, is not subject to probate and is not included in the calculation base.

FLORIDA, cont.

Florida Statutes § 733.617 reversed the ruling in *In re Platt's Estate*, 586 So.2d 328 (Fla. 1991), which held that a personal representative could not charge a fee based solely on a percentage of the value of the estate. *Bitterman v. Bitterman*, 714 So. 2d 3 (Fla. 1998), decided that the law applicable to determine a reasonable fee was the law in effect when the matter commenced. For matters commenced before October 1, 1993, the *Platt* case will control.

Curators are also entitled to a reasonable fee for their services and the court is authorized to consider the statute providing for personal representative's commissions when setting a curator's fee. Florida Statute § 733.501(3).

INTER VIVOS AND TESTAMENTARY TRUSTEE'S FEE

There is no statutory authority for trustees' fees in Florida, although Florida Statutes § 737.204(1) provides the authority and procedure for the court to review the reasonableness of a trustee's compensation. Case law has established a "reasonable fee" limitation, but has loosely defined what is considered reasonable. Therefore, great discretion is allowed to the court in determining a reasonable fee depending on the facts of the case. Also, there is no modern case law in this area, but when next presented, the appellate courts may very well attempt to establish some standards or limitations in this area.

However, there is a statute which establishes a presumed reasonable fee for the attorney representing the trustee in the initial trust administration (death settlement), which is similar in structure and operation to the Florida statute providing for a presumed reasonable attorney's fee for probate administration. See Florida Statutes §§ 737.2041 and 733.6171.

Ordinarily, only one trustee's fee is payable and must be shared among multiple trustees. *In re Platt's Estate*, 586 So.2d 328 (Fla. 1991) (applying to a personal representative's fee) may be controlling, holding that a personal representative could not charge a fee based solely on a percentage of the value of the estate. No decision has yet applied this principle.

Although there is little uniformity in how trust services are charged, and there are substantial variation in rates, the following rates are published by one regional trust department:

Annual fee based on a percentage of the market value of the account:

1.35%	of the first	\$500,000
1.20%	of the next	\$500,000
0.55%	of the next	\$4,000,000
0.45%	of the balance over	\$5,000,000

Minimum annual fee is \$3,500.

Acceptance fee of up to 1% where trust department is accepting trustee responsibilities as successor trustee.

Distribution fee of up to 1% on any distribution, partial termination or termination.

GEORGIA

William J. Linkous, Jr.
Atlanta, Georgia
December 28, 1998

EXECUTOR'S OR ADMINISTRATOR'S FEE

Section 53-6-60 of the Revised Probate Code of 1998 allows for a personal representative to be compensated as specified in either the will or any written agreement entered into prior to the decedent's death or a written agreement signed by all the beneficiaries of a testate estate or all the heirs of an intestate estate. Corporate and individual fiduciaries typically utilize contractual fee schedules.

If the personal representative's compensation is not specified in the will or any separate agreement the statutory rates are as follows: 2.5% of cash received; 2.5% of cash disbursed; a reasonable fee not exceeding 3% of the value of property delivered in kind, subject to court approval; and compensation of 10% on all interest earned on money loaned by the executor or administrator in his fiduciary capacity and received during the course of administration. Additional compensation may be allowed for extraordinary services, subject to court approval.

Joint executors or administrators are entitled to only one commission for their services, which should be divided between them in proportion to the services rendered, unless otherwise provided by contract.

Attorney's fees are fixed independently of the executor's fees and are not paid out of the executor's fees.

An example follows of charges of a corporate fiduciary in Atlanta under a typical agreement with a testator:

Base charge of \$4,000 plus:

On principal of probate estate assets:

3.75%	of first	\$1,000,000
3.00%	of next	\$1,000,000
2.00%	of next	\$1,000,000
1.00%	of next	\$1,000,000
.75%	of the remainder	

On principal of non-probate assets, a fee of up to 1% will apply based on time involved and the responsibility assumed.

A 5% charge applies to gross receipts and disbursements from real property.

Additional charges may apply.

TESTAMENTARY TRUSTEE'S FEE

Section 53-12-173 of the Revised Probate Code of 1998 stipulates that a trustee shall be compensated in accordance with either the trust instrument or any separate written agreement.

If the trustee's compensation is not specified in the trust instrument or any separate written agreement, the trustee's compensation shall be the statutory provisions outlined above for executors and administrators, except that trustees may also be allowed an additional annual compensation in the amount of 0.5% of the market value of the property held in trust.

GEORGIA, cont.

An example follows of charges of a corporate fiduciary in Atlanta under a typical agreement with a testator:

Annual fee based on the average market value of assets held:

1.1%	of first	\$500,000
0.9%	of the next	\$500,000
0.6%	of the next	\$1,000,000
0.5%	of excess over	\$2,000,000

Minimum annual fee: \$2,000

If entirely invested in one or more common funds of the corporate fiduciary annual fees are reduced by 20%.

Annual fees will be charged one-half against income and one-half against principal of the trust, unless otherwise directed.

HAWAII

Mervyn S. Gerson
Honolulu, Hawaii
December 17, 2001

PERSONAL REPRESENTATIVE'S FEE

The Hawaii Uniform Probate Code provides that a personal representative is entitled to reasonable compensation for the personal representative's services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative may also renounce the personal representative's right to all or any part of the compensation. A written renunciation of fee may be filed with the court. (Changed 1996 - Amend. L 1996, c 288, pt of §1).

The fees provided by the Code are the same for personal representatives and trustees. See below for fee schedule.

Note: If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not that person is entitled to receive from the estate that person's necessary expenses and disbursements including reasonable attorney's fees incurred. (L 1996, c 288, pt of §1)

TESTAMENTARY TRUSTEE'S FEE

The fees provided by the Code are both on income (computed on income received by the estate each year) and on principal (computed on the value of the probate assets as of the date of death of the decedent as finally determined for federal estate tax purposes or, if none, as shown on the inventory of the estate accepted by the court). The fees, which are not applicable to Trustees of charitable trusts, are:

On income:

7.0%	of first	\$5,000
5.0%	of excess over	\$5,000

On principal:

At inception of trust 1.0%

Final distribution upon termination 1.0%

Cash principal received after the inception of the trust which does not represent the principal upon which the 2 1/2% has previously at anytime been charged, payable at the receipt out of the principal 2.5%

Upon final payment of any cash principal prior to the termination of the trust, payable at the final payment out of the principal 2.5%

At the expiration of each year during the continuance of the trust payable annually out of the principal, provided that such 0.5 of 1% on the principal shall not apply to charitable trust, nor to the extent the trustee has employed others to perform bookkeeping and clerical services at the expense of the estate as permitted by the trust document or as provided by the Code 0.5 of 1.0%

HAWAII, cont.

In addition, further allowances may be made as the court deems just and reasonable for services performed in connection with sales or leases of real estate, contested or litigated claims against the estate, the adjustment and payment of extensive or complicated estate or inheritance taxes, the preparation of estate and income tax returns, the carrying on of the decedent's business pursuant to an order of court or under the provisions of any will, litigation in regard to the property of the estate, and such other special services as may be necessary for the trustee to perform, prosecute, or defend. All contracts between a trustee and a beneficiary other than the creator of the trust, for higher compensation than is allowed in this section shall be void.

These rules apply to future accounting in existing estates as to new estates. (Changed in 1993, Amend. L 1993, c 34, §2)

CHARITABLE TRUSTEES

For all existing and new charitable trusts established after January 1, 1999, the compensation of trustees of a charitable trust is limited to a reasonable amount, as determined by the circumstances. However, any provision in a trust agreement that existed prior to January 1, 1999, supercedes the foregoing provision. (Changed in 1998, Amend. L. 1998, c 310, § 2)

Prior to January 1, 1999, the commissions of trustees of charitable trusts was limited to the following schedule of percentages, to be applied no more often than once a year, on all moneys received in the nature of revenue of income of the estate, such as rents, interests, and general profits:

10%	of first	\$1,000
7%	on the next	\$4,000
5%	on the next	\$100,000
3%	on the next	\$100,000
2%	on all over	\$205,000

Prior to January 1, 1999, such trustees were also entitled to just and reasonable allowances for bookkeeping, clerical, and special services and expenses incidental thereto.

IDAHO

Loren C. Ipsen
Boise, Idaho
July 22, 1998

PERSONAL REPRESENTATIVE'S FEE

There are no statutory rates. Statutes provide that personal representatives are entitled to reasonable compensation, and that the reasonableness of the personal representative's fee is subject to review by the court on the petition or motion of an interested party. Idaho Code §§ 15-3-719 and 15-3-721.

TESTAMENTARY TRUSTEE'S FEE

Statutory provisions for testamentary trustees' fees allow the trustee to determine a reasonable fee and provide for review by the court upon petition by an interested party. Idaho Code § 15-2-705.

ILLINOIS

Carter Howard
Chicago, Illinois
January 1993

EXECUTOR'S OR ADMINISTRATOR'S FEE

Illinois banks charge a set fee for ordinary services based on the fair market value on the death of probate property plus income collected during administration. The set fee is based on a percentage of incremental estate values; and the following is representative of Chicago and other urban banks in Illinois:

6.00% (\$6,000 minimum)	on the first	\$100,000
4.00% (up to another \$6,000)	on the next	\$150,000
3.00% (up to another \$22,500)	on the next	\$750,000
1.75%	on values over	\$1,000,000

Based on the schedule, the fee for an \$800,000 estate would be \$28,500; and the fee for an estate of \$1,400,000 would be \$41,500.

Minimum fees for smaller urban banks and non-urban banks are frequently less, in some cases as little as \$1,000. Also, the percentages tend to be less for lower values, but are the same or slightly higher for values in excess of \$1,000,000.

Fees of co-fiduciaries, attorneys and other professionals are in addition to these scheduled fees. Such additional fees are usually closely related to the actual value of services performed (increasingly, supported by a time and description diary or other contemporaneous record).

Where similar services are performed by a bank as trustee of a living trust as the death of the settlor, a reduced fee in the range of one half to two thirds of the probate fee is arranged. In either case, extra fees will be charged for special or unusual services, such as involvement in the operations of a business, sale of a business or real estate and litigation.

TRUSTEE'S FEE

Fees for this service are based on an annual valuation of gross trust assets, and the fee is commonly charged to the trust account quarterly. The following is representative of trust accounts that are invested, at least in major part, in individually selected assets:

Base charge is \$2,200 plus		
1.00% (up to \$10,000)	on the first	\$1,000,000
0.50% of 1% (up to another \$20,000)	on the next	\$4,000,000
0.25% of 1% (up to another \$12,500)	on the next	\$5,000,000
0.20% of 1%	on values over	\$10,000,000

Base charge may be as little as \$1,000, but most often is between \$2,000 and \$2,500.

Where the trust is entirely invested in the bank's common trust funds without any individual selection of assets, the base charge is reduced to \$1,650 (a 25% reduction), and the value based charge is .75% on the first \$1,000,000; fees are negotiated for trusts of larger size.

Individually invested trusts which include unusual assets or circumstances, such as management of real estate, participation in business operations or direct payment of beneficiary expenses will be the subject of a special additional fee. Where the bank is relieved of responsibility for certain assets, a reduction in normal fees may be obtained (practice among banks differs).

ILLINOIS, cont.

The official position of banks is that the base charge and percentage fee calculations for separate trusts created by the same or related settlors will be calculated separately; but aggregate fee calculation agreements are not uncommon, especially where two or more trusts have the same beneficiaries.

Fees of co-fiduciaries, attorneys and other professionals are in addition to these scheduled fees.

Absent contrary provisions in the trust instrument, the Illinois Principal and Income Act directs that ordinary trustee fees be charged one half to income and one half to principal. Acceptance and termination fees are not usually charged; but actual service-related fees may be charged on those occasions.

INDIANA

Kristin G. Fruehwald
Indianapolis, Indiana
December 21, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

The standard is reasonable compensation. Fees vary greatly within the state. The maximum fee schedule proposed by the judges and adopted in several counties is as follows:

6%	of first	\$100,000
4%	of next	\$200,000
3%	of next	\$700,000
1%	of excess over	\$1,000,000

A fee for sale of real estate is \$500. The fee for an estate tax return is \$600 plus 1% of assets not on inheritance tax return. There is no separate fee for an inheritance tax return, but an additional 1% of non-probate intangibles and 1.5% of other non-probate assets would be permissible.

For extraordinary services, additional reasonable fees may be allowed at \$85 per hour. Fees of executor or administrator equal one half of attorney's fee. If an attorney acts as executor or administrator, he is entitled to a full fee for legal services and a one-third fee for acting as personal representative.

TESTAMENTARY TRUSTEE'S FEE

The standard is reasonable compensation. An example of customary rates is as follows:

Annual fee:

.01	of first	\$300,000
.006	of next	\$800,000
.003	of next	\$4,000,000
.002	of excess over	\$5,000,000

The minimum annual fee is \$1,000.

On termination, distribution or revocation (wholly or in part) — \$500 plus time and effort.

IOWA

Jerrold B. Oliver
Winterset, Iowa
April 22, 1998

EXECUTOR'S OR ADMINISTRATOR'S FEE

Reasonable fees for all ordinary services as may be determined by the court for services rendered but not in excess of the following commissions upon the gross assets of the estate as listed in the probate inventory for Iowa inheritance tax purposes:

6%	of first	\$1,000
4%	of next	\$4,000
2%	of excess over	\$5,000

Ordinary fees:

When fees for ordinary services are charged, proof of the nature and extent of responsibilities assumed and services rendered shall be required. Unless special circumstances exist, the file contents may suffice to show the services rendered. Attorney fees for the personal representative's attorney shall be allowed and taxed as part of the cost of administration on the basis stated above for executors or administrators.

Extraordinary allowance:

Further allowances as are just and reasonable may be made by the court to personal representatives and their attorneys for actual and necessary extraordinary expenses or services. The request for extraordinary services or expenses may be by separate application or included in the final report. The application shall show the amounts requested and shall show (1) the necessity for such extraordinary service or expense, (2) responsibilities assumed, (3) the extra time or expense involved, (4) the complexity and importance of the matter to the estate, if applicable, (5) and results obtained, if applicable. Unless waivers of notice are filed by all interested persons, the request shall be set for hearing with notice as the court prescribes. The burden is upon the personal representative or attorney to make a sufficient showing to justify the award.

If each item of the estate is in joint tenancy and no need exists for clearance of debts and liabilities by probate proceedings, CIT (clearance of inheritance taxes) proceedings are quicker, simpler and about half as expensive. If all of the assets are held in joint tenancy with right of survivorship between husband and wife alone, clearance for inheritance tax is not required.

If the attorney is also the executor or administrator, the total fee as attorney and fiduciary is usually fixed at 1.5 times the usual executor's fee.

Upon request of the personal representative, the final report shall show "an itemization of services performed, time spent for such services, and responsibilities assumed by the personal representative's attorney," unless the final report contains a statement that the personal representative was informed of these provisions and did not request the itemization.

TESTAMENTARY TRUSTEE'S FEE

No statutory fee. Examples of annual fees asked by some corporate trustees in Des Moines are as follows:

.7 of 1%	of first	\$400,000	of assets
.6 of 1%	of next	\$300,000	of assets
.5 of 1%	of next	\$300,000	of assets
.4 of 1%	of excess over	\$1,000,000	

based on non-real estate assets. Minimum fee is usually \$600. For management of farms, fee is based on 10% of the gross income. For management of residential or commercial property, fee varies from 5% to 15%. Distribution

IOWA, cont.

fees: No uniform fee basis.

All testamentary trustees' fees are subject to court approval. Application for allowance of fees for testamentary trustees and attorneys shall be verified in writing and include an itemized statement of services performed.

KANSAS

Martin B. Dickinson, Jr.
Lawrence, Kansas
April 30, 1998

EXECUTOR'S OR ADMINISTRATOR'S FEE

There is no statutory fee schedule for executors or administrators. A fiduciary is entitled to "just and reasonable" compensation. K.S.A. 59-1717. Fees of executors and administrators must be approved by the court, even where there is a fee agreement between the beneficiaries and the executors or administrator.

Fee practices vary widely. In rural areas fees are usually determined as a percentage of the estate value, with the percentage declining as the estate value rises. In urban areas fees are more often based on hourly rates or specific amounts agreed to by the beneficiaries and the executor or administrator. Where the fee is determined as a percentage of the estate, there is a growing tendency of probate judges to require documentation of work done, preferably including time records or other specifics.

The fee schedules of banks and trust companies are usually honored, if agreed to by the beneficiaries, and assuming the amount is not unreasonable relative to the work performed.

TESTAMENTARY TRUSTEE'S FEE

There is no statutory fee schedule for executors or administrators. A fiduciary is entitled to "just and reasonable" compensation. K.S.A. 59-1717. No court approval is required unless the trust instrument mandates court approval.

Fee practices vary widely, with the fee typically determined by agreement between the beneficiaries and the trustee. Noninstitutional trustees are often compensated on an hourly rate basis, while institutional trustees are typically compensated on the basis of an agreed fee structure related to asset values and/or income, subject to a mandatory minimum.

KENTUCKY

Randolph Noe
Louisville, Kentucky
December 17, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

Statute provides that compensation shall not exceed 5% of "personal estate," plus 5% of income collected. Additional allowance may be made for extraordinary services.

TESTAMENTARY TRUSTEES' FEES

Statute provides that compensation shall not exceed 6% of income collected plus .3 of 1% annually of fair value of real and personal estate, or at the option of the trustee and in lieu of annual compensation, 6% of the fair value of the principal distributed compensation at the time of distribution. Additional allowances may be made for extraordinary services.

LOUISIANA

Joel A. Mendler
New Orleans, Louisiana
November 30, 2001

SUCCESSION REPRESENTATIVE'S FEE

The Louisiana Code of Civil Procedure provides that an executor named in a testament dated prior to January 1, 1961, is entitled to the full compensation allowed by law even though he may not have been actually confirmed. Executors named in testaments dated subsequent to December 31, 1960, are entitled to reasonable compensation for services rendered, whether actually confirmed as executor or not (CCP Art 3033).

The Louisiana Code of Civil Procedure provides that an executor shall be allowed compensation of such "reasonable" amount as is provided in the testament appointing him and an administrator such "reasonable" amount as may be agreed upon with the surviving spouse and competent heirs. In the absence of a testamentary provision or an agreement, the executor or administrator is allowed 2.5% of the amount of the inventory which amount may be increased by the court if inadequate. Provisional administrators and administrators of vacant successions are allowed "fair and reasonable" compensation by the court (CCP Art 3351). Unless otherwise provided in the testament or otherwise agreed in writing by the heirs and legatees owning a two-thirds interest in the succession, an attorney who serves as succession representative may not receive compensation for services both as attorney and as succession representative (CCP Art 3351.1B). The compensation of the succession representative is reduced by the amount received and which is attributable to the performance of the duties as attorney for the succession or succession representative. Unless otherwise provided in the testament or otherwise agreed in writing by the heirs and legatees owning a two-thirds interest in the succession, if the succession representative in discharging his duties as succession representative is or becomes an officer or managing partner of a corporation or partnership in which the majority of outstanding shares or interests were owned by the decedent at the time of his death, the succession representative cannot receive compensation in both capacities, but the succession representative's compensation is reduced by the amount he receives and which is attributable to the performance of his duties as an officer of the corporation or managing partner of the partnership (CCP Art. 3351.1A). Any compensation paid or due the succession representative serving in the foregoing dual capacities must be approved by the court prior to the payment (CCP Art 3351.1D).

In parishes where a public administrator has been appointed, the law fixes their fee at 5% of all funds administered by them plus expenses approved in advance by specific court order in parishes of less than 425,000 population. There is an annual salary in lieu of a commission in parishes having more than 425,000 population. (LaRS 9:1589).

TESTAMENTARY TRUSTEE'S FEE

The Louisiana Trust Code provides that a trustee is entitled to "reasonable compensation" unless the trust provides otherwise or unless the trustee waives compensation, but if he commits a breach of trust the court may deny all or a part of the compensation to which he would otherwise be entitled (LaRS 9:2181 et seq.).

MAINE

Philip C. Hunt
Portland, Maine
December 6, 2001

PERSONAL REPRESENTATIVE'S FEE

Since the adoption of the Maine Uniform Probate Code on January 1, 1981, a personal representative (formerly executor or administrator) is entitled to "reasonable" compensation for services based on a number of factors specified in 18-A M.R.S.A. § 3-721. These factors include the time and labor required, amounts involved, results obtained, time limits, expertise, reputation and ability of the personal representative, and the likelihood that acceptance of appointment will preclude other employment. In an important decision in 1986, the Maine Supreme Court ruled that in most estates the fee should be based predominantly on the amount of time expended rather than the size of the estate [*Estate of Davis*, 509 A.2d 1175 (Me. 1986)]. Any interested person can seek judicial review of estate fees if he so desires.

TESTAMENTARY TRUSTEE'S FEE

Trustees (both testamentary and inter vivos) are entitled to reasonable compensation. The factors set forth in 18-A M.R.S.A. § 7-205 are considered in determining the reasonableness of fees for a trustee. Percentage fees are allowable if reasonable taking into consideration include the time and labor required, amounts involved, results obtained, time limits, expertise, reputation and ability of the personal representative, and the likelihood that acceptance of appointment will preclude other employment.

MARYLAND

Allan J. Gibber
Baltimore, Maryland
December 1, 1998

EXECUTOR'S OR ADMINISTRATOR'S FEE

Statute provides for commissions not exceeding 9% of the first \$20,000 of the "probate estate" and 3.6% on the balance of the estate, such commissions to be determined, however, in the exclusive jurisdiction of the Orphan's Court upon petition in reasonable detail. These maximum fees are applicable unless the will provides for a larger measure of compensation. Effective January 1, 1992, "probate estate" includes real property.

Effective for decedents dying on or after January 1, 1998, payment of commissions may be made without order of court provided each unpaid creditor and all interested persons consents in writing, filed with the Register, and provided the combined payments of commissions and attorneys' fees do not exceed the statutory maximum commissions.

"Probate estate" does not include life insurance or other death benefits payable to others, jointly held property or joint and several annuities.

TESTAMENTARY TRUSTEE'S FEE

Statutory rates are as follows as to each separate trust:

Annual commissions on principal:		
.40 of 1%	of first	\$250,000
.25 of 1%	of next	\$250,000
.15 of 1%	of next	\$500,000
.10 of 1%	of excess over	\$1,000,000

Annual commissions on income:

6% on all income from real estate, ground rents, mortgages collected.

As to all other income:

6.5%	of first	\$10,000
5.0%	of next	\$10,000
4.0%	of next	\$10,000
3.0%	of excess over	\$30,000

Instead of the rates for principal and income commissions set forth above, a trustee may charge "increased" commissions if the trustee is (1) a financial institution subject to supervision by the state of Maryland or the federal government, or an instrumentality of the United States, or (2) a member of the bar of the state of Maryland, provided that the trustee (a) files a schedule of its rates in accordance with the statute (a savings and loan association files with the State Director of the Division of Savings and Loan Associations; all other eligible trustees file with the Commissioner of Financial Regulation, and with the Trust Clerk if the Trust is administered under the jurisdiction of a Court) and (b) gives notice of said schedule to the ascertained beneficiaries of each affected trust. Where there are multiple trustees, the controlling schedule will be the schedule filed by the trustee having custody of the assets and maintaining records of the trust. The statute gives an objecting beneficiary the remedy of circuit court review of the reasonableness of any proposed rate increases. Trustees who do not file for increased compensation are limited to the statutory rates. Trustees who are not authorized to file are limited to the statutory rates unless they petition the Court for approval of an increase.

For selling real property or leasehold property, a commission upon the proceeds of sale at the rate allowed by rule of court or statute to trustees appointed to make sales under decrees or orders of a circuit court in the county where the property is situated, or if located outside Maryland, for selling similar property in the county where the trust is being administered.

MARYLAND, cont.

On final distribution, an allowance is made commensurate with the labor and responsibility involved in making distribution. In the absence of special circumstances, the commission shall equal .5 of 1% on the fair value of the principal being distributed.

MASSACHUSETTS

John J. Roche
Cambridge, Massachusetts
July 31, 1998

EXECUTOR'S AND ADMINISTRATOR'S FEE

There are no statutory rates. The current customary charges, based on probate property value, by corporate executors in Boston are as follows:

Income fee: 7% of gross income.

Fee on principal:

5%	of first	\$300,000
4%	of next	\$200,000
3%	of next	\$500,000
2%	of next	\$2,000,000
1%	of balance	

One half (½) of the non-probate property over which the executor has investment responsibility usually is included in the above calculation.

Minimum charges range between \$5,000 and \$7,500.

NOTE: Executor fees charged by many private fiduciary firms, including law firms with trust departments, are frequently less than the corporate fiduciary fee structure.

TRUSTEE'S FEE

There are no statutory rates.

Annual income fee: 7% of income, although it is not uncommon for fiduciaries to decrease the rate as the amount of the income flow increases.

Annual fee on principal:

.75% of first	\$1,000,000
.65% on next	\$2,000,000
.50% over	\$3,000,000

Some banks add on base charges ranging from \$700 to \$2,000. Minimum charges range between \$2,000 and \$7,500. Some banks charge a 1% termination fee. The fees on accounts wholly invested in common trust funds usually are less than 50% of the above fees.

NOTE: Trustee fees charges by members of many private fiduciary firms, including law firms, may be significantly lower than the fees charged by corporate fiduciaries. In addition, trustee fees for large accounts (over \$5.0 million) may be the subject of negotiation with the corporate or individual trustee if addressed prior to the establishment of the fiduciary relationship.

MICHIGAN

John M. Wright
Flint, Michigan
December 23, 1998

PERSONAL REPRESENTATIVE'S FEE

Statute provides that:

A fiduciary shall be allowed the amount of his or her reasonable expenses incurred in the administration of the estate and shall also have such compensation for his or her services, both ordinary and extraordinary, as the Court in which the fiduciary's accounts are settled deems to be just and reasonable. When compensation is provided by a written instrument, the provision shall be deemed to provide full compensation for the fiduciary's services if the fiduciary accepts the trust under the instrument unless, by written instrument filed in the Court at the time of his or her acceptance, the fiduciary renounces his or her claim to compensation provided by the instrument. In the case of a successor personal representative, the Court, in its discretion, may apportion the compensation among the first and successor personal representatives. Fiduciary fees may be taken at intervals as approved by the Court [Mich. Comp. Laws § 700.541].

Examples of customary rates of corporate personal representatives are as follows:

Detroit (southeast Michigan) area:

Up to \$2,000,000 — 3%
Plus \$160 monthly base fee
Plus charges for time of specialists.

Grand Rapids (western Michigan) area:

Base fee of \$750-\$2,000 for supervised probate
Base fee of \$500-\$2,000 for independent probate
Plus:

3%	of first	\$300,000
2%	of next	\$3,000,000
1%	over	\$3,000,000

Flint (central Michigan) area:

Base fee of \$1,000
Plus:

3.00%	of first	\$2,000,000
2.25%	of next	\$3,000,000
1.75%	of next	\$5,000,000
1.00%	over	\$10,000,000

All special services \$100-\$150 per hour.

MICHIGAN, cont.

TESTAMENTARY TRUSTEE'S FEE

The statute quoted above likewise applies to testamentary trustees. Examples of customary rates of corporate trustees are as follows:

Detroit (southeast Michigan) area:

Account maintenance fee of \$800 to \$1,100

Income fee of 8%

Asset fee based on total assets managed

Minimum fee of \$2,750.

Grand Rapids (western Michigan) area:

Based on diversified portfolio management schedule:

Base fee of \$800

Plus 7% of income

Plus 1/2% of first \$1,000,000 of current market value of managed assets

Minimum — \$500-\$2,750 annually

Flint (central Michigan) area:

Base fee of \$800

Minimum of \$1,500

Plus charges for tax work, real estate management, court hearings, etc.

All special services \$100 per hour.

\$300 minimum co-trustee fee.

MINNESOTA

Richard A. Wilhoit
St. Paul, Minnesota
January 4, 2002

EXECUTOR'S OR ADMINISTRATOR'S FEE

Minnesota Statutes provide that personal representatives' fees, as well as attorneys' fees, are to be just and reasonable. Factors to be considered are: time and labor required, experience and knowledge of the representative, complexity and novelty of problems involved, extent of responsibilities assumed and results obtained, and sufficiency of assets properly available to pay for the services. Some district courts have established their own guidelines and standards for review and allowance of these fees. Some courts place emphasis on time expended.

Most corporate fiduciaries in the Minnesota/St. Paul area are part of national banking institutions. Customary charges for corporate fiduciaries in the Minneapolis/St. Paul area are as follows:

3%	of first	\$1,000,000
2%	of next	\$2,000,000
1%	of excess over	\$3,000,000

Range of minimum fee: \$3,000 to \$10,000

Some corporate fiduciaries also charge the above fee on all or a portion of income earned during administration, as well as the value of the corpus.

Additional fees for non-probate assets in a probate estate are based upon services performed. Such fees are usually based either on time expended or one half the fee for a probate estate.

If a "decedent's" assets are held in a revocable trust by a corporate fiduciary at the decedent's death, all corporate trustees discount their personal representative's fee for post-death estate administration services, including estate and fiduciary tax return preparation, by 15 to 50%. One institution has a modest flat fee. All institutions continue to charge their regular fees for continuing trustee services.

TESTAMENTARY TRUSTEE'S FEE

Minnesota Statutes provide for reasonable compensation. Examples of customary annual charges by corporate fiduciaries in the Minneapolis/St. Paul area currently in effect are as follows:

First \$1,000,000 of principal	Range of 1 to 1.35%
Second \$1,000,000 of principal	Range of .75 to 1.3%
\$3,000,000 of principal and above	.50%

In valuing principal for fee computation purposes, bonds and marketable securities are generally valued at the time the fee is charged to the account, e.g., monthly or quarterly. Some institutions also charge a base fee, in addition to the stated annual percentage rate. Some institutions have separate additional charges for tax return preparation. All institutions have reduced fees for assets invested in the trustee's managed mutual funds.

Minimum fees range from \$1,250 to \$22,000 per with a mean maximum fee of about \$6,000.

Generally, termination fees charged to principal no longer apply. Minnesota Statutes provide that regular trustees' fees shall be charged one half to income and one half to principal unless the instrument directs otherwise.

MINNESOTA, cont.

Discounts from the stated fee schedule may be available where there are unusually large or directed holdings of assets. Trusts that hold closely-held business interest and other special assets will probably be subject to special charges. Because of variation in fee schedules for corporate trustees, as well as itemized charges for some services which are included in the base fee of other trustees, it has become more complex to compare total costs and fees for corporate trustee services. Projected fees should be reviewed carefully if that is important to the client.

MISSISSIPPI

F.M. Bush, III
Tupelo, Mississippi
December 7, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

Statute provides for such compensation as the court deems proper considering the value and worth of the estate and the degree of difficulty of the representative's duties plus any necessary expenses, including attorney's fees, which the court will allow.

An example of customary rates follows:

5.0%	of first	\$50,000
4.0%	of next	\$50,000
3.5%	of next	\$200,000
3.0%	of next	\$200,000
2.0%	of excess over	\$500,000

Minimum fee: \$2,500.

PERSONAL TRUSTS — ANNUAL FEE

Based on market value of assets:

.80%	of first	\$300,000
.70%	of next	\$700,000
.40%	of next	\$1,000,000
.30%	of next	\$1,000,000
.25%	of next	\$1,000,000

Individual quotes for assets in excess of \$4,000,000.

Plus:

Based on income:

4.0%	of first	\$25,000
2.5%	of next	\$60,000
1.5%	of excess over	\$85,000

Minimum annual fee: \$700.

SPECIAL CHARGES

In addition to the normal charges, if the trust or estate consists of assets of an unusual nature or if the administration of the trust or estate is unusually complex, the following schedule is typical:

(1) Real estate management:

- (a) Sale negotiation and closing: 2% of gross sales price when an agent is employed; 5.5% of gross sales if no agent is used.
- (b) Lease negotiation and closing: 5% of total lease payments.
- (c) Rental collection: 6% of rentals plus .1 of 1% of market value of real estate.
- (d) Non-income producing property: .35 of 1% of market value of real estate.

(2) Minerals management:

- (a) Royalty interest: 5.5% of gross receipts, bonuses or similar receipts.
- (b) Working interest: 5.5% of gross receipts.

Plus out-of-pocket costs for geologist consultation.

MISSISSIPPI, cont.

(3) Extra services:

For unusual services, including operation of business, involvement in litigation or out-of-town travel, reasonable compensation commensurate with the services, time, work and responsibility involved will be charged.

MISSOURI

John W. Howald
Hillsboro, Missouri
December 14, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

In regular ("supervised") administration:

The minimum compensation fixed by statute for one personal representative is:

5.00%	of first	\$5,000
4.00%	of next	\$20,000
3.00%	of next	\$75,000
2.75%	of next	\$300,000
2.50%	of next	\$600,000
2.00%	of excess over	\$1,000,000

based on the personal property administered (valued as of the date of distribution) and proceeds of all real property sold under order of the probate division of circuit court, unless different provision for compensation is made in the will and such is not renounced by personal representative prior to qualifying. Section 473.153 RSMo, provides where reasonable compensation to the personal representative is in excess of the schedule, the court shall allow such additional compensation as will make the compensation reasonable and adequate.

Where two or more serve either jointly or as successor personal representatives, statute fixes maximum compensation as the lesser of twice the statutory minimum or 5% of the aforesaid fee base, whichever is less; however, corporate fiduciaries normally require the statutory minimum allowed for one personal representative even when serving with others. Maximum limitation does not apply if possession has been taken of real estate which is not sold during administration or if extraordinary services have been performed.

Attorneys performing services for the estate at the instance of the personal representative are allowed as minimum compensation for their services the same fee minimum fixed for one personal representative. If the personal representative is an attorney, no separate allowance is made for legal services unless authorized by the will or by order of the court or are consented to by all heirs and devisees upon whom the fee would have an effect. Further, statute provides that attorney fees shall be disallowed if a court finds any services or actions of the attorney are wrong, improper, or injurious to the state.

Employment of independent accountants or tax specialists is specifically authorized by statute which provides such person shall be paid reasonable compensation as determined by the court. However, if the personal representative is a certified public accountant, tax specialist, or independent accountant, no allowance is to be made for accounting services performed by him or at his insistence unless authorized by will, by order of the court, or by consent of all heirs and devisees upon whom the fee would have an effect. Further, by statute, if a court finds any accountant's services or actions in connection with the estate to be wrong, improper, or injurious to the estate, no accountant fee whatsoever shall be allowed.

In independent ("unsupervised") administration:

Missouri Probate Code provides for modified version of unsupervised administration where will so provides or all beneficiaries or heirs of intestate consent. Independent personal representative and attorney are each entitled to reasonable compensation; statutory schedule (see above) is *prima facie* evidence of same. Reasonableness of compensation is reviewable by probate division, upon petition by an interested person.

TESTAMENTARY TRUSTEE'S FEE

No statutory provision.

Corporate fiduciary fees and commissions vary considerably, and may well be subject to negotiation.

Virtually all Missouri corporate fiduciaries provide printed schedules of fees and commissions, which should be reviewed prior to the selection of a trustee.

MONTANA

George D. Goodrich
Missoula, Montana
April 7, 1998

PERSONAL REPRESENTATIVE'S FEE

Such fees shall be reasonable, not exceeding:

3%	of first	\$40,000
2%	of excess over	\$40,000

based on value of estate reported for federal estate tax or state inheritance tax purposes, whichever is larger.

The court may allow additional compensation for extraordinary services, not exceeding the amount of the original compensation. The attorney's fee shall not exceed 1.5 times the compensation of the personal representative. Further compensation may be allowed to the attorney for good cause shown after notice and hearing.

TESTAMENTARY TRUSTEE'S FEE

In accordance with will provision, and if the will is silent, then reasonable compensation is allowed. The court may allow compensation in addition to the amount shown in the will, or lower the amount of compensation shown in the will if the compensation shown in the will is inequitable, or unreasonably low or high.

Montana trust organizations typically charge acceptance, annual, and termination fees. Annual fees typically are in the range of .7 of 1% to 1.5% of the principal administered.

NEBRASKA

Sharon R. Kresha
Omaha, Nebraska
June 12, 1998

EXECUTOR'S OR ADMINISTRATOR'S FEE

No statutory provision except "reasonable compensation," which may be determined by the personal representative subject to review by the court upon petition of any interested person, or which may be judicially determined or approved upon application by the personal representative, with notice to all interested persons, followed by hearing. Upon review, the court may order the refund of any fees previously paid which are found to have been excessive.

Although subject to variation, depending on the location and nature of assets involved, a common fee is approximately 2% of the market value of the probate assets. Special services, such as management of rental real estate, either rural or urban, justify additional fees, which usually approximate similar fees charged by others engaged in similar activities. Most corporate fiduciaries do not charge an increased percentage rate on smaller estates. A fixed minimum charge, from \$1,000 to \$3,500 (\$2,500 customary), is common for handling any estate.

Attorneys fees are not expected nor required to be paid by the fiduciary out of the latter's fees, but are additional and paid out of the estate assets.

TESTAMENTARY TRUSTEE'S FEE

Same statutory provision as above for fees of personal representatives. Some customary rates are as follows:

Many corporate fiduciaries have discontinued charging an acceptance fee.

Annual fees for management of trust property are for the most part based on the size of the trust. Some corporate fiduciaries in the metropolitan areas compute a separate investment fee and trustee's fee. As a general proposition, fees range from about .5% on amounts in excess of \$1,500,000 to between .92% and 1.2% on the first \$500,000 to \$750,000, with intermediate blocks at .2% increments in most cases. Preparation of fiduciary income tax returns are additional whether done by outside tax accountants or in house by the fiduciary. Unusual services, such as sale or management of real estate, call for additional charges, which vary depending on the responsibility assumed and the nature of the services, and whether or not independent outside agents or managers are required. Minimum annual fees are established by most corporate fiduciaries, usually in the \$250 to \$1,500 range. Minimum fees are higher at metro banks, usually in the \$1,000 to \$1,500 range.

A majority of the corporate fiduciaries charge some type of closing and distribution fee. The method of determining this fee varies widely. The fee may be based on a percentage of the asset value, usually between 1% and 2%, or on a percentage of the current annual fee in addition to the prorated portion of the current year's annual fee. Out-of-pocket expenses and the nature and complexity of the assets may also be considered.

Most corporate fiduciaries charge the same fees whether acting as sole trustee or as co-trustee.

NEVADA

Prince A. Hawkins
Reno, Nevada
February 1, 2002

EXECUTOR'S OR ADMINISTRATOR'S FEE

Statutory rates are as follows:

4%	of first	\$15,000
3%	of next	\$85,000
2%	of excess over	\$100,000

allowed on the "whole amount of the estate accounted for."

Additional allowance may be made for service in regard to real property, and for extraordinary services.

TESTAMENTARY TRUSTEE'S FEE

Nevada Revised Statutes 153.070 provides as follows:

On the settlement of each account of a trustee the court shall allow the trustee his proper expenses and such compensation for services as the court may deem just and reasonable. Where there are several trustees it shall apportion the compensation among them according to the respective services rendered. It may, in its discretion, fix a yearly compensation for the trustee or trustees, to continue as long as the court may deem proper.

Examples of customary rates are as follows:

Acceptance fee if trustee did not serve as executor:

.1 of 1% of principal, with maximum charge of \$350.

Annual fee (based on trust assets):

1.2%	of first	\$2,000,000
0.90%	of next	\$2,000,000
0.70%	of next	\$2,000,000
0.55%	of next	\$5,000,000
0.45%	of excess over	\$10,000,000

Minimum charge of \$3,000

Distribution fee; time effort and cost involved.

.5 of 1% of principal, with minimum charge of \$250.

NEW HAMPSHIRE

John C. Ransmeier
Concord, New Hampshire
December 10, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

There is no statutory provision establishing the level of fiduciary or attorney fees. Fiduciary and attorney fees are reported on the fiduciary's accounts, which must be filed with the probate court annually and upon the close of administration. The probate court will allow fees that are "reasonable" based upon an examination of a variety of factors, which include the time, labor, and skill involved in administration, fees customarily charged for like services, the size of the estate involved and results obtained. *In Re Estate of Rolfe*, 136 N.H. 294, 615 A2d 625 (1992).

In *Rolfe*, the New Hampshire Supreme Court recommended that fiduciaries and attorneys have fee agreements and stated that, although fee agreements would not be binding upon the probate court in its review of fees, fee agreements would certainly be an important factor to be considered by the probate court when determining fees. The fiduciary is required to submit to the probate court a Statement Concerning Fees, due upon filing the probate inventory which is routinely due 90 days from the grant of administration, certifying whether or not any fee agreement(s) are in place with respect to attorneys fees.

TESTAMENTARY TRUSTEE'S FEE

Trustees of non-charitable testamentary trusts are required to report their expenses and compensation to the probate court on annual accounts and accounts filed upon trust termination. Under RSA 564:21,I such trustees are to be allowed their reasonable expenses and, unless otherwise provided in the trust instrument, such reasonable compensation for services as the probate court may allow. In the case of any corporate or professional trustee, RSA 564:21,II allows a rebuttable presumption that reasonable compensation for the trustee's services is to be defined by the trustee's established fee schedule or fee agreement in effect when the services were rendered. Trustees are required to submit an affidavit stating the fee schedule or fee agreement, that charges for services were in accordance with the schedule or agreement, and that beneficiaries were notified of the schedule or agreement. Additional charges are not ordinarily allowed for the cost of preparing accounts or for court appearances. Under RSA 564:21,III, expenses and trustee compensation are to be equitably apportioned by the trustee between income and principal, subject to review by the probate court.

Trustees of charitable trusts are required to file their accounts with the director of charitable trusts as well as with the probate court. RSA 7:28. Under RSA 564:21-a, they are to be allowed their reasonable expenses and such reasonable compensation as the probate court may allow. Such expenses and compensation are to be payable as provided in the instrument, or in the absence of direction out of income, except that expenses and compensation may be payable out of principal, or both out of income and principal, if annually approved by the governing body of the charity or beneficiaries and approved by the court.

NEW JERSEY

George A. Aguilar
Morristown, New Jersey
April 14, 1998

EXECUTOR'S OR ADMINISTRATOR'S FEE

Statutory rates are as follows:

Income: 6% on income, without court allowance.

Corpus: 5% on corpus received by the fiduciary where corpus receipts do not exceed \$200,000; and where corpus receipts exceed \$200,000, 5% on the first \$200,000, 3.5% on the excess over \$200,000 up to \$1,000,000, and 2% on the excess over \$1,000,000 or such other percentage as the court may determine on the settlement of a fiduciary's intermediate or final account according to actual services rendered. If there are two or more fiduciaries, the court may allow additional corpus commissions in an amount not exceeding 1% of all corpus for each additional fiduciary. No one fiduciary shall be entitled to any greater commission than that which would be allowed if there were but one fiduciary involved.

Court may allow additional commissions on corpus for unusual or extraordinary services; and may allow reasonable compensation on non-probate assets that are subject to death taxes.

Commissions are payable when allowed by the court, or approved by beneficiaries. However, annually, without court allowance, fiduciary may take on account of corpus commissions .2 of 1% of the value of the corpus. If there are two or more fiduciaries, there may be added one fifth of such commissions for each fiduciary more than one. In computing the amount of commissions which may be taken annually, at the option of the fiduciary, either the presumptive value or the value of such item at the end of the period for which the commissions are taken may be used. The "presumptive value" of any item of corpus shall be the value of such item at the time it came into the fiduciary's hands. Unpaid commissions for any year may be taken in a subsequent year. Commissions are subject to review by the court and may be disallowed if the aggregate exceeds the amount specified in the first paragraph above.

In the event of dispute as to value of corpus, burden of proof is on party claiming value other than presumptive value.

TESTAMENTARY TRUSTEE'S FEE

Statutory rates are as follows:

Income: 6% on income, without court allowance.

Corpus: Annually, without court allowance, fiduciary may take commissions on corpus (including accumulated income invested by the fiduciary) of .5 of 1% on the first \$400,000 and .3 of 1% on the excess. If there are two or more fiduciaries, there may be added one fifth of such commissions for each fiduciary more than one. No one fiduciary shall be entitled to any greater commission than that which would be allowed if there were but one fiduciary involved. Unpaid commissions for any year may be taken in a subsequent year.

Notwithstanding the above, if fiduciary is a banking institution or savings and loan authorized to exercise fiduciary powers and corpus value exceeds \$400,000, the fiduciary shall be entitled to such commissions as may be reasonable.

In addition to the foregoing annual commissions, the fiduciary may take, on trust termination or distribution of assets, the following commissions on corpus distributed:

- 2.0% if distribution within 5 years from date when corpus received
- 1.5% if distribution between 5 and 10 years
- 1.0% if distribution after 10 years.

NEW JERSEY, cont.

If there are two or more fiduciaries, there may be added one fifth of such commissions for each fiduciary more than one. The value of the corpus for the purpose of computing the commissions shall be the “presumptive value” mentioned above or, at the option of the fiduciary, the value at the end of the period for which commissions are taken. In the event of dispute as to value of corpus, burden of proof is on party claiming value other than presumptive value. Court may allow additional commissions on corpus for unusual or extraordinary services.

No commissions in excess of such statutory commissions shall be paid to a testamentary trustee unless testator, by will or codicil, acknowledges that he is aware of the statutory commissions and authorizes payment in excess thereof. This does not preclude court from allowing commissions for extraordinary services.

Regarding the computation of commissions on corpus held by trustees for periods prior to March 1, 1980, commissions which may be taken shall be the greater of commissions permitted by statutes in effect prior to February 29, 1980, or commissions as stated above.

Within 60 days after end of each tax year, a trustee must provide all parties interested in the income of the trust, and to all parties interested in the principal of the trust who shall make a demand thereof, a statement showing corpus commissions taken during the tax year and the basis upon which those commissions were taken, including “presumptive value” and “value” as of date commissions were computed.

NEW MEXICO

James M. Parker
Albuquerque, New Mexico
July 17, 1992

PERSONAL REPRESENTATIVE'S FEE

Statutory compensation for personal representatives is as follows:

On "property. . . which shall come into their possession" (subject to below provisions):

10%	of first	\$3,000
5%	of excess over	\$3,000

provided that if said property consists of "proceeds of life insurance policies, or cash, including checking accounts, time deposits, certificates of deposit, savings accounts, postal savings certificates, and all United States government bonds," compensation shall not exceed:

5%	of first	\$5,000
1%	of excess over	\$5,000

and provided further, no compensation is paid on account of real estate, except as allowed by court upon proper cause being shown.

TESTAMENTARY TRUSTEE'S FEE

No statutory provision. Customary rates vary, based upon the services to be performed, including a percentage of 4% to 5% of gross rental income and basic annual fees from .9 of 1% to 1.5% based upon the current market value of the assets in the hands of the trustee. Most trustees provide that there will be additional reasonable fees for extraordinary services based upon the work done, costs of operations, and the responsibility which is assumed.

NEW YORK

John C. Spitzmiller
Buffalo, New York
December 11, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

Statutory rates for receiving and paying out all sums of money:

5.0%	of first	\$100,000
4.0%	of next	\$200,000
3.0%	of next	\$700,000
2.5%	of next	\$4,000,000
2.0%	of excess over	\$5,000,000

The value of any property received or distributed in kind is fixed as directed by the court.

Percentage is taken one half as receiving and one half as paying out. For example, assume the representative receives \$8,000, but because of depreciation pays out \$7,000. He would be entitled to 2.5% of \$8,000 as a receiving commission and 2.5% of \$7,000 as a paying out commission. For persons dying after August 31, 1993, no more than two commissions shall be allowed unless the testator specifically provides otherwise in writing. Unless the representatives otherwise agree, the allowed commission is to be apportioned among the representatives according to the services rendered, but in no event shall a representative receive more than one full commission. For persons dying on or before August 31, 1993, as many as three commissions may be allowed if the principal accounted for exceeds \$300,000. An additional commission of 5% of gross rents collected is allowed where a representative is required to collect rents and manage real property, but only one such additional commission is allowed regardless of number of representatives. If the fiduciary is a New York attorney, payment for legal services reasonably required is in addition to the statutory commission. With respect to a corporate executor, if a will makes specific provisions for compensation, or if the corporate executor has agreed to accept specific rates or amounts or if the will provides that the corporate executor is to be compensated according to its published fee schedule in effect from time to time, than the specific provisions, agreed rate or amount or fee schedule shall control even though not executed in accordance with the provisions required of a will or not attested as required for recording a deed. See Surrogate's Court Procedure Act §§ 2307 and 2313.

An attorney designated as executor under a will drafted by the attorney or an affiliated attorney shall receive a commission equal to one-half of a statutory commission unless there is a written and witnessed acknowledgment by the decedent that certain information relating to commissions and fees for legal services was disclosed to the decedent. Such disclosure must take place prior to the will execution for wills executed on or after January 1, 1996 but may be disclosed after the execution with respect to wills executed prior to January 1, 1996. Forms for such disclosure are provided in the statute. See Surrogate's Court Procedure Act § 2307-a.

TESTAMENTARY TRUSTEE'S FEE

I. Individual trustee:

Statutory rates for trustees under wills of persons dying after August 31, 1956 (see Surrogate's Court Procedure Act §2308 for trustees under wills of persons dying, or lifetime trusts created, on or before August 31, 1956), are as follows:

Compensation consists of (a) an annual fee, measured by the value of the trust principal on the applicable valuation date, and (b) upon settlement of an account, a paying-out fee, measured by the value of the sums of principal paid out.

NEW YORK, cont.

- (a) Annual fee: Unless the will provides otherwise, the annual commission allowed is payable one third from income and two thirds from principal (except in the case of charitable remainder trust, or a non charitable trust whose definition of income is governed by the “unitrust” provisions of Estates, Powers and Trusts Law §11-2.4 in which case the annual commission shall be paid from principal after the allowance of the annuity or unitrust amounts and not from the annuity or unitrust amount). Prior to August 4, 1993, the annual commission was chargeable one half to income and one half to principal. The annual commission is computed based on the value of the principal as follows:

\$10.50 per \$1,000	of first	\$400,000
\$4.50 per \$1,000	of next	\$600,000
\$3.00 per \$1,000	of excess over	\$1,000,000

If, prior to January 1, 1994, annual commissions were computed on a 12-month period other than a calendar year, the trustee’s election of such period will be binding unless, prior to January 1, 1995, the trustee elects to compute annual commissions based on a calendar year.

A trustee may opt to value the trust principal at either the beginning or end of the period, but once such an election is made, it shall be used during the continuance of the trust and is binding on all successor trustees.

Six percent of gross rents collected is allowed as additional compensation where the trustee is required to collect rents and manage real property, but only one such additional commission is allowed regardless of number of trustees.

- (b) Paying-out fee is 1% of all sums of principal paid out.
- (c) Number of commissions: For persons dying after August 31, 1993, no more than two commissions shall be allowed unless the testator specifically provides otherwise in writing. Unless the trustees otherwise agree, the allowed commission is to be apportioned among the trustees according to the services rendered, but in no event shall a trustee receive more than one full commission. For persons dying on or before August 31, 1993, as many as three commissions may be allowed if the principal accounted for exceeds \$400,000. See Surrogate’s Court Procedure Act §§ 2309 and 2313.

II. Corporate trustee:

If the principal of the trust does not exceed \$400,000, the corporate trustee shall not charge an annual commission more than 1.235%. If the trust exceeds \$400,000, a corporate trustee is entitled to annual commissions as determined by one of three methods. If the trust instrument specifically provides for commissions, these provisions shall control. In the absence of such provisions, corporate trustees may charge such commission as may be reasonable, subject to court review. Corporate trustees may charge at least the statutory rate provided for individual trustees (see above) which shall be deemed reasonable. Statutory provisions establish the procedure for reviewing the reasonableness of a corporate trustee’s commission.

Unless the governing instrument provides otherwise, annual commissions are payable one-third from income and two-thirds from principal (except in the case of charitable remainder trust or a non charitable trust whose definition of income is governed by the “unitrust” provisions of Estates, Powers and Trusts Law §11-2.4 in which case the annual commission shall be paid from principal after the allowance of the annuity or unitrust amounts and not from the annuity or unitrust amount).

Corporate trustees are entitled to the same paying-out fee as individual trustees unless the trust instrument provides otherwise. See Surrogate’s Court Procedure Act § 2312.

III. Fees for charitable trusts (no individual beneficiaries or remaindermen):

In trust solely for charitable purposes, annual commission is 6% of income collected in the year. If income amounts to \$4,000 or more, each trustee receives commissions, but if more than two trustees, two full commissions are apportioned among them, not to exceed more than one full commission to any of them. A corporate trustee is entitled to commissions as may be reasonable. A corporate trustee is not entitled to any commission from principal. See Surrogate’s Court Procedure Act §§ 2309 and 2312.

NORTH CAROLINA

George A. Ragland
Winston-Salem, N.C.
January 1, 2002

EXECUTOR'S OR ADMINISTRATOR'S FEE

N.C.G.S. § 28A-23-3 provides for commissions to be fixed in the discretion of the clerk of superior court not to exceed 5% on receipts including value of all personalty, and 5% on expenditures. No commissions are allowed on real estate except for the proceeds of the sale of real estate actually used to pay debts or legacies. No commissions are allowed on payment of legacies or distributive shares. Notwithstanding the above, where the gross value of an estate is \$2,000 or less, the clerk in his discretion may fix such amount of compensation as he deems just and adequate.

Example of customary rate charged by a corporate executor is a base charge of \$10,000, plus a percentage of principal, as follows:

4.00%	of first	\$1,000,000
3.00%	of next	\$1,000,000
2.00%	of next	\$1,000,000
1.00%	of excess over	\$3,000,000

based upon receipts of all assets including real estate and life insurance payable to the estate. A 1% charge will apply to the principal of all non-probate assets, except the primary residence passing to the surviving spouse, and life insurance payable to a named beneficiary. There is an additional fee of 5% of gross income received. Further charges may be made where extraordinary services are involved.

TESTAMENTARY TRUSTEE'S FEE

Unless otherwise provided in the will, N.C.G.S. § 32-50 authorizes minimum annual commissions on income ranging from 5% on the first \$5,000 of income to 2% on all income over \$50,000, and on the current value of personalty ranging from .4% on the first \$25,000 of principal to .05% on all principal over \$200,000. Clerk of superior court may allow additional compensation up to 5% of income and expenditures, plus .5% of the current value of principal (both real and personal property), when trustee has rendered non-routine services. Notwithstanding the above, where the gross value of the trust principal is \$10,000 or less, the clerk in his discretion may fix such amount of compensation as he deems just and adequate.

An example of a customary rate charged by a corporate trustee when trust is individually invested entirely in securities (based on value of securities) follows:

Annual principal charge:		
1.2%	of first	\$1,000,000
.9%	of next	\$2,000,000
.7%	of next	\$2,000,000
.55%	of next	\$5,000,000
.45%	of excess over	\$10,000,000

Minimum annual charge: \$6,000.

Termination charges: Based on work involved, the amount not to exceed the trustee's annual minimum charge.

Additional charges may be made where unusual services are required.

Reductions in charges may apply if account assets are invested in mutual funds issued by trustee.

NORTH DAKOTA

Robert E. Rosenvold
West Fargo, North Dakota
December 6, 2001

PERSONAL REPRESENTATIVE'S FEE

Pursuant to N.D.C.C. §30.1-18-19 a personal representative is entitled to reasonable compensation.

The customary rate of commission is not uniform. Some corporate personal representatives charge \$60 to \$80 per hour, and some offer the alternative to an hourly charge by charging on the basis of the percentage of the assets subject to administration. Each case is determined partially by size and complexity of the estate.

TESTAMENTARY TRUSTEE'S FEE

No statutory provision. Examples of customary fees are as follows:

- (1) 5% of gross income generated by the trust properties, plus .4 of 1% of market value of assets.
- (2) .5 of 1% to .8 of 1% of market value of assets. Percentage decreases as principal increases.
- (3) Where real estate is primary trust asset, the fee may be based on the percentage of income, with no charge based on the value of the asset itself. Fees range from 7% to 10% of the owner's share of gross income.
- (4) Minimum fees range from \$500 to \$1,000 annually.

OHIO

C. Terry Johnson
Dayton, Ohio
April 14, 1998

EXECUTOR'S OR ADMINISTRATOR'S FEE

Statutory rates (revised statute Section 2113.35, R effective May 31, 1990) are as follows upon all personal estates, income therefrom and proceeds of real estate sold under authority contained in will:

4%	of first	\$100,000
3%	of next	\$300,000
2%	of excess over	\$400,000

plus 1% on real estate not sold and non-probate assets includable for Ohio estate tax purposes, except joint and survivorship, based on gross proceeds of sale of real property sold and fair market value as of death of all other property. Compensation may be reduced by court for cause.

TESTAMENTARY TRUSTEE'S FEE

No statutory fees. Governed by court rule in most counties. Range of fees as follows:

Annual charges on income:

- 2%-10% of rentals
- 3%-7% of income from personalty

Annual charges on principal:

Wide variation. For example, the rates for the first \$100,000 range from no charge to \$9.50 per \$1,000.

Distribution fee: Allowed by some courts.

Rules of Franklin County Probate Court (Columbus) provide these annual charges:

6% income	of first	\$10,000
5% income	of next	\$10,000
4% income	of excess over	\$20,000
\$4.00 per \$1,000 principal	of first	\$100,000
\$3.50 per \$1,000 principal	of next	\$200,000
\$3.00 per \$1,000 principal	of next	\$200,000
\$2.00 per \$1,000 principal	of next	\$500,000
\$1.00 per \$1,000 principal of balance		

With approval of court, principal distribution fee of 1% on final distribution.

Rules of Cuyahoga County Probate Court (Cleveland) provide these annual charges to be charged one half to income, and one half to principal, unless otherwise provided:

\$9.50 per \$1,000 principal of first	\$ 200,000
\$7.50 per \$1,000 principal of next	\$800,000
\$5.50 per \$1,000 principal of excess over	\$1,000,000

Trustee may charge minimum fee of \$750.

OHIO, cont.

In the case of a corporate trustee, if the entire corpus of the trust is invested on a daily basis, the corporate trustee may be allowed an amount equal to .5 of 1%, on an annual basis, of the amount invested, but not in excess of \$100 per month.

Principal distribution fee of 1% on final distribution.

Rules of Hamilton County Probate Court (Cincinnati) provide these annual charges:

In the case of an individual trustee, fees generally equal those charged by the banking institution with which the trust transacts business, unless specified otherwise by the instrument creating the trust.

In the case of the corporate trustee, if the entire corpus of the trust is invested in common trust funds, management fees may be charged within the fund. However, the fee charged shall not, when added to any other compensation charged by a bank to a participant, exceed the total amount of compensation which would have been charged if no assets had been invested in participation in the fund. Unless specified otherwise by the instrument creating the trust, a testamentary trustee may charge fees on the same basis as for living trusts.

OKLAHOMA

Mark W. Curnutte
Vinita, Oklahoma
December 11, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

Statutory rates (58 O.S.A. § 527) are as follows:

5.0%	of first	\$1,000
4.0%	of next	\$5,000
2.5%	of excess over	\$6,000

based on "whole estate accounted for." Further allowances may be made for extraordinary services. Extra allowances may not exceed commission at above rates.

TESTAMENTARY TRUSTEE'S FEE

Statute (60 O.S.A. § 175.48) provides for reasonable compensation. Example of customary rates for a major metropolitan bank are:

Acceptance fee: None, unless trustee must audit accounts of predecessor or perform extraordinary services, then fee based on actual work, time and responsibility involved.

Annual fee: Principal assets, exclusive of real estate, mortgages, and oil and gas assets, which are subject to separate fee schedules, are subject to \$400 annual base fee plus:

1.00% of first	\$500,000
0.60% of next	\$500,000
0.400% of next	\$2,000,000
0.35% of excess over	\$3,000,000

Minimum fee: \$1,200 per year.

Termination fee: A reasonable fee, not to exceed 1%, to cover actual time and expenses involved in the termination including \$25 charge for each security delivered.

OREGON

Joseph J. Hanna, Jr.
Portland, Oregon
January 1, 2002

PERSONAL REPRESENTATIVE'S FEE

Statutory fee for services upon application to the court is a commission upon the whole estate as follows:

- (1) Upon property subject to the jurisdiction of the court, including income and realized gain:

7% of first	\$ 1,000
4% of next	\$ 9,000
3% of next	\$40,000
2% of excess over	\$50,000

Further compensation may be allowed for extraordinary services.
- (2) Plus 1% of the property, exclusive of life insurance proceeds, not subject to the jurisdiction of the court but reportable for Oregon inheritance tax or federal estate tax purposes [Or. Rev. Stat. 116.173].

TESTAMENTARY TRUSTEE'S FEE

No statutory provision.

The trustee's fee of one corporate financial institution in Portland, Oregon, is:

- I. Minimum Monthly fee: \$250
- II. Fees for Assets Under Management (based on current market value):
 - A. Cash, Securities, Common Trust Funds, Non-Proprietary Mutual Funds and Money Market Instruments:

\$13.50 per \$1,000	of first	\$500,000
\$ 9.00 per \$1,000	of next	\$500,000
\$ 7.00 per \$1,000	of next	\$2,000,000
\$ 6.00 per \$1,000	of next	\$2,000,000
\$ 5.00 per \$1,000	of excess over	\$5,000,000
 - B. Proprietary Mutual Funds:

\$8.00 per \$1,000	of first	\$500,000
\$6.00 per \$1,000	of next	\$500,000
\$4.50 per \$1,000	of next	\$2,000,000
\$3.50 per \$1,000	of next	\$2,000,000
\$2.50 per \$1,000	of excess over	\$5,000,000
 - C. Real estate; Contracts, Notes, Mortgages, Miscellaneous Personal Property, Partnership and Closely held Businesses and Partnerships (Note: Each asset class will be charged at the following schedule starting at the highest percentage for asset class):

\$13.50 per \$1,000	of first	\$1,000,000
\$11.00 per \$1,000	of next	\$2,000,000
\$ 8.50 per \$1,000	of next	\$2,000,000
\$ 5.00 per \$1,000	of excess over	\$5,000,000

OREGON, cont.

D. Agriculture, Timber and Mineral Interests:

6% of gross income received plus:

\$7.00 per \$1,000	of first	\$100,000
\$3.50 per \$1,000	of excess over	\$100,000

III. Hourly Time and Miscellaneous Charges:

Hourly charges are assessed for the extraordinary administrative duties and services and are assessed in addition to any applicable minimum fee charges.

- A. Holding fee for each real estate parcel: \$500
- B. Each liability serviced: \$200
- C. Holding fee for each item of miscellaneous personal property physically held by the Trust Department: \$50/year
- D. Tax related activities assessed hourly charges subject to the following minimums:

Federal Fiduciary Income Tax Returns	\$400
State Fiduciary Income Tax Returns	\$100
Agency Tax Reporting	\$200
Estimated Fiduciary Tax Payments	\$100/yr

IV. Out of Pocket Expenses:

Wire transfers, postage, telephone, mileage, photocopying, etc. as incurred.

The above schedule is only a representative example of institutional fees. Such fees vary among corporate trustees and are subject to special agreement by trustor and trustee. Many non-corporate trustees will use a corporate trustees' fees as a guide in setting the fee charged.

PENNSYLVANIA

Christopher H. Gadsden
Philadelphia, Pennsylvania
January 24, 2002

EXECUTOR'S OR ADMINISTRATOR'S FEE

Pennsylvania does not have a statutory fee schedule for executors or administrators. The only statutory guidance is that, "The court shall allow such compensation to the personal representative as shall in the circumstances be reasonable and just, and may calculate such compensation on a graduated percentage." Case law and practice have created general guidelines. For instance, an individual personal representative's customary commission on personal property might be 5% on the first \$100,000 of assets, 4% on the next \$100,000, 3% on the next \$800,000, 2% on the next \$1,000,000 and 1.5% on the third \$1,000,000. If there are two or more individual executors or administrators, they share the aforesaid commission.

Corporate executors and administrators customarily charge fees on the basis of published schedules, to which the testator agrees. A typical schedule is as follows: principal charge of 5% on the first \$300,000, 4% on the next \$700,000, 3% on the next \$1,000,000 and 2% on the next \$1,000,000 and 1% on additional amounts. Some corporate executors have somewhat lower rates on principal but also charge a 5% or 6% commission on gross income. A typical minimum principal fee is \$10,000, although this varies widely.

TESTAMENTARY TRUSTEE'S FEE

As the case with executor's and administrator's fees, there is no statutory fee schedule. The statute provides for reasonable compensation which may be calculated on a graduated percentage basis. For an individual trustee, only income commissions (5%) are allowable during administration, with the principal commission to be paid at termination, although there is a procedure for applying for an on-account principal payment. The amount of principal commission varies depending on the length of the trust and size, but usually is between 3% and 5%.

A typical corporate trustee's published schedule of annual fees consists solely of a charge based on the market value of principal with no charge based on gross income collected. The following schedule is representative:

\$10.00 per \$1,000	of first	\$1,500,000
\$ 5.00 per \$1,000	of next	\$3,500,000
\$ 4.00 per \$1,000	of next	\$5,000,000
\$ 3.00 per \$1,000	of excess over	\$10,000,000

Some corporate trustees charge a somewhat lower rate based on market value of principal but also charge 5% or 6% of income collected.

Unless the will or the fee agreement with the testator provides for a different allocation, the charge based on principal value would be charged against principal and the charge based on income collected would be charged against income. Banks differ widely in the minimum annual fee, but a typical minimum is \$5,000. Trusts invested entirely in common trust funds benefit from lower scheduled rates.

Corporate fiduciaries generally charge additional fees for the automatic reinvestment of cash balances (sweeping). A typical charge is \$.50 or \$.60 per year for each \$100 of cash invested.

Most corporate fiduciaries also reserve the right to impose additional charges for extraordinary services such as the managing or disposing of a closely-held business, litigation or unusual tax settlement.

RHODE ISLAND

Andrew H. Davis, Jr.
Providence, Rhode Island
February 5, 1992

EXECUTOR'S OR ADMINISTRATOR'S FEE

Statute provides for just compensation. Customary fee schedules of four corporate fiduciaries are as follows:

A. Principal

1.	4.0%	on the first	\$250,000
	3.0%	on the next	\$750,000
	2.0%	on the next	\$2,000,000
2.	4.0%	on the first	\$100,000
	3.0%	on the next	\$500,000
	2.5%	on the next	\$500,000
	2.0%	on the next	\$1,000,000
3.	4.0%	on the first	\$300,000
	3.0%	on the next	\$700,000
	2.0%	on the balance	
4.	4.0%	on the first	\$250,000
	3.5%	on the next	\$500,000
	3.0%	on the next	\$750,000
	2.5%	on the next	\$1,000,000

B. Income

1.	7%	on the first	\$30,000
	5%	on the next	\$50,000
	4%	on the balance	
2.	8%	on the first	\$15,000
	6%	on the next	\$30,000
	4%	on the next	\$50,000
	3%	on the balance	

C. On non-probate assets fees ranged from 1% to 1.5%

D. Minimum fees ranged from \$2,000 to \$5,000 or 2.5% to 2.75% of the gross estate, whichever was greater.

TESTAMENTARY TRUSTEES' FEES

Statute provides for reasonable compensation.

A. Principal (rate is per \$1,000)

1.	\$8.00	on the first	\$500,000
	\$5.00	on the next	\$500,000
	\$3.00	on the next	\$2,000,000
	\$2.00	on the balance	

RHODE ISLAND, cont.

2.	\$7.00	on the first	\$500,000
	\$3.00	on the next	\$500,000
	\$2.00	on the next	\$1,000,000
	\$1.50	on the next	\$1,000,000
	\$1.00	on the balance	
3.	\$7.00	on the first	\$250,000
	\$5.00	on the next	\$250,000
	\$2.50	on the next	\$2,000,000
	\$1.00	on the balance	
4.	\$6.00	on the first	\$500,000
	\$4.00	on the next	\$500,000
	\$3.00	on the next	\$1,000,000
	\$2.50	on the next	\$1,000,000
	\$1.75	on the balance	

B. Income (figures refer to gross income collected)

1.	7%	on the first	\$25,000
	6%	on the next	\$25,000
	5%	on the next	\$25,000
	4%	on the balance	
2.	8%	on the first	\$15,000
	6%	on the next	\$30,000
	4%	on the next	\$50,000
	3%	on the balance	
3.	7%	on the first	\$50,000
	5%	on the balance	
4.	8.0%	on the first	\$50,000
	6.5%	on the next	\$50,000
	4.0%	on the balance	

C. Additional charges may include “sweep fees,” distribution charges (if to other than grantor) and termination fees.

D. Minimum fees range from \$1,500 to \$5,000 annually.

E. Reductions in fees are offered by most corporate fiduciaries if investments are made in common trust funds or if the trust is a charitable one.

SOUTH CAROLINA

W. Steven Johnson
Columbia, S.C.
December 1, 1998

PERSONAL REPRESENTATIVE'S FEE

Statute provides maximum fees of 5% of appraised value of all personal property of the estate and 5% of the income earned on investments made with assets of the estate. The same commissions are allowed on the proceeds of the sale of real estate when directed by will or court order. The minimum commission payable is \$50 regardless of the value of the personal estate. Statutory fees are inapplicable when there is a contract providing for the compensation to be paid for the services or when the will otherwise directs.

Wills which name a corporate personal representative customarily provide that the personal representative will be entitled to compensation in accordance with its standard fee schedule. The following is a representative example of a standard fee schedule.

The following percentages are applied to the value of all probate property included in the gross estate for federal estate tax purposes:

Schedule of Fees:

Minimum Base Charge of \$4,000

On Principal of Probate Estate Assets:

3.75%	of the first	\$1,000,000
3.00%	of the next	\$1,000,000
2.00%	of the next	\$1,000,000
1.00%	of the next	\$2,000,000
0.75%	of the remainder	

On Principal of Non-Probate Assets

One percent (1%) except that no fee shall be charged on the following:

Primary residence passing to surviving spouse;
Life Insurance payable to beneficiaries other than the estate.

Fees include investment management and estate tax preparation services.

In instances where extraordinary services are required, appropriate additional charges may be made.

TESTAMENTARY TRUSTEE'S FEE

Trustees are allowed reasonable fees, which are subject to review by the probate court on petition of any interested party.

Wills which name a corporate trustee customarily provide that the trustee will be entitled to compensation in accordance with its standard fee schedule. The following is a representative example of a standard fee schedule.

Schedule of Fees:

Market Value

SOUTH CAROLINA, cont.

First \$500,000	1.10%
Next \$500,000	0.90%
Next \$1,000,000	0.60%
All Over \$2,000,000	0.50%

Minimum Annual Fee \$2,000

Termination fees of one-fourth of the annual rates.

Additional fees by the trustee may be charged for real estate and tax services.

SOUTH DAKOTA

Raymond M. Schutz
Aberdeen, South Dakota
December 4, 2001

COMPENSATION OF PERSONAL REPRESENTATIVE

Statute provides: Personal representatives, attorneys, accountants, appraisers, and other agents of the personal representative are entitled to reasonable compensation for services.

When compensation is not provided by will, or in an intestate proceeding, the personal representative may be allowed commissions upon the amount of personal property accounted for by the personal representative, excluding personal property not ranked as assets, as follows:

5.0%	of first	\$1,000
4.0%	of next	\$4,000
2.5%	of excess over	\$5,000

Upon all real property accounted for by the personal representative, the personal representative shall receive a just and reasonable compensation for the services performed to be fixed by the court. All real estate sold by the personal representative as part of the proceedings in probate shall be considered as personal property. SDCL 29A-3-719.

TESTAMENTARY TRUSTEE'S FEE

Statute provides: "When a declaration of trust does not specify the rate or amount of the trustee's compensation, the trustee is entitled to and shall receive reasonable compensation for the performance of his duties. If such declaration specifies the amount or rate of his compensation, he is entitled to the amount or rate thus specified and no more." SDCL 55-3-14.

TENNESSEE

James C. Gooch
Nashville, Tennessee
December 31, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

Statute provides for reasonable compensation. Rates are not uniform in the state.

The following is an example of customary charges by a corporate fiduciary in Nashville based upon market value of all probate assets (including real estate sold during administration) and income earned during administration:

Principal charges:

4%	of first	\$200,000
3%	of next	\$600,000
2%	of next	\$200,000
1%	of excess over	\$1,000,000

Income charges:

5% of income collected during administration.
Minimum charge for administration: \$5,000.

These charges apply only to those assets in the probate estate which are subject to control by the fiduciary (including real estate sold during administration). An additional 1% charge is imposed on non-probate assets, other than life insurance payable to a beneficiary other than the decedent's estate. The fee will include all ordinary administrative, tax and investment services. If the bank is required to perform extraordinary services, such as the continuation, sale or liquidation of business or farm, involvement in litigation or tax controversies, ancillary administration in another state, or additional estate and inheritance tax responsibilities involving non-probate assets, an additional charge will be made based upon the time and responsibility assumed.

In Shelby County (Memphis), fees are under the direction of the Probate Court of Shelby County. There is no suggested fee schedule, but the Court may consider published rates charged by banks and trust companies. The fees must be reasonable and appropriate under all of the circumstances, including the size of the estate, the relationship of the personal representative to the decedent, the comparative involvement of the attorneys for the estate, the complexity of the matter, the cooperation (or lack thereof) by the beneficiaries, and any extraordinary or special services required (such as litigation, complex tax audits, and the management or sale of business).

In Hamilton County (Chattanooga), fees are presumptively reasonable if (a) in the case of a personal representative regularly engaged in the business of administering estates the fees do not exceed those allowed under schedule 2 below, or (b) in the case of a personal representative not regularly engaged in the business of administering estates the fees do not exceed those allowed under schedule 1 below. The percentages are applied against the gross estate for federal estate tax purposes.

Schedule 1

2.5% on the first \$20,000
2.0% on next \$80,000
1.5% on next \$150,000
1.0% on next \$500,000
.5% on next \$750,000

Schedule 2

5% on first \$20,000
4% on next \$80,000
3% on next \$150,000
2% on next \$500,000
1% over \$750,000

TENNESSEE, cont.

TESTAMENTARY TRUSTEE'S FEE

No statutory provision. The following is an example of customary charges by a corporate fiduciary in Nashville. Annual fee based on market value of all the assets held in the account.

Base charge of \$1,600 for each trust account.

Plus additional charges based on market value of trust assets as follows:

1.1 %	on first	\$1,000,000
.8%	on next	\$2,000,000
.6%	on next	\$2,000,000
.5%	over	\$5,000,000

No separate income charge.

This fee will include all normal investment and administrative services. If the bank is required to perform extraordinary services, such as operation, sale or liquidation of a closely held business, development of real estate, operation of a farm, involvement in litigation or tax controversies or the required review of the acts and records of a prior fiduciary, an additional charge will be made based upon the time and responsibility assumed. The fee will be charged against the account quarterly and will be based upon the most recent valuation of the account.

Acceptance charge: None. A reasonable charge based on time, effort and costs may be assessed.

Termination charge: None. A reasonable charge based on time, effort and costs may be assessed.

TEXAS

Robert H. Kroney
Dallas, Texas
April 27, 1998

EXECUTOR'S OR ADMINISTRATOR'S FEE

TEX.PROB. CODE ANN. § 241(a) (Vernon Supp. 1998), provides generally that executors and administrators shall be entitled to receive a commission of 5% on all sums they actually receive in cash and the same percent on all sums they may actually pay out in cash during the administration of the estate on a finding by the court that the executor or administrator has taken care of and managed the estate in compliance with the standards of the Texas Probate Code. No commissions are allowed for receiving funds belonging to the decedent which were on hand or were held for the decedent at the time of his death in a financial institution or a brokerage firm, including cash equivalents held by a financial institution; nor for collecting the proceeds of any life insurance policy; nor for paying out cash to heirs or legatees. In no event shall the executor or administrator be entitled to more than 5% of the gross fair market value of the estate subject to administration; provided, additional compensation may be allowed by the court for management of a farm, ranch, factory, or other business. If the commission as calculated in accordance with the Texas Probate Code is unreasonably low, the court may allow the executor reasonable compensation for his services, including unusual effort to collect funds or life insurance. The court is given specific authority upon the application of an interested person, or on the court's own motion, to deny a commission if the court finds that the executor or administrator has not taken care of and managed the estate property prudently or the executor or administrator has been removed under the Texas Probate Code. The range of minimum executor's fees charged by corporate fiduciaries is \$5,000 to \$15,000. Corporate fiduciaries vary in their practice of determining fees, with some corporate fiduciaries charging hourly rates, some charging on a per transaction basis, and some charging as a percentage of the estate.

TESTAMENTARY TRUSTEE'S FEE

Section 114.061 of the Texas Trust Code provides that unless the terms of the trust provide otherwise, a trustee is entitled to reasonable compensation for its services. Otherwise, Texas has no statutory provision for fees. The following is a summary of customary charges by corporate fiduciaries:

Minimum fees: \$950-\$6,000

Annual administration fee: \$200-\$1,250

Principal fee as follows:

<i>Fair Market Value</i>	<i>Percentage Fee</i>
First \$1,000,000	1.00% - 1.20%
Next \$2,000,000	0.60% - 0.90%
\$3,000,000 to \$6,000,000	0.40% - 0.70%
\$6,000,000 to \$10,000,000	Negotiated - 0.50%
Over \$10,000,000	Negotiated - 0.40%

Examples of annual fees:

<i>Fair Market Value</i>	<i>Annual Fee</i>	<i>Percentage Fee</i>
\$1,000,000	\$12,000	1.20%
\$3,000,000	\$28,000	0.93%
\$5,000,000	\$38,000	0.76%
\$10,000,000	\$63,000	0.63%
\$25,000,000	\$138,000	0.55%

TEXAS, cont.

Negotiated fees: Most corporate fiduciaries will consider negotiating their fee, especially for trusts with a fair market value over \$6,000,000.

Income fee: Some corporate fiduciaries charge an additional income fee in the range of 1% of gross dividend interest income.

Investments: Some corporate fiduciaries will reduce their fees if the trust estate is fully invested in the corporate trustee's common trust funds.

Real estate and oil and gas: Fees for management of real estate and oil and gas interests are generally charged as a percentage of income in the range of 5% - 10%.

Special Assets Fees: In addition to extra fees charged for managing real estate and oil and gas interests, some corporate fiduciaries charge a per asset fee (i.e., \$500.00 per year, per asset) for managing the following: limited or general partnership interest, not publically traded; closely-held business interest; notes and mortgages; and other tangible assets such as jewelry, art, etc. Additional charges will be incurred for litigation.

UTAH

Clark P. Giles
Salt Lake City, Utah
January 28, 2002

EXECUTOR'S OR ADMINISTRATOR'S FEE

Utah Code Ann. § 75-3-718 (1953), as amended in 1992, provides that a personal representative and an attorney are entitled to reasonable compensation for their services. When approval of a fee is requested, a copy of the petition must be sent to all interested parties at least 10 days prior to the hearing. Only if an interested party objects to the fees requested does the court determine the reasonableness of the compensation requested. Most courts are requiring substantiation of fees based on time spent. In determining fees, most personal representatives are charging on an hourly basis, but some continue to follow prior law which provided for reasonable compensation not exceeding the following schedule on the probate estate for a normal probate proceeding:

5.0%	of first	\$1,000
4.0%	of next	\$4,000
3.0%	of next	\$5,000
2.0%	of next	\$40,000
1.5%	of next	\$50,000
1.0%	of excess over	\$100,000

Under this schedule additional compensation was allowed for extraordinary services, including death tax determinations.

TESTAMENTARY TRUSTEE'S FEE

Utah Code Ann. § 75-7-206 (1953) provides a standard of reasonable compensation for trustees of both testamentary and inter vivos trusts. In determining reasonable compensation, most courts prefer substantiation of fees based on time spent, but will approve percentage schedules. Some courts may continue to follow a prior court rule of the greater of 5% of the gross income or:

- (a) 10.00% of the gross rents, plus
- (b) 0.75 of 1% of fair market value of the first \$200,000 of principal other than rental property, and
- (c) 0.50 of 1% of fair market value of principal other than rental property in excess of \$200,000.

The courts will allow minimum fees and extraordinary fees upon proof of reasonableness. Approval of annual, periodic or final accounts is not required by statute, but most courts require fees to be within the above rule or otherwise proven reasonable before approving any account. Most corporate fiduciaries charge fees consistent with the above rule, but usually require a minimum or base fee and generally apply a slightly higher percentage schedule with declining percentages for amounts in excess of \$500,000, and usually negotiate fees with respect to real property.

VERMONT

David A. Otterman
Barre, Vermont
December 18, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

Vt. Stat. Ann. tit. 14, § 1065 provides for allowance for services, such fees as the law provides, with extra expenses. If will provides for compensation, such compensation shall be full satisfaction for services unless a written instrument renounces the compensation provided by the will. In practice, which varies from district to district, corporate fiduciaries are allowed compensation in accordance with their announced schedules of charges. Individual fiduciaries are compensated for the fair value of services rendered. In practice, fiduciary should negotiate with persons interested in the estate for compensation satisfactory to all parties.

Vt. Stat. Ann. tit. 32, § 1143, adopted in 1866 and amended in 1921, provides for compensation at the rate of \$4.00 per day. The probate court may allow additional compensation in cases of unusual difficulty or responsibility. Rule 66(c) of Vermont Rules of Probate Procedure make applicable the provisions of DR2-106(b) (1)-(8) of the Code of Professional Responsibility to fees of executors and fiduciaries. *See generally Parker v. Krupinsky*, 146 Vt. 304, 503 A.2d 531 (1985).

TESTAMENTARY TRUSTEE'S FEE

Same as executors and administrators.

VIRGINIA

William G. Murray
Arlington, Virginia
December 14, 2001

EXECUTOR'S OR ADMINISTRATOR'S FEE

Statute directs Commissioner of Accounts to allow "a reasonable compensation." Case law generally allows a commission of 5% on receipts and inventory value of property subject to right of sale. In some cases, an individual fiduciary serving alone will be required to absorb in his commission the "farm-out" costs of fees incurred for bookkeeping, tax and investment services. A fiduciary may act as attorney for the estate and charge separately for services not normally performed by the fiduciary. *Swank v. Reherd*, 181 VA. 943, 27 S.E.2d 191 (1943).

Example of Commissioner of Accounts guidelines are as follows:

Principal in probate estate:

5%	of first	\$500,000
4%	of next	\$500,000
3%	of next	\$500,000
2%	of excess over	\$1,500,000

Up to 1% on assets passing outside the will (other than the family home) but includable in the estate for tax purposes.

Extra charge for "extraordinary services" (e.g., managing a family business) may be charged.

Minimum principal fee: \$2,500.

Income: 5% on first \$25,000 of annual gross income, 4% on excess.

TESTAMENTARY TRUSTEE'S FEE

Statute directs Commissioner of Accounts to allow "a reasonable compensation." Example of Commissioner of Accounts guidelines are as follows:

Annual commissions on principal:

1.00%	of first	\$500,000
.50%	of next	\$500,000
.25%	of excess over	\$1,000,000

Income: 5% on first \$25,000 of annual gross income, 4% on excess.

Minimum combined annual fee: \$2,400.

Note: Each case governed by its own facts. Variations exist in different parts of the state.

For executors, administrators, and testamentary trustees, Commissioner of Accounts approves fees requested, which approval may be subject to court review. Fiduciary's agreement with testator/settlor will bind estate/trust. Factors in determining "a reasonable compensation" are value of the estate, character of the work, difficulties encountered, and results obtained. *Trotman v. Trotman*, 148 Va. 860, 139 S.E. 490 (1927).

WASHINGTON

Bruce P. Flynn
Seattle, Washington
January 28, 2002

PERSONAL REPRESENTATIVE'S FEE

Statutory provisions permit that the personal representative be allowed such compensation for services as the court shall deem "just and reasonable". Wash. Rev. Code §§ 11.48.210; 11.68.110. *In re Bailey's Estate*, 56 Wash.2d 623, 354 P.2d 920 (1960). Additional compensation may be allowed for services as attorney and for other services not required of a personal representative. Wash. Rev. Code § 11.48.210. Personal representative fees are not subject to court approval, however, at any time during administration the personal representative may apply to the court for an allowance upon the compensation of the personal representative. *Id.* The granting of compensation is within the discretion of the court and will not be disbursed on appeal unless facts and circumstances established that the court abused its discretion. *In re Douglas' Estate*, 65 Wash.2d 495, 398 P.2d 7 (1965).

In instances where the reasonableness of fees of the personal representative is to be determined by the court the criteria considered shall be that contained in the Rules of Professional Conduct (RPC). Wash. Rev. Code § 11.68.100. These criteria include, among others, the time, skill and labor required; the amount involved and the results obtained, the novelty and difficulty of the problems involved; the fees customarily charged for similar services; and any other factors that the court deems relevant. RPC § 1.5(a). The personal representative should be prepared to provide written evidence of dates worked, time spent, and services performed to substantiate the requested fee. The *King County Probate and Guardianship Policy Manual*, Article 17 (1995).

TESTAMENTARY TRUSTEE'S FEE

Testamentary trustees' fees are fixed by statute, other than a general requirement of reasonableness similar to that in the case of personal representatives. Wash. Rev. Code § 11.98.070(26); *In re Powell's Trust Estate*, 68 Wash.2d 38, 411 P.2d 162 (1966). If the trust instrument does not provide otherwise, a trustee is entitled to be paid reasonable compensation considering all circumstances including the time, efforts, skill, and responsibility involved in the performance of services. Wash. Rev. Code § 11.98.070(26). As in other jurisdictions, a professional or institutional trustee typically charges a fee based on the percentage of the market value of the assets held in the trust.

Trustees' fees are not subject to court approval unless a party interested in the trust requests the court to evaluate the appropriateness of the fees charges. Wash. Rev. Code § 11.96A. If the court is required to determine the reasonableness of a trustee's fee, the court may consider a variety factors including the amount of risk and responsibility involved; the time actually required in the performance of the trust; the size of the estate; the amount of income received; and the manual and overall services provided. *In re Powell's Estate*, 68 Wash.2d at 41.

WEST VIRGINIA

Charles B. Stacy
Charleston, West Virginia
June 8, 1998

EXECUTOR'S OR ADMINISTRATOR'S FEE

W. Va. Code § 44-4-12 allows "a reasonable compensation in the form of a commission on receipts or otherwise," and "any reasonable expenses" incurred by the fiduciary.

What constitutes reasonable compensation has been discussed in a long line of Virginia and West Virginia decisions, summed up in *Estate of Lapinsky v. Sparacino*, 148 W.Va. 38, 132 S.E.2nd 765 (1963) as follows: "Five percent of actual receipts is a firmly established guide or standard, though by no means an inflexible guide or standard, which for years has been adhered to, in this State and in Virginia, as a measure of 'reasonable compensation' to a personal representative for his services as such; but, under peculiar circumstances, a higher or lower rate of compensation will be deemed reasonable and proper." Compensation is based on assets subject to administration, and thus real property is excluded from the computation unless it is devised to the personal representative to be sold, or unless the personal representative is given a power of sale over the real property.

Corporate fiduciaries, although subject to the statutory rule, usually follow their own published fee schedules, which vary considerably and are subject to change. Typically, the 5% rate will apply to the first \$50,000 or \$100,000, with a declining percentage on higher brackets. Such schedules will also often provide for additional charges on assets not included in the probate estate, but subject to estate taxation.

TESTAMENTARY TRUSTEE'S FEE

W. Va. Code § 44-4-12 applies the same rule to all fiduciaries, including trustees. Corporate fiduciaries customarily have fee schedules providing for a fee of 5% (or a sliding scale) on income and a sliding scale on principal. Acceptance and termination fees are becoming more usual.

Fee schedules vary throughout the state, and in some cases may be subject to negotiation.

WISCONSIN

David W. Reinecke
Madison, Wisconsin
December 3, 2001

PERSONAL REPRESENTATIVE'S FEE

Wis. Stat. § 857.05 provides that personal representative (executor, administrator, etc.), subject to approval of the court, shall be allowed commissions computed on inventory value of property less mortgages or liens plus net corpus gains in estate proceedings at rate of 2%; and such other sums for extraordinary services as are reasonable.

In 1997, Wis. Stat. § 857.05 was amended to provide that in addition to the above-referenced 2% statutory fee, the personal representative could charge a fee at a "rate that the decedent and the personal representative, or the persons who receive the majority interest in the estate and the personal representative, agree to in writing." If the personal representative or any law firm with which the personal representative is associated also serves as attorney for estate, the court may allow him or her either executor's commissions (including sums for extraordinary services) or attorney's fees; or may allow both executor's commissions and attorney's fees, and shall pay both where will so authorizes. Under the general authority of Wis. Stat. § 857.05, some corporate fiduciaries claim charges for extraordinary services in connection with preparation of income tax and death tax returns in addition to the percentage fee allowed by statute.

TESTAMENTARY TRUSTEE'S FEE

No statutory provision, except as to apportionment of annual fee between income and principal per Wis. Stat. § 701.20. Fees vary from fiduciary to fiduciary. Fees are usually based on a percentage of the corpus using a sliding scale, and on the nature of assets and duties of investment.

WYOMING

Carl L. Lathrop
Cheyenne, Wyoming
April 30, 1998

PERSONAL REPRESENTATIVE'S (EXECUTOR'S OR ADMINISTRATOR'S) FEE

Statutory rates are as follows:

10%	of first	\$1,000
5%	of next	\$4,000
3%	of next	\$15,000
2%	of excess over	\$20,000

based upon the "amount of the decedent's probate estate accounted for" which is defined to include assets at probate inventory value, adjusted for any reappraisal or actual sale, plus interest, dividends or similar income and the "net income" of any business, less casualty losses.

Additional allowance may be made for extraordinary services such as services rendered relative to tax matters or in connection with litigation. The court is also empowered to award a fee higher than provided by the statutory schedule for ordinary services if the statutory fee is not equitable because of unusual circumstances, considering the time and effort reasonably expended and the responsibility with which the personal representative is charged.

The attorney for the estate is entitled to a fee on the same basis as the personal representative. An attorney for the estate cannot collect fees for acting in both capacities; only one fee is allowed.

TESTAMENTARY TRUSTEE'S FEE

No statutory provision. Rates vary in different counties and depend on facts of the particular case.

An example of the rates in Cheyenne is as follows:

1.0%	of first	\$300,000 market value
0.8 of 1%	of next	\$300,000 market value
0.75	of next	\$300,000 market value
0.5	of next	\$300,000 market value
0.3	of balance	

Minimum fee: \$600.

Higher rates may apply to oil and gas interests or to real property requiring active management. Additional hourly charges may be imposed for extraordinary services.

CANADA

Mary Louise Dickson
Toronto, Ontario
April 7, 1998

TRUSTEE'S OR PERSONAL REPRESENTATIVE'S FEE

By Trustee Act § 61 a judge of the Ontario court (general division) is authorized to award reasonable allowance.

No rates are set but usual basis is:

2.5% of current market value of original assets as realized;

2.5% of current market value of capital disbursements;

2.5% of income receipts;

2.5% of income disbursements;

and, in addition, when trusts are of a continuing nature an annual management fee of .4 of 1% of the average market value of the trust capital.

It is common practice for executors also to be named as trustees so testamentary trustees' acceptance or termination charges are rarely met or requested.

Fee is seldom increased regardless of number of trustees or personal representatives; division of fee between them is made by the trustees or personal representatives.

Fees are mainly settled by agreement with beneficiaries on the above scale without application to the court.

If will or trust specifies the compensation, no further amount will be allowed.

The attorney's fee is not expected to be paid out of the trustee's or personal representative's fee and an attorney who also acts as executor or trustee can expect to be paid in both capacities.