

PUBLIC COMMENT EMAILS PERTAINING TO FEES

If possible, you should compare the number of letters prepared by fiduciaries and attorneys in guardianship and conservatorship cases vs how many get mailed, faxed and revised.

I used to work for a fiduciary. One of the ways they milked the accounts was by many, many more revisions than needed to documents. The person I was secretary would revise every simple letter or document anywhere from 6 to 12 times. Many times, I used a boiler plate letter (one she had previously approved and only names and numbers needed to be substituted) but that individual would again revise it many times billing the client for every unnecessary revision ... before it was sent. This was an incredible waste of time but increase in revenue.

There ought to be some way to catch this trick when you are reviewing their accountings.

Thank you for your diligence in serving the public.

Having worked as both a legal secretary and paralegal specializing in Probate, Guardianships/Conservatorships and estate planning in the State of Arizona I have had the opportunity to observe the "system" from a unique perspective. While there is certainly much to be commended, there is clearly not enough oversight by the Court concerning the management of the estates of protected persons. Private fiduciaries and their attorneys are allowed to pay themselves in advance of approval of their fees by the Court which is neither appropriate nor in the best interests of the protected person. Families of the protected person frequently enter into prolonged litigation - at the expense of the protected person's estate - purely to protect what they consider to be their interest in the estate - not the welfare of the protected person - while the best interests of the protected person go unnoticed and unprotected and the estate becomes subject to waste and dissipation. Further, a considerable amount of litigation arises because the family of a protected person has issues with each other and which have nothing to do with the well-being of the protected person. These matters should NEVER be litigated at the expense of the estate. A more practical way to handle family disputes should be established which could include pre-litigation mediation wherein the parties are required to attempt to settle their disputes within a given, and very limited, time-period after which, if no settlement can be reached - litigation could be commenced, but not at the expense of the protected estate. A non-refundable mediation fee large enough to discourage frivolous or unwarranted lawsuits should be charged to cover the costs of such mediation. Legal or fiduciary fees incurred ONLY on the behalf of the protected person in such a case should be paid by the estate only after intense scrutiny by the court accountant and approval by the Court. Private fiduciaries who are licensed by the Supreme Court of the State of Arizona should not be entitled to charge their operating expenses to the estate (i.e., the mere physical act of sending or receiving a facsimile transmission and/or opening mail, taking a telephone message, etc.), as those expenses are the cost of doing business and should never be paid by the estate. Further, private fiduciaries should never be allowed to create a subsidiary which provides physical care-giving services to their own clients which is (or should be) a significant conflict of interest as it would seem impossible for a fiduciary to provide appropriate fiscal oversight when considering a billing statement the payment of which will ultimately be profitable to such fiduciary.

If one has been reading the articles in the Arizona Republic it appears that there have been serious problems in the probate court particularly with fees and costs of care in connection with certain elderly. While I realize that these problems may not be wide spread, it appears that one commissioner allowed lawyers to collect outrageous fees and also allowed care facilities to do the same. The complaints of her family were apparently ignored by all and remarks made which tended to blame the relatives for exercising their rights to address the situation and this is not acceptable conduct on the part of the court system.

It is apparent there needs to be closer supervision so that this will not be repeated. Also, some adjustment should be made so these people do not have to live in poverty just because lawyers and health care facilities took advantage of them.

Many older people have discussed these problems among themselves, and they have formed a very bad opinion of the probate court and the court system as a whole.

This matter needs to be addressed so it won't happen again.

From what I've seen, the situation with conservators/attorneys for the ward is a corrupt travesty in Maricopa County. Normal aging deficiencies such as forgetfulness seem to be enough to allow the probate to essentially steal the life of senior citizen while the attorneys bleed the estate. I'm an attorney myself and have practiced in Maricopa county for nearly 34 years. The hourly billing fees are obscene with no one protecting the interests of the ward. There is a limit to the value of an attorney's services irrespective of time. You cannot justify dissipating a large percentage of the estate in the name of "preserving" it.

Dear Sirs,

I have personal experience with a lady who has been declared incompetent and is collecting \$650 per month in Social Security. As she is incompetent her \$650 per month is sent to a service company who act as her payee, they look after her monthly rent and utilities for a small fee. She receives food stamps, she is on AHCCS and mental health care with Value Options. It works ok at a very reasonable cost. This is how the poor are treated.

I am horrified to read in the newspapers that a rich woman with \$1,300,000 who got declared as incompetent who went through the probate court system and her care was assigned to attorneys who managed to steal her \$1,300,000 in fees in less than two years, while she did not receive the care that she needed or deserved. Any court system that participates in and allows such an abuse should be abolished and replaced with some other system that protects the incompetent, not sets them up to be rip-off victims.

My experience has been that the legal industry has used the Arizona Probate Court system as a means to simply transfer economic wealth from those incapacitated or citizens requiring

guardianship to the members of the legal industry practicing probate law. First I do not believe that attorneys have the knowledge, education and financial experience to properly manage the financial assets of an individual or estate that is subject to the Probate System in Arizona. I think this function should be assigned to Certified Public Accountants and or Certified Financial Managers. Lawyers should practice only LAW and not be financial administrators and their fees should be limited to a max cap of 10% of the assets of the party or estate being subjected to the probate system.

When the courts assigns someone to take charge of some poor soul, that person should never be an attorney, because of the high fees they charge.

In the cases I have read about, there appears to have been collusion between the judge and the attorneys to enrich themselves. I am glad to see that

you have brought in the members of the public. I hope they are persons of good will, and integrity.

Regarding the Probate Court and appointing and paying conservators and attorneys: (1) Must limit the amount of money paid to both attorney and conservator, and my initial suggestion is why should they be paid more than a public defender? If a judge pro tem is called to sit in a justice court, or the Phoenix Municipal Court, he or she is not paid any more than about \$55.00 per hour. Why should the Probate Court allow more than they are paid? (2) In any event, the estate must be evaluated and an agreed amount set as to what is the value of the individuals estate. Then, the attorney and conservator should not be allowed payment (in full - over the lifetime of the appointment) exceeding more than 10 percent of the value of the estate. AND, the probate court judge should not simply "rubber stamp" the requests for payments submitted by the attorney and conservator. The court, I know is extremely busy, but I suggest someone be appointed by the probate court judge to examine and submit approval and/or disapproval to the court, PRIOR to any hearing for attorney and/or conservator fees. Regulation is sorely needed. What is actually going on, and public perception is that the attorneys and conservators are raping the estates and the probate court is approving it. This has to stop.

County of Residence: ----- Maricopa My Interest is from the following point of view: ----- Other If you selected "Other" above, please give us an idea of your connection to this process: -----
----- Interested citizen Your Comments: ----- Robbing people who are considered "incompetent" by allowing attorneys to deplete their estates through "legal fees" is criminal, and the attorneys involved should be prosecuted!

This should never be allowed to happen again!

It is absolutely outrageous that unsupervised attorneys can rob elderly/incompetent individuals by charging unconscionable fees that are not limited in any way by current law.

Since greed is the primary engine in this country today perhaps it's time to limit how much attorneys and probate officials can legally steal from their victims. Let's simplify the process with primary emphasis on the welfare of the litigant and justified and standard fees on their assets.

Guardian and conservator powers for incapacitated citizens can and have in fact been abused. A citizen's life savings can be quickly depleted by grossly excessive attorney fees somehow permitted by the probate court.

Additional oversight and controls must be established to ensure that conservators actually conserve the assets of the vulnerable instead of being able to absorb them with no one to limit legal costs to appropriate amounts.

The Probate Court process needs to be examined to eliminate waste. Judges ethics and exhorbitant attorneys fees should also be examined.

With sincere concern I believe it is of utmost important that a guideline be set by the State to protect an individual's funds that have been assigned for guardianship or conservatorship.

Cost and/or legal fees guidelines should be part of the process in order to protect the rights of the individual's funds.

There are several issues worth mentioning but the biggest by far is fees charged by fiduciaries and their attorneys. I see the following problems.

1. Failure of fee requests to be set forth in a manner which allows critical determinations. The typical affidavit of fees I see is an affidavit setting forth qualifications and a statement that the attached billing statements are fair and reasonable. Attached to the affidavit are billing statements of variable size. There is no report in the affidavit of what was actually done or accomplished and how much time was directed to each task. It would take 100 hours to comb through these billing statements for a critical review to be done. The burden of proving that the fees are fair and reasonable should be on the fiduciary and the attorney and these breakdowns should be done from the start by the fiduciaries.

2. I see too much extraneous billing which accomplishes nothing other than to line the pockets of the fiduciary and the attorney. The fiduciary is supposed to do the underlying work, not the attorney. The attorney is there to represent the fiduciary in court and to answer legal questions. If a fiduciary needs an attorney to handle all the managing tasks, what is the point of having a separate fiduciary? So I see the fiduciary billing to tell the attorney a problem (which the fiduciary should be handling by him/herself), the attorney billing for the conference with the fiduciary, the attorney then bills for writing the letter that the fiduciary should have written, the fiduciary then charges for reviewing and editing the letter that he/she should have written, then

the attorney charges for making the changes. A simple 10 minute letter becomes a two hour project.

I see fiduciaries charging \$150 - 200 per hour for tasks that do not involve skill such as waiting in line at banks, filing, reading bills and writing checks. Secretarial or filing work should not be billed at all and simple tasks should either be handled by lower billing staff or billed at a lower rate. I see attorneys billing secretarial work as paralegal work. I see attorneys acting as fiduciaries and billing their attorney rates rather than a fiduciary rate and then having another member of their firm be their "attorney" so they get to bill twice.

3. I see attorneys who have been hired by the fiduciary, trying to represent the fiduciary in every legal problem even if the attorney isn't competent or has a huge learning curve on the legal issues. I see hourly billing where contingency billing is more appropriate and vice versa.

4. I see the judiciary abandoning their jobs as the critical reviewers of fee applications and essentially rubber stamping the applications. There are many cases where the judiciary is the only possible objective reviewer (no one else to object) and yet no critical analysis is done.

5. I see the judiciary making it very difficult for an objection to be made or prosecuted. So court appointed attorneys or other parties are afraid to object because they will be put on the spot and/or they are afraid that their objection will only double the fees because the fiduciary and attorney will charge for defending their fees.

6. I see typical arguments made by fiduciaries and attorneys to justify fees such as "family fighting." There always is family fighting and it doesn't mean that thousands more has to be spent. There are professional ways to deal with family fighting and certain litigation does not have to cost tens of thousands. Also, litigation has to be justified. Just because there is a claim against a defendant does not mean that you are justified in pursuing it. It doesn't help to spend \$50,000 in fees to get at \$5,000 judgment.

I don't get this. The Bar has lots of procedures for having competent clients challenge fees including an inexpensive fee arbitration and yet incompetent people don't get as much protection. The process is expensive and potentially dangerous as you may incur the wrath of the judiciary. The bench and bar should be much more diligent at the fees charged against the estate of a protected person.

Fixes: (1) Some fixed billing rates for certain tasks; (2) requirement of the fee affidavits to describe the tasks accomplished and the hours billed against the specific task (much easier to critically examine) and any other specificity required by the bench; (3) the bench should be much more diligent at critically reviewing fees and there should be an easy way to object to fees which puts the burden on the fiduciary and attorney to justify those fees; (4) there has to be easy processes to object to fees: special masters or arbitration or other ways to get this done.

County of Residence: ----- Yavapai My Interest is from the following point of view:
----- Other If you selected "Other" above, please give us an

idea of your connection to this process: -----

----- Retired Pers Trust Executive w/ VNB/Bank One/JPMorgan Chase Your
Comments: ----- Given my close involvement with Probate Court matters over many
years, I followed the series of AZ Republic articles by Laurie Roberts with great interest. The
two cases that she focused on, while extreme in my experience, highlight several deficiencies in
the Guardianship/Conservatorship process in this state, and in particular with various Probate
Court practices.

I was particularly appalled by the Ravenscroft situation, since at one time I was personally
involved with the Ravenscroft family trusts before they were distributed to the beneficiaries,
including Edward.

The most blatant abuse in both of the profiled cases was the Judges' decisions permitting the court
appointed guardian/conservator (Sun) to hire itself, at what I can only categorize as outrageously
high fees, to provide day-to-day care to the ward. This is an obvious conflict of interest, rife with
the potential of over-charging. The easiest way to avoid this in the future is to change court rules
to specifically disallow any and all fees for caretaker services in these circumstances. Do not
give the judge any discretion to allow such fees.

Procedural changes are also necessary to avoid the seemingly exorbitant billings from various
attorney's involved in cases of this nature. There are a couple of possible alternatives. First,
attorneys should be required to apply to the court for prior approval of fees before bills are
submitted to and paid by the Conservator, rather than having their fees approved after the fact as
routinely happens now. Second, attorneys should be required to apply for approval of fees when
they hit a certain threshold (say \$25,000 or 5% of the ward's estate, whichever is greater),
regardless of time elapsed since the last application. Third, all billings which in the aggregate
exceed a second threshold (either a dollar amount or perhaps a percentage of the ward's estate, or
some combination thereof) should require a formal evidentiary hearing, where the judge would
be required to inquire into the reasonableness of the fees in totality, even in the absence of any
objection thereto. I believe the Court should be responsible to proactively protect the interests
and estate of the ward.

Another possible procedural change would be the creation of a special master position within the
Probate Court that would hear all fee requests, whether from attorneys or fiduciaries, and take
this function away from the judge assigned to hear substantive matters. In at least one of the
profiled cases, it seems clear that the judge who had handled the substantive matters in the case
had become too close to the attorneys for one of the parties, to the extent of the prohibited ex
parte communications, and merely rubber stamped hundreds of thousands of dollars in fees.

This same special master could also be charged with periodically reviewing accountings on
"active cases" (1) with significant contested matters, and/or (2) multiple parties and multiple
attorney representations, to assure that, as in the case of Marie Long, the ward's entire estate is
not dissipated before anyone even realizes it has happened.

I would also suggest that in such "active cases" the special master have the authority to require
semi-annual or even quarterly accountings, rather than the annual accountings currently required.
In the Long case, 12 months was enough time for hundreds of thousands of dollars in fees to be
expended.

I am sure that your Committee will identify and consider many worthwhile suggestions to correct
the apparent abuses that Ms. Roberts detailed. Clearly significant change needs to be
implemented to avoid such results in the future, and restore public confidence in the Probate
Court in particular, and our judicial system as a whole.

Consider a board with at least one volunteer taxpayer sitting on each case. Have the same across the board percentage fee allowed. This is a horrible injustice that has been done to so many vulnerable victims and it needs to stop! I personally would be willing to be one of those volunteers.

Although probate is a "necessary" legal process, the thought of having one's entire assets used up by lawyers and a select group of "care provider's" is shameful. The monies saved by the individual should be used for his/her care (a SMALL percentage to the lawyer's) not for lining the pockets of provider's at the expense of the person.

To Whom It May Concern:

The media may, of course, distort reality somewhat; however, it appears that the probate process is broken, allowing trustees or conservators in some cases to plunder the assets of the vulnerable. It's shameful and despicable, yet legal. Help those who cannot help themselves. Remember, just because it's legal does not mean it's moral or ethical.

Reference: "the committee wishes to receive input regarding problems encountered or observed in guardianship or conservatorship cases and any suggested solutions."

I used to work for a private family fiduciary in Arizona. As conservators or Trustees, I observed that they collaborated with their attorneys to milk the estates of their clients and stall settling estates. That fiduciary was usually decent in guardianship cases, however.

If that fiduciary didn't personally like a client, they deliberately tried to drain their assets quickly until there is nothing left to oversee. For example, they'd let an obnoxious client of minimum mental capacity and without a large estate, to buy 50 lbs of birdseed a month to feed the pigeons and allow him the highest\$ cable TV package, and generally let that client frivolously blow through his money, just so they'll be able to get rid of him soon.

If that private fiduciary has a client with a lot of money, that fiduciary is usually reluctant to part with enough money to truly improve the lives of those for which they are conservator. More so if that client isn't bright enough to be able to fight the fiduciary. That fiduciary is stingy with the clients and generous to themselves and their attorneys. They are masters of covering their greedy methods so nobody could legally pin the truth on them.

And that fiduciary LOVED it when an estate had contentious family members! The fiduciary strategically used that as an excuse to stall things, have elaborate meetings that served to feed the contentiousness and bill a lot for themselves and their attorney.

It should stand out to the probate courts when the fiduciary and attorneys receive ongoing, substantially larger fees than the beneficiaries receive in stipends, benefits and/or investments; perhaps on a % of the estate basis.

The courts should insist that the conservators build the estate; or at least not be allowed to drain an estate below a certain point without penalties such as fines or losing the conservatorship to another fiduciary.

The court should receive a copy of all requests made to the fiduciary from the clients. It could help the court better hear and adjudicate the complaints of clients assigned to a conservatorship. The court should be able and willing to re-assign a conservatorship or impose fines if there are ongoing complaints or suspicions of conservators stonewalling or being greedy in their duties.

I was amazed that the courts didn't question the fiduciary and attorney accountings when the case would drag on for years. Why is there no established timeline, or consequences (like fines), for unreasonably going past a timeline to settle estates? Does the court consider whether the estate and beneficiaries remain as solvent as they were when the fiduciary took the conservatorship? I observed a number of "dead" cases that should have and could have been closed. Some cases sit on that fiduciaries books for years with nothing done to or for them. What a shame to see the beneficiaries end up with little or nothing.

I hope the probate court can come up with a way to resolve this thorny problem.

There is a story on the news currently about an old woman who started out with nearly a million dollars and by the time the lawyers were finished with her she was broke. This should not be allowed to happen. Legal fees should be capped at a small percentage of the estate, or a fixed amount, or some other regulating method that prevents this kind of financial transfer. It's a shame that we have to talk about ways to protect people from the professionals that are PAID to protect them from themselves and others. Thanks for the opportunity to vent.

Hello,

My information comes from the newspaper but from what I read the action by the Court concerning those 2 individuals was a crime against them. The one lady who lost all her money to attorneys and is now indigent and the other wealthy guy {REDACTED INFORMATION} who lost much of his money to Court appointed attorneys was appalling. The attorney fees were alarmingly high and in many cases unwarranted, like several hundred dollars to go to the store to get the lady an item. Those attorney fees should be reversed by the judge and a schedule of fees then should be put in place for all such cases after reasonable discussion. Maybe in many cases an attorney is not required at all, just an ordinary taxi driver or something to do that, and I am sure the attorneys charged large fees while having their secretary do the work and charging for the secretary - I had an experience like that in California Probate where I had to pay the attorney, his secretary and another person to do something which in reality was done by the secretary - highway robbery. Possibly attorneys are not really needed in these cases and I am sure the public would respond with a suitable alternative if the Court said they were interested in some public company doing these tasks - attorneys just charge too much and really they should not be in the business of caretaker anyway as they have shown they are poor at it an unreasonable expensive. I am sure they themselves do not do it, they just charge for themselves and then hire someone to do it and charge for that too.

As long as it is an attorney driven process, the cost will be high and lengthy. A Living trust is in the public interest and should be offered by non lawyer providers. As an alternative, fees could be capped at a low percentage of the estate ie 10%.

I have sat in court and observed many hearings, in Yuma and Maricopa Counties, where unlicensed fiduciaries are serving without bond and requesting access to restricted assets. These cases are very costly and cumbersome. They should be held as non-appearance hearings, reviewed by court officials, and only set for hearing if the expenditure requests are questionable. There is no good done to a protected person's assets in having two attorneys and a judge review receipts or quotes in open court.

Thank you for allowing this input. I have practiced exclusively in the probate court for fifteen years and make the following recommendations:

1. If a fee dispute is brought in good faith, then the attorney or fiduciary whose fees are being disputed should not be permitted to charge the estate for the costs of defending the disputed fees. As of now, because the attorney and/or fiduciary routinely charges the estate for such disputes, there is little incentive to reduce fees and so persons who otherwise would like to bring legitimate disputes do not do so because the overall expense to the estate is increased by the dispute itself. However, there are some who would abuse this process and so it would be necessary to guard against disputes not brought in good faith.

2. Fiduciaries and attorneys charging fees that they know to be subject to approval should be required to put the fees before the court no less often than annually for a hearing, initially a nonappearance unless contested, either as a part of an accounting or separately. (Not all attorney and fiduciary fees are subject to court approval. In some cases, they are not subject to approval unless a party makes them so.) In at least one of the highly profiled cases, the fiduciary sought approval of at least two or more years' worth of fees and costs all at once, and during that time it was clear the fees would be contested. Therefore, too much water was under the proverbial bridge before the court ever reviewed those facts. Also, I have seen at least one court appointed attorney deliberately wait for more than two years before seeking approval of his fees because he knew all along they would be contested. Under the current system, some judicial officers believe that the fee issue is not "ripe" until the fiduciary or attorney seeks that approval, and so a party seeing unreasonable charges can do nothing in the meantime. If a party believes that unreasonable fees are being charged, the party should be able to request a hearing for review of those fees even if the attorney or fiduciary has not yet sought such approval. Under the existing rules, a hearing is obtained by filing a petition and requesting a hearing from probate administration and that hearing is set independently of any action by the judicial officer. In a highly profiled case, an attorney kept asking the judicial officer for a hearing and was never granted one, when all he had to do was file a petition and request the hearing from court administration. What is needed is a clear statement that anyone can bring the fee issue before the court with a petition even if the fiduciary or attorney has not yet done so.

3. Guidelines for court appointed counsel were written in 1997 by the probate study committee for Maricopa County and those guidelines should be but are not always observed. Every minute

entry issued in Maricopa County showing appointment of an attorney in a guardianship or conservatorship matters states that the attorney shall abide by the guidelines for court appointed counsel. Among other things, those guidelines require a court appointed attorney to advocate the client's position to the extent the client can understand the evidence and participate meaningfully in the process; otherwise the attorney shall act in the client's best interests (essentially as a GAL but without the title). The guidelines also state that the attorney should not ask for an evidentiary hearing if there is no evidence to support the client's position. All court appointed attorneys should be required to hold to this standard in order to maintain their right to hold a contract. That is not always the case now, and there appears to be no manner whatsoever of reviewing whether they do so or not with the office that grants the contracts for probate cases. Court appointed counsel might, for example, demand additional medical evidence where multiple doctors already agree on incapacity and then insist on multiple evidentiary hearings that have an outcome that all can predict with absolute certainty, all in the name of advocacy. In addition, a disturbing trend has occurred over recent years so that a GAL is now considered necessary in many cases where the client cannot meaningfully participate, even though the guidelines already provide for that situation. I was on the court appointed list for about six years and remember only one case where I felt the judge should appoint a GAL. In that case, I believed that was the only way the judge would hear certain facts that my client did not wish me to share and it appeared those facts were unlikely to come forth otherwise. Now, even though Title 14 requires that specific findings of fact must be made when appointing a GAL, it is extremely common to have both an advocate and a GAL in contested matters, and that brings an additional expense to the estate, especially when they are fighting each other. Litigation expenses would be reduced in many cases by holding the court-appointed attorneys to the written guidelines and appointing GALs only when required.

To summarize:

Attorneys and fiduciaries should not be authorized to defend their fees at the estate's expense as long as the dispute is brought in good faith.

If the fees are subject to court approval, that approval must be sought no less often than annually.

If a party to the case files a petition and sets a hearing related to a request for review of fees being charged by another party or attorney, the court shall hear the case even if the fiduciary or attorney has not yet sought the review.

Court-appointed attorneys should be required to abide by the guidelines for court appointed counsel (at least in Maricopa County) and the office of county counsel should provide a method of review and comment for those attorneys who do not abide by the guidelines, and should not issue contracts to attorneys who consistently fail to abide by those rules.

GALs should be appointed only in cases where it appears to the court that it will not be presented with all the facts necessary to render a just opinion.

Thank you for this opportunity.

Attorneys and fiduciaries should be paid AFTER, their fees are approved, not a year before the accounting is submitted. too many cronies in the system, and the enormous fees are forgotten as enormous.

In my opinion, big problem of the current Probate Courts is that lawyers and fiduciaries take too much (actually unlimited) money from incapacitated people.

They are like vultures, in my opinion.

One way to fix the problem is we put a limit on the attorney and fiduciary fees. For example, maximum 30% of the estate of the incapacitated person is allowed to pay the lawyers and fiduciaries.

Because our current system has no such limit, instead of protecting incapacitated people, we let these un-protected people sucked dry by the greedies.

----- Websters dictionary list a definition of Probate Court as , Guardianship, than it states under guardian, protects or takes care of another person.....so where does it say, strip them of every cent that they own, until they wind up on public assistance. The lawyers and judges that are amassing their wealth from those who have become incompetent should be stripped of their jobs and their dignity as they are doing to others. We should, as a society, treat those, who can no longer take care of themselves with dignity and respect, and not look upon their financial situation as a means to benefit ourselves. Let them pay reasonable amounts for services and continue their lives with the respect due them.

Although probate attorneys need to be paid for their services a reasonable fee should be in place with a cap based on the size of the estate. An example would be in a living trust compensation to the successor trustees typically starts at .50 basis points up to 5% of the value of the estate or a set amount plus expenses. A prudent man rule should also apply. For several probate attorneys to continue to "rape" an estate until little or no value is left for the person or their heirs is horrible. Several Estate Planning attorneys I work with suggest that when a client seeks advice from an attorney and their estate has value above \$350,000, instead of recommending a living trust which avoids probate, they instead write a will which is a list of instructions to the probate court. When the will reaches the court many times the lawyer who wrote the will is asked to probate the will which could be a built in retirement plan for the attorney. I think rules need to be put in place to protect the public as well as the probate court and the state of Arizona. Perhaps additional or new probate attorneys should be considered to represent the public.

----- The problem that pervades our court system in this area is nationwide. The failure of the Supreme Court and Bar to establish true safeguards as opposed to catering to the "in crowd" in the Probate Court system is both unfortunate and damaging to our whole profession.

I suggest we make use of the vast literal "army" of senior attorneys who are for the most part retired or no longer in "active" practice, to act in the capacity of guardians and trustees for these estates at reasonable, but set fees, which would bring both experience and competence, as well as empathy for the citizens they are asked to protect.

I speak as a senior attorney, age 78, who feels competent and yet not employable otherwise due to age, so I speak with some degree of prejudice for the position I represent, and yet I feel my suggestion is not only doable but the right step for our profession. As an "active" attorney, I am

called upon several times yearly to act as an arbitrator, and yet the contribution senior attorneys could bring to this sadly lacking area of law is ignored.

Here is what I have observed. There was no regard as to where my father (He lives with us) and where the attorney appointed was located .if you look at a map, we live in Glendale, AZ and the attorney was in Apache junction, the other end of the world. So when the attorney wanted to visit my dad in would cost us almost 1,000. This is totally lacking in caring and is absurd. The attorney could charge what he wanted and never informed us of any of his fees. The judge should make sure the we are informed by requiring the attorney to let us know what his charges are. The judge should set limits as to what ongoing cost would be. They really rape my father. Probate court should be a good thing but it is not and prays with people who have money and drains them.

Hope this helps.

Name: ----- Phone: ----- E-mail: ----- County of Residence: Maricopa

My Interest is from the following point of view: Other

If you selected "Other" above, please give us an idea of your connection to this process:
Conservator/guardian for now deceased mother

Your Comments: My mother had severe dementia and in order to get her the help she needed, I had to sue her in probate court, because she was then seeing me as her enemy, her court appointed atty would not agree to me as her guardian/conservator and appointed an outside company. The fees and attorney fees were legal robbery condoned by the court system. I finally went back to court a year later and won my case to be conservator/guardian and protect what assets were left. There really needs to be better oversight and a fee schedule that is reasonable, not open season on the assets of the incapacitated, as seems to be the case.

Several years back we had a 16 year old gal from Hong Kong living in our home. She was a high school student at the school my husband taught at. The home she was living in was not able to keep her due to an aging grandparent who needed to be moved in and cared for. We opened our home to the gal from Hong Kong, but we felt we should have guardianship papers drawn up so we could make decisions for her if her parents in Hong Kong could not be reached. We hired an attorney who took care of most of the paperwork. My husband was told that we would have to make payment with a money order, or cashiers check. The attorney told us how much it was going to cost. My husband went down to our bank and got a cashiers check. When he got to the downtown (we lived in Glendale then) where he was to pay for the guardianship he was told it was going to cost a different amount than what the attorney had told us. There was a \$1.00 difference between the two amounts. My husband reached in his pocket and got a dollar bill out to make up the difference. They would not take the one dollar bill, or a person check, and wouldn't accept the cashier's check because it was not made out for the correct amount. The person helping my husband told him to contact his attorney and have the attorney contact them. In the end the attorney sent a check to the courts, and my husband then repaid the attorney with a personal check.

My husband had taken a half day off work to take care of this. Fortunately, our attorney followed through so he didn't have to take another half day off work.

QUESTION: Is this still the procedure used for payment of guardianship? Is there some other way payment could be made with a personal check, or even a debit card tied to a checking account? We thought it very strange that they wouldn't accept cash.

Dear Judge Berch,

I'm disappointed there is no one on the Committee representing the interests of Corporate Fiduciaries. Corporate Fiduciaries would have a different perspective than the private fiduciaries. My concern is that proposed fee guidelines may have the effect of causing corporate fiduciaries to decline to serve in conservatorship or other court-ordered trusts. Corporate fiduciaries already charge their fees based on a percentage of the assets they are managing so there is already a built-in limiting factor. With corporate fiduciaries, perhaps the court could approve the proposed fee schedule at the time of the appointment, thereby allowing the corporate fiduciary to charge their fees monthly as is customary. If the corporate fiduciary wanted to change the fee schedule for a given matter, they could present it to the court for approval at the time of an annual accounting. If the new fee was not approved, the corporate fiduciary could continue to charge under the old schedule or resign in favor of a new fiduciary

Thank you for your time.

Name: ----- Phone: ----- E-mail: ----- County of Residence: Maricopa

My Interest is from the following point of view: Attorney

Your Comments: I believe that if you establish fee limits for attorneys in probate matters, the quality of the attorneys will decline. In no other section of the bar, are the fees set at a specified amount. I also think that being a "court appointed attorney" should not be that individual's main source of income. I believe that every attorney who is a member of the probate section should be asked to serve as court appointed counsel. If the person has a conflict or is unable or unwilling to serve, he/she can decline. The public views the "court appointed" as if the person is a government employee, not a private attorney who makes a living from these appointments. It should be a civic obligation. If the list will remain limited, then assignments need to make sense, ie, where does the court appointed have an office. There is no reason to assign an attorney in gilbert to a case assigned to the northeast court house. That is a waste of the Ward's money. Having said all of this, I think the probate matters work very well. I believe that both the bench and the bar have the best interests of the ward in mind during proceedings. I think the air of cooperation serves everyone in the proceedings well. These are emotionally difficult cases and there is no reason to make them more difficult for the families we serve.

Y:\BOARDS COMMITTEES COMMISSION\COMMITTEE ON IMPROVING PROBATE COURT MATTERS\PUBLIC COMMENTS FROM PCC MAILBOX\Probate Emails Listed Under FEE COMMENTS.docx



ENTRUST FIDUCIARY SERVICES, INC.

LICENSED FIDUCIARY NO. 20545

P. O. BOX 249 YUMA, AZ 85366-0249

TELEPHONE: (928) 782-0974

FACSIMILE: (928) 782-3889

LISA M. PRICE

LICENSED FIDUCIARY

LICENSE NO. 20120

NATIONAL CERTIFIED GUARDIAN

LISA.PRICE@ENTRUSTFIDUCIARY.COM

August 19, 2010

Honorable Rosa Mroz
Committee on Improving Judicial Oversight and
Processing of Probate Court Matters
1501 West Washington Street
Phoenix, Arizona 85007

VIA EMAIL: PROBATECOURTCOMMITTEE@COURTS.AZ.GOV

Re: Workgroup #3: Fee Guidelines/Fee Awards and Fee Dispute Resolution

Dear Judge Mroz:

I was in attendance at the July 30, 2010 meeting of Workgroup #3 and wish to share some of my comments from that meeting.

One piece that appears to be missing from all of the committee meetings is the attempt to determine IF there is a problem with the probate system and to identify the actual problem. It seems to me that we cannot propose solutions to a problem if we have not identified the actual problem. I continually hear members of the committee and the public address articles written in newspapers as their source for identification of the problems with the probate court system, but where is the data? Where is the attempt to actually review accountings/billing statements/processes to determine what, if anything, needs to be corrected? I believe that if the committee continues down this path that recommendations will be made to address problems that do not actually exist and we will miss out on an opportunity to actually improve the probate system.

While I can understand the hesitancy of opening the workgroup meetings to comments from the public, particularly when discussing a difficult topic such as fees, I feel that it is a disservice to the workgroup members, the committee members and stakeholders to not allow public comments. The purpose of a workgroup is to identify and resolve any potential concerns of the stakeholders. Such work should be completed at the workgroup level; not the committee level. The workgroup should be able to flesh out many of the stakeholder's concerns prior to submitting a product to the committee. If we must wait to make public comments or express concerns until the recommendations are presented to the committee, this will result in little to no

Honorable Rosa Mroz
August 19, 2010

stakeholder input into the process. My experience with these types of committees in the past has been that the majority of time the committee will adopt the recommendations of the workgroup during the meeting leaving stakeholders no opportunity to comment until the public comment portion at the end of the meeting which is typically well after the committee has already made a decision. I would ask that you please reconsider this position as I believe that many members of the public would be able to offer constructive input in the process and recommendations of the workgroup.

I have received a copy of the Draft Guardianship/Conservatorship Case Management Plan and would like to offer my comments and recommendations regarding this draft. I understand that Judge Harrington's workgroup may also be considering this document so I have copied him on my letter to you.

In reviewing this document I am unable to determine how this document would benefit the ward, interested parties or the court. Most of this information is already contained in the inventory and appraisal, annual accounting and/or the annual guardianship report. I find it somewhat ironic that there is a recommendation from a workgroup reviewing fees to reinstitute this form, supplying essentially duplicative information, which will result in more fees to the estate.

I believe that a better way to approach this would be to require that a budget be submitted with the inventory and appraisal and annual accounting. I prepare budgets for all of my wards at least annually and more often if necessary. In order for fiduciaries to make appropriate placement and investment decisions they should already be preparing an annual budget for their wards so this approach will not result in any additional fees to the ward. It is a very simple one page spreadsheet which should not take more than 20-30 minutes to complete. I have attached a copy to this letter for your review.

Most of the information contained in the health care/personal care section of the draft plan is already contained in the annual guardianship report. What is not contained could simply be added with one or two additional paragraphs. Again, this would not result in any additional fees to the estate as the fiduciary must already submit this form to the court. I have attached a draft of the guardianship report with revisions to this letter for your review.

Recommending changes to the annual guardianship report and requiring the submission of an annual budget will also address the concern of submitting the case management plan when only acting as guardian or only acting as conservator. Fiduciaries acting in only one role will not likely have access to the remaining information being requested on this form.

Should the workgroup still recommend the establishment of this plan, I cannot understand why it is being recommended that the public fiduciaries and the Arizona Veterans Service Commission be exempt from this requirement. As we all know, the public fiduciaries and ADVS are not exempt from mistakes and wrong-doing. Additionally, there have been very large cases of theft by those offices, just as there has by from private fiduciaries. The belief that the public fiduciaries and ADVS do not manage estates with significant asset value is inaccurate. Many

Honorable Rosa Mroz
August 19, 2010

public fiduciary offices, but particularly the Maricopa County Public Fiduciary, manage estates with significant value. If it is going to be argued that this form would provide benefit to the ward, interested parties and the court, I cannot imagine how it could be argued that such benefit is invalid simply because the case is managed by the public fiduciary or ADVS.

Additionally, should this form be reinstated there would need to be changes made the Arizona Rules of Probate Procedure, Rule 7, to include this document in the list of confidential documents.

There was also a document circulated which contained a number of potential statutory and administrative rules. One proposed statute would be to allow the court (I am assuming the Superior Court as that was not identified) to order an audit of the estate. The Administrative Office of the Courts already has audit authority over licensed fiduciaries and the court already has the authority to order an investigation by the public fiduciaries into cases handled by non-licensed fiduciaries. Such a statute would seem duplicative and place an unnecessary burden on the Superior Court.

Lastly, I appreciate the tone of the discussion with regard to the proposed attorney fee guidelines. I believe that the discussion of the workgroup moved in the right direction during the July 30, 2010 meeting. I particularly agreed with the position that the terms "shall" and "will" be removed from the document as it was to be presented as a guideline and not a requirement. One question I had in reviewing the guidelines and Administrative Order 2010-52 is that the administrative order indicates that the committee is to make recommendations regarding fiduciary fees and court-appointed attorney fees. It appears that the draft being considered by the workgroup goes well beyond the scope of the administrative order as it encompasses all attorney fees.

I appreciate the opportunity to voice these concerns and recommendations. I am happy to answer any questions you or the workgroup members may have about the documents I have submitted for your review.

Best Regards,



Lisa M. Price, NCG
Licensed Fiduciary
Principle Fiduciary for Entrust Fiduciary Services, Inc.

Encl.

CC: Judge Charles Harrington (w/enclosures)
Via Email: probatecourtcommittee@courts.az.gov

In the [Guardianship/Conservatorship/Trust] of [Ward]
Annual Budget

Anticipated Income

Income Source	Monthly Amount
Pension	
Social Security	
Total Monthly Income	\$0.00

Cash Accounts	Value on (Date)
Checking Account	
Savings Account	
Brokerage Account	
Total Cash	\$0.00

Anticipated Expenses

	Monthly Amount
Assisted Living/Nursing Home	
Mortgage	
Home/Auto Insurance	
Property Taxes	
Income Taxes (Federal and State)	
Vehicle Loan	
Supplemental Health Insurance	
Medicare Part D	
Medications	
Cable	
Telephone	
Electricity	
Water/Trash	
Groceries and Personal Needs	
Administrative Expenses (Fiduciary/Attorney)	
Total Monthly Expenses	\$0.00
Excess of Expenses over Income	\$0.00
Total Cash Required for First Year	\$0.00
Cash Available for First Year	\$0.00
Total Remaining Cash after the First Year	\$0.00

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF _____

In the Matter of the Guardianship of <and
Conservatorship of>

_____,

An Adult.

Case No.: _____

Division No. _____

ANNUAL REPORT OF GUARDIAN

Pursuant to Arizona Revised Statutes ("A.R.S.") §14-5315, _____,
("Guardian"), the guardian of <WARD>, hereby submits the annual report as follows:

1. The type, name, and address of the home or facility where the Ward lives, and the
name of the person in charge of the home are as follows:

Type of home/facility:

Name of home/facility:

Address:

Phone Number:

Administrator:

1 2. How many times has the Guardian seen the Ward in the last twelve (12) months?

2 3. The Guardian last saw the Ward on the following date:

3 4. The name and address of the Ward’s physician is:

4 Name:

5 Address:

6 Telephone Number:

7 5. The ward is seen by the following specialists:

8 Name:

9 Specialty:

10 Address:

11 Telephone Number:

12 ~~5-6.~~ The Ward was last seen by a physician on the following date:

13 ~~6-7.~~ A copy of the Ward’s physician’s report to the Guardian is attached hereto as

14 Exhibit A, or, if none exists, a summary of the physician’s observations on the ward’s physical
15 and mental condition is as follows:

16 8. Major changes in the Ward’s physical or mental condition observed by the
17 Guardian in the last year are as follows:

18 9. The Guardian anticipates the following medical services will be provided to the
19 Ward during the next year:

20 ~~7-10.~~ The Guardian anticipates the following change to the Ward’s residential
21 placement during the next year:

22 ~~8-11.~~ The Guardian’s opinion as to whether the guardianship should be continued is as
23 follows:

24 12. A summary of the services provided to the Ward by a governmental agency and
25 the name of the individual responsible for the Ward’s affairs with that agency is as follows:

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 2 +
Alignment: Left + Aligned at: 0.5" + Tab after:
1" + Indent at: 1"

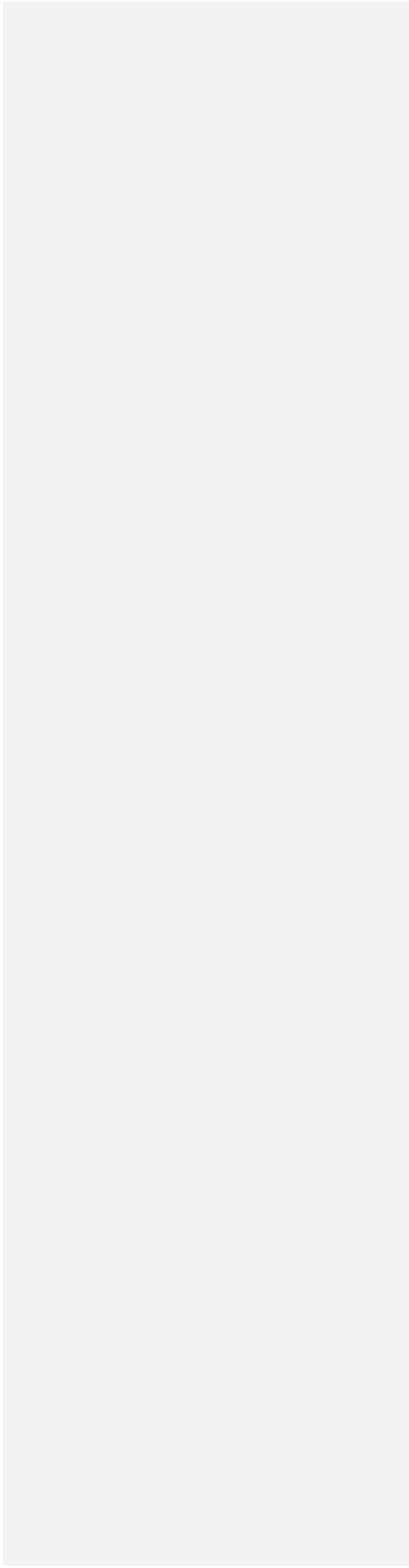
Formatted: Indent: Left: 1"

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

9.

RESPECTFULLY SUBMITTED this _____ day of _____,

20__.



County of Residence: Yavapai

My Interest is from the following point of view: an advocate for the elderly

Your Comments:

I have been involved in a couple of fiduciary cases. I see no accountability for the fiduciary's actions. In one of the cases, the fiduciary has her husband as an attorney for her fiduciary company. I find this a conflict of interest as they are charging the ward's account for every little piece of paper written. To me it reeks of conflict, putting the ward's money in their own pockets. Although they state that the courts hold them accountable for the finances they spend doing tasks for the ward, I find some of the charges unreasonable. Such as taking the ward shopping and charging 380.00 for 2 hours of shopping or balancing a checkbook that costs 200.00. There perhaps should be someone appointed to make sure that the fiduciary really is acting on the ward's best interest instead of making as much money as possible off of them and then when the money is gone, dropping them.

County of Residence:-- Pima

My Interest is from the following point of view: Fiduciary

Your Comments: - I recently had a conversation with a war combat veteran who had received mental health care. He related that without court notification he was assigned a fiduciary who was charging \$500.00 dollars a month to serve this veteran. He related that this same fiduciary had a number of other war combat veterans as clients. Service to these compensated veterans at that cost is unthinkable. I have researched the regulation of fiduciaries and found that the regulation under a committee of other fiduciaries

County of Residence: Maricopa

My Interest is from the following point of view: My husband and I are conservator/guardian for my 90 year old mother.

Your Comments: When my mother began to show signs of dementia (getting lost while driving, money scams - she sent \$9,000 to Canada, forgetfulness, hoarding, entering every contest/ mailing list imaginable, getting her days and nights mixed up, calling me by another name, extravagant spending, bouncing checks, etc.) I had to go to court to protect what assets she had left. Her court appointed attorney blatantly ignored the reports of her neurologist and the court investigator, and did not speak with the people caring for her in assisted living. Instead, he had her evaluated by a neuropsychologist in Scottsdale. That one appointment cost my mother \$3,000! Also he wanted an outside fiduciary company to handle her finances instead of me - her only

child. For everything the CAA did, our lawyer had to try to undo. This went on for months and months, and lawyer bills increased and increased. Meanwhile, mother's bills went unpaid because I had no access to her money. Finally I was appointed guardian, and my husband a "limited" conservator, which turned out to be worthless. Mother's bank would not honor a "limited" conservatorship. So back to court where our lawyer sought an emergency court order to allow us to pay her bills. Again, the CAA fought that, and would only agree to a 30 day time period for us to access her funds. This has been nothing short of a nightmare! The CAA scrutinizes and questions and objects to everything we do, and in the midst of all this he raised his fees from \$250/hour to \$300/hour! After two short years over \$36,000 of my mother's limited funds have gone to lawyer fees --- that's a whole year of her group home fees at \$3,000/month. My suggestion would be that CAAs need to be monitored VERY closely and there should be caps on fees they can charge...they should be there to protect the ward, not steal from them!!

County of Residence: Maricopa

My Interest is from the following point of view: Am a court appointed guardian for my son.

Your Comments: As a participant in the court guardianship process, it appears that court appointed attorneys have little impact on the care of the incapacitated person. Their fees are higher than private attorneys hired by the guardian to oversee trust funds, daily care, etc. There should be a standard fee schedule for court appointed lawyers and other caregivers.

County of Residence: Maricopa

My Interest is from the following point of view: Attorney

Your Comments: The probate mediation project in Maricopa County, which was in place from about the year 2000 until several years ago, was extremely successful in every aspect but one. After proving the success of the program for approximately 1 1/2 years, the committee that led the project, of which I am a founding member, was unable to persuade the then presiding probate judge (who was not the presiding judge who gave his blessing to the committee) to agree to implement an administrative rule allowing the mediators to be paid from the estates that had sufficient funds to pay them. The program, however, was initiated on the premise that if the value of the program could be proven to the court, such a rule would naturally follow. The mediators, who came into the program with the minimum 40-hours mediation training, took the ADR's advanced probate mediation training (adapted from the University of Michigan at Ann Arbor's Advanced Guardianship Mediation Program) in exchange for volunteering to mediate only a certain number of cases, I believe a dozen. The cases were referred directly from the bench to the ADR division, which scheduled the mediations. After about a year and a half of 75% or better settlement rate for the program and extremely

favorable reviews from the probate bench, the request for the rule authorizing payment was nonetheless turned down flatly. Eventually, volunteer mediators, some by then having done 20-30 mediations, stopped volunteering and the decision was made for the ADR division to turn to settlement conferences done by judge pro tems. The consensus I have heard is that the probate mediation program came to a halt because it was not workable, but it was never intended to be carried by a perpetual stream of volunteer probate attorney mediators, as that is not a rational expectation. The program can be restarted and most of the graduates of the program would return if a payment rule was implemented. Most mediations take one-half day and payment is solely for that time. The participant mediators were for the most part willing to have their fees set by rule and even to volunteer for cases where there were no funds (they do exist) if they could be paid from the estates that could afford payment. The September 26th article in the Arizona Republic noted a considerable drop in mediated cases and this is why. Mediations are largely sought privately, often with attorneys who gained their experience in the probate court's program. Given the significant fees paid in disputed cases, as highlighted in that article, this committee should consider whether the probate mediation program should be reinstated as described in this comment.

County of Residence: Maricopa

My Interest is from the following point of view: Physician, often involved in end-of-life matters

Your Comments:

After noting the article in today's AZ Republic, I feel compelled to put in my "2 cents worth". Two cents is a laughably low amount of money compared to what gets spent at the discretion of public fiduciaries. Having said that, however, I should point out that in my experience the fees that fiduciaries charge the system is ALSO laughably small compared to what gets spent. That is because of the decisions that I see fiduciaries making; prolonging life, suffering --and cost-- in situations where further, usually very expensive, medical care is futile. It is my experience, and that of many other physicians, that fiduciaries ALWAYS tell us to go on with treatments, even in situations where loving, thoughtful family members would make the decision to go to comfort measures. Such decisions result in the spending of hundreds of millions of dollars each year on futile treatments such as ICU care. An often-expressed perception among my colleagues is that this happens because if we go to comfort measures a patient may die a month or two earlier and the fiduciary will lose the monthly fee they get. This monthly fee

is perhaps a more tangible thing for your committee to go after, and certainly less politically charged than addressing the actual decisions fiduciaries make. However -- let's face it -- it's laughably small. It is not the mere amount of the fee but the reward system for fiduciaries itself that I think is the issue. I realize that fiduciaries are charged with acting as the patients' advocates. It is a slippery slope indeed for the state to start interfering with their decisions, (I disagree with much of what Sarah Palin has to say about "death panels", but there is both a valid point and potential for political hysteria in her comments.) Perhaps taking away the incentive to mindlessly prolong suffering could address the matter somewhat without removing the very protection we are seeking for these vulnerable people. That would of course have to be balanced with adequately reimbursing people for often heartbreaking work. It will not serve the greater good to make the job so unattractive that you only attract people who won't do it well.

County of Residence: Pima

My Interest is from the following point of view: Legal Secretary

Your Comments: I have noticed that court appointed attorney's fees are often submitted to the court for payment. Many times the alleged protected ward's family is more than able to pay those fees. There should be some kind of financial affidavit regarding the ward's family financial status for court inspection only that would determine if court appointed attorney should be paid directly by the family or the court. Many many times the ward's family is very well off but those fees are submitted to the court for payment. This is not fair to the court appointed attorneys or tax payers. The responsibility of all fees and costs incurred in pursuing a guardianship or conservatorship belongs to the ward's family or ward himself.

Comments to Committee on Probate Procedures and Fees

The Supreme Court, in convening the Committee on Improving Probate Court Matters, proceeds on presumptions that are not established, and which statistically are likely false presumptions. These presumptions may not be borne out in the experiences of many attorneys who, for many years have made probate related matters the emphasis in their law practices. From this perspective, the Committee seeks to make "improvements" which may not be warranted, and which may add additional layers of proceedings and resulting expenses which accomplishes the opposite of the objectives intended. In the 1970s, Arizona State University professor Richard Effland lead the efforts of the American Law Institute in promulgating the Uniform Probate Code, which successfully streamlined matters related to the administration of Wills and Trusts, and the establishment and administration of guardianships and conservatorships properly within the parameters of constitutional due process guarantees. Since its adoption by Arizona in the mid 1970s, and in light of Arizona's large senior and retirement

populations, the Arizona Probate Code has been used as a model nation-wide for its qualities. Probate related matters necessarily involve family members. Whether in the administration of a decedent's estate or a trust, or the establishment and maintenance of protective proceedings, family of the decedent or prospective protected person, are "interested persons" as defined by A.R.S. § 14-1201(26). However, the factual circumstances which arise in decedent's estate, trust, or protective proceedings are of vast and unlimited variety. Similarly, the actual relationships between family members also cannot be generalized. The history of love, trust, acts and omissions among family members spans the entire spectrum of human interactions. Thus, "family" cannot be generalized, and difficulties in analyzing family dynamics are compounded by the death of the decedent, or by the cognitive diminishment of a proposed protected person. These truths can be confirmed by committee members Judge O'Neill, Judge Myers and Judge Donahoe, each of whom have served as a judicial officer in the Probate Division. It is equally true that some "family," asserting they are acting in the best interests of a proposed protected person or the wishes of a decedent regarding the transmission of the decedent's wealth, are often deemed to be acting in their own self interest in direct contravention of the ward or decedent. If "family" was always best, the courts would have no need for non-family intervention, and court proceedings and resulting fees would be minimized. As these experienced Judges can confirm, that is often not the case. Additionally, legal services are expensive, and litigation increases the legal services required by parties. Attorneys are not related to the decedent or the ward, and have clients to whom they owe ethical duties. While the assets of a ward or an estate may be limited, private fiduciaries appointed, or attorneys retained by fiduciaries to represent such clients in legal proceedings owe no duty to perform any services for free. Those proceedings are within the control and authority of the court to which the matter is assigned. Court filing fees, appearance fees and judicial salaries are not discounted because a ward has modest assets. Likewise, utility bills, groceries, medical services, transportation costs, gasoline prices, repairs and maintenance costs are not discounted in the marketplace in recognition of the limited resources of the ward or estate. Each such service provider, retailer or industry must be profitable or it cannot survive to provide such goods or services. Fiduciaries and their attorneys are no exception. They must be able to pay fair compensation to their employees, and be current on their expenses from the fees charged and received in exchange for the services they render. Mortgage holders, landlords, utility providers, insurers, gas stations, grocery stores, and others have no special discounts for fiduciaries or their attorneys acting in connection with an estate or ward with limited resources. However, such fiduciaries and their attorneys willingly practice in an area in which their fees and costs are subjected to review and scrutiny by the court and to persons legally deemed to be "interested persons," and objections (both meritorious and nonmeritorious) by such interested persons. They submit themselves to the court for its determination of whether such fees incurred and for which approval is requested are reasonable, regarding whether:

- a. The rates charged are indicative of the marketplace;
- b. The services specifically described were warranted; and
- c. The time incurred in performing such services was supportable.

To ensure the interests of the estate, or the ward are protected, and the interests of the beneficiaries, the creditors, and the "interested persons," a knowledgeable and experienced judiciary is an absolute necessity. At best, judicial rotations create instability and inconsistency in the proceedings, which, in the case of some guardianships and conservatorships which can continue for many years, can itself cause an increase in fees and costs, especially if a person seeks to take advantage of the lack of experience of the new judicial officer with the facts and circumstances of the matter, to re-assert claims which otherwise would be deemed meritless. Thus, limiting

the judicial rotations in the Probate Division, and when making such rotations, keeping intact sufficient judicial officers who have accumulated the knowledge and experience to mitigate the adverse effects on both particular cases, and all pending and future cases overall. In the history of the Probate Court, its experienced and knowledgeable judges and commissioners have been extraordinarily effective in properly policing the conduct of fiduciaries (family, public or private) and their attorneys, including ensuring that fees and costs sought to be paid from estates or conservatorships, are supportable, reasonable and warranted by existing law. Any plan by this Committee to remove such discretionary authority from an experienced and knowledgeable judiciary, would not only be counterproductive regarding the objectives sought to be achieved, but will create additional procedures, proceedings, judicial obligations, and more fees and costs, than the status quo. There are always going to be persons, be they close family, remote relatives, boyfriends, girlfriends, long-standing friends, new friends, mere acquaintances, "hangers-on," and others seeking to interject themselves into matters related to the estate or protective proceedings. Sometimes, such persons have the best interest of the estate or ward at heart. However, sometimes they seek to advance their own personal interests under the mere guise of acting for the estate or ward. In both circumstances, such persons always have the potential to be vocal, persistent, sometimes relentless and unyielding even in the face of evidence contrary to their position. Neither a fiduciary nor the fiduciary's attorney has authority to unilaterally:

- a. Deny such person's access to the courts; or
- b. Limit the scope of such person's claims or assertions; or
- c. Limit the nature of the proceedings to adjudicate such claims or assertions.

Such authority is within the sole purview of the court. Arizona's Probate Code grants broad jurisdiction to the Probate Court, including A.R.S. § 14-1302(B). Efforts by the Committee to remove discretionary authority from the court, and to standardize remedies for perceived deficiencies in the Probate Court would achieve the opposite result. No rule changes, or procedure changes, or standardization will have any effect on the necessity of a fiduciary and its attorney from responding to claims, and engaging in proceedings, commenced by such persons. Ultimately, notwithstanding efforts to the contrary, such authority will always remain with the court. We note that there is very little representation on the Committee by individuals and/or representatives of a private fiduciary who accepts requests for appointment from the court to serve as fiduciary in matters involving significant family conflict and discord related either to the administration of an estate or trust, or the establishment or administration of a guardianship or conservatorship. Ms. Johnston has tried very hard to represent the private fiduciary community, however, even her practice is mainly limited to matters that do not involved the level of litigation that have been featured in the news of late. It is imperative for the Committee to understand that private fiduciaries cannot appoint themselves to any case. In such circumstances, the court had deemed the family members and the existing parties to be unacceptable or otherwise disqualified for the appointment, and a private fiduciary is sought either by stipulation of the parties or prayer for relief of one or more of the parties or by the exercise of discretion by the court. Although they represent only a small percentage of cases in the Probate Court, these are the very types of cases which foster vociferous complaints by the very persons whom the court has denied appointment. They are the types of cases which attract media attention and the types of cases in which the court, the fiduciary and its attorneys are subjected to criticism and attack. Such criticism and attacks are generally based on "selective" facts, circumstances, and court rulings. The full record, or those facts which undermine the dubious theme, are ignored. Nonetheless, the estates require administration or the interests of the wards require protection. The courthouse doors are open to any person having standing to bring their concerns to the court by

appropriate petition or motion. If the court does not grant the relief they requested, they can appeal. Neither the court nor the fiduciary or its attorney can limit the ability of such persons to take their complaints to the media, nor can they place parameters on the media's handling of such matters. They generally do so when the court has rejected their claims or assertions. As stated, private fiduciaries do not appoint themselves, and their fees and those of their attorneys are subject to review and approval by the court. Hopefully, it is by the same judicial officer who presided over the matter. In item number 6 of her submission entitled "What Can Be Done to Improve Probate," attorney Candess Hunter asserts, among other things: "Now, the two largest fiduciary companies have gotten much more sophisticated – they and their attorneys do not steal from the protected persons's estate, but "bill" until the Estate is gone, the same end result for the Ward [as theft]. These fiduciary companies often hire attorneys that also are *pro tem* judges in the probate court to represent them, and no one thinks it's a conflict. Often, the incoming judges and commissioners are "trained" by these same attorneys, who *pro tem* and represent fiduciaries in the probate court. Not surprisingly, the Courts Simply rubber stamp this decimating of estates, and seem to think that it is too bad, but there is nothing they can do about it. Everyone seems to think it is ok if the Ward then has to go on public assistance. When fiduciaries get in a dispute with the family, they consistently separate the Ward from their family members, with the Court's blessing." Judges and commissioners in the Probate Division have historically and consistently carefully reviewed Rule 5.7 and Rule 33 attorney fee statements, and sometimes they approve the fees in toto, sometimes they deny fees, and sometimes they partially approve and partially deny fees. It is likely that any of the matters that have received recent scrutiny by the press involve the level of family discord alluded to herein. Further, it is likely that the facts and circumstances involved would provide ample support for the action taken by the judiciary. When a court, or parties, request a private fiduciary in a highly charged case involving feuding family members concerning an estate or a - protected person, the court is literally asking the fiduciary to enter an existing war zone created by the intense and emotional intra-family dispute; and for the fiduciary to become the focus of the ire; the target of the attacks of those previously attacking each other. In this environment, the private fiduciary is to act in furtherance of the estate administration or the protection of the protected person. In this environment, there is no action by the private fiduciary which is not subjected to the scrutiny of the warring family members and the court. However, the mere appointment of a private fiduciary by the court in such circumstances, or even admonishments from the court itself, may not be sufficient to mitigate continuing and costly litigation, and the proceedings necessary for the ultimate judicial decision. It also does not delay or mitigate the expenses associated with the care of an incapacitated protected person. The incurrence of fees, and its effect on the decedent's estate or the assets of a protected person is in the shared hands of two persons in control:

- a. The family members themselves; and
- b. The court.

Often, the private fiduciary is subject to attack irrespective of its decision. This is easily illustrated by item number 5(d) of Attorney Hunter's essay on "What Can Be Done to Improve Probate." Therein, in advocating a fiduciary "code of conduct," she asserts: "d. The fiduciary shall not remove the ward from the home of the ward or separate the ward from family and friends unless this removal is necessary to prevent substantial harm. The fiduciary shall make every reasonable effort to ensure the ward resides at home or in a community setting." With respect to residential placement for a ward, the fiduciary is subject to criticism in any event. To incapacitated adults, any placement outside of their home represents "the unknown," and can initially result in fear and avoidance. However, in making a decision regarding residential placement, a fiduciary

must consider the overall circumstances of the ward and the recommendations of family, medical professionals, cognitive professionals, and financial professionals. While a ward may object to a placement in a group home, or an assisted living facility, regardless of the amenities and benefits, sometimes a fiduciary must select an appropriate option for placement outside of the ward's residence. Professionals may recommend placement outside the ward's residence in order to increase the activities and socialization available to the ward, to stimulate the ward and mitigate his or her continuing physical, emotional, and cognitive decline. From a purely financial standpoint, home placement may subject the ward and his assets to extraordinary expenses associated with in-home care. The ward may initially require only part-time companion care, but if the care requirements increase significantly (perhaps to round-the-clock care, by more skilled care providers), the costs of such care, even for a short period of time, operate as a tremendous expenditure. Such expenses can threaten the ward's long-term financial well-being by exhausting his or her assets and leaving the fiduciary with little or no alternatives other than Arizona Long Term Care System (ALTCs) for the remainder of the ward's life. Under such circumstance, the fiduciary can be criticized for maintaining the ward in his residence, and approving such expenditures for in-home care, on the grounds that exhaustion of such assets could have been avoided by the significantly less expensive "fixed costs" associated with assisted living. The argument is often made that, for far less than the in-home care, that the ward could have been placed in a "high-end" assisted living facility with many perks and amenities which the ward could enjoy which were not available to the ward under residential placement. Significant costs could be avoided, while the ward's life is enhanced. If given fair opportunity the ward would abandon his or her initial resistance to assisted living, and would quickly form a positive attitude about the change and the benefits associated with it. In the alternative, the fiduciary can be just as easily criticized for any appropriate placement of the ward outside of the home, irrespective of the financial, social, emotional and cognitive benefits associated with assisted living. The argument is, "the ward does not want to leave his or her home, and that his or her assets (which the ward has worked a lifetime to acquire) should be applied (and perhaps exhausted during the ward's lifetime) for his or her care irrespective of the costs. Of course, the criticism here is also that the fiduciary opted for assisted living to save the ward's money for the benefit of greedy heirs, devisees or beneficiaries, rather than spending the ward's money for the benefit of the ward (i.e., maintaining the ward's residential placement). To avoid the criticism, the fiduciary may petition the court for instructions – to have the court decide giving the fiduciary the power of a court order for whichever placement is determined. Of course, the court could then inquire as to why it is being asked to make a decision which is within the purview and authority of the fiduciary appointed by the court to make such decisions. This is a fair question from the court, but it must be considered in the context of litigation arising from the decision of the fiduciary (or even the decision of the court) regardless of whether residential placement or assisted living placement was determined to be in the best interest of the ward. Certainly increasing judicial instructions would give clear instructions to the fiduciary, while adding many proceedings to the court's calendar, but it is unlikely that it would mitigate litigation and the expenses associated therewith, especially in matters involving significant intrafamily disputes. While the petitioning fiduciary will simply request judicial instructions, the warring family members will weigh-in creating contested proceedings between them, which by definition will increase fees significantly. Arizona's Probate Code and the current procedural rules are all sufficient to provide protection to estates and to protected persons when private or public fiduciaries are appointed. Such appointments are made by the court based upon evidence, and the actions and fees of such fiduciaries and their attorneys are submitted to the court and

the parties for scrutinization. Under existing law and procedure, the court has full power and authority regarding such matters. Such fiduciaries are required to prepare and submit detailed accountings to the court, the interested persons and the Office of the Court Accountant, setting forth all expenditures including Rule 5.7 or Rule 33 statements setting forth with particularity the fees and costs requested by the fiduciary and its attorney to be paid from the estate. The following are suggestions to remedy the perceived problems for which this Committee was empowered:

- a. Minimize judicial rotations which operate to undermine the knowledge, experience and understanding of probate matters;
- b. Specify that the court's authority under A.R.S. § 14-1302(B) includes the authority to apportion fees and costs in matters which come before it, including the "shifting" or apportioning fees and costs in probate litigation to persons appearing in the matter as the court sees fit. Efforts to compel fiduciaries or attorneys to provide gratuitous services, or discounted rates, will fail to achieve the objectives of the Committee. Efforts to add additional requirements such as additional interim accountings or entitlement to change appointed fiduciaries will fail to achieve the objectives of the Committee. All perceived "ills" forming the basis of the loud complaints of a few persons, are already within the purview of the court. If persons with standing disagree with judicial rulings, the appellate court is available to them. However, if this Committee believes that their efforts, however well meaning and considered, will quiet the few alleging systemic problems in the Probate Division, we respectfully assert that the Committee will be disappointed. It will only have tried to fix something which was not broken. Unfortunately the Committee will be successful in causing the cost to handle a routine matter before the probate court to increase 10 fold for the 98% of cases that benefit from the relative ease Professor Effland had envisioned, all to try and correct the issues with the 2% of cases that are the cause for the current controversy.

Respectfully submitted,

There are two items that immediately come to mind.

1. I think the legal community needs to address the question of over billing by attorneys and other professionals. While the professionals should be fairly compensated for their services, there should be guidelines when those fees are challenged by opposing parties and the court itself. I think that when fees are questioned in most cases, the cost of the objection should be born by the person charging the fees or the objecting party, and not the incapacitated protected person. There are no guidelines in that regard.
2. Consideration should be given to putting in place a rule allowing a licensed professional fiduciary to appoint another agent to serve in the capacity of guardian/conservator when the licensed professional is temporarily incapacitated or indisposed.
 - A. What is an appropriate time period for another licensed professional to step in and help;
 - B. Under what circumstances should there be a required temporary guardian
 - C. Can a licensed professional create a power of attorney to cover for the individual when he or she is away (Tibet, Laos, New Guinea, etc) on vacation and needs someone to make healthcare decisions for her wards during her absence.
 - D. The rules under 14-5301 et seq are scant about appointment of an agent to assist in guardianship decisions.
 - E. Are there duties that are not delegable? I hope these help.

To Whom It May Concern:

I am a solo practitioner in Phoenix, Arizona who does special needs planning and necessarily practices in probate court. I've been in practice in this area for 15 years. I have been awaiting a report and recommendations on these matters so that I may have an opportunity to review and comment. The Interim Report to the Arizona Judicial Council was first made available today, September 7, 2010, the deadline by which to submit comments concerning same. This does not

afford the public sufficient time to adequately review and make meaningful comments to the committee before the Report is presented to the Arizona Judicial Council to act upon this legislative session or with respect to rulemaking this year. I noted several proposals that, in my opinion, are positive but a number that require further investigation and consideration. I am concerned that the proposals are being made in haste and in reaction to a handful of cases that are not the norm. It would be helpful if the committee(s) would identify the specific problems or issues that they are attempting to address. If the committee(s) are unable to identify specific problems or issues other than generally stating that "there is a problem", this brings into question whether systemic problems in fact exist. Surprisingly, the various recommendations will result in increased cost to the estates of protected persons and the courts, which is contrary to what I understood the objectives of this task force to be in part. This will result in a majority of cases brought in probate court ultimately bearing the cost of the minority of cases that are atypical in terms of the resources required, both public and private, to resolve such cases. I truly want to trust the process but find it hard to do so given the timing in terms of the genesis of this task force, and the speed at which the many dimensions of probate are being reviewed and recommendations for its overhaul are being proposed. I trust and hope that the time for public comment will be extended in light of the fact that it is not possible to comment in detail on the many recommendations contained in the Interim Report the very same day that such report was first made available to the public.

County of Residence: Maricopa

My Interest is from the following point of view: ordinary citizen recently experienced guardianship & conservatorship process

Your Comments:

My recent experience with the guardianship & conservatorship process was very expensive. My Mother had basically no estate and no money. I also had no money. But it was very necessary to use an attorney. I could not afford an accountant which ended up costing me more money. I will still be paying for my attorney and my Mother's court-appointed attorney for at least another year, a total of five years. Technically, the documents can be completed and filed by an ordinary person, however, the process is actually quite complicated. The self-help attorney I contacted from the website list was not available. Yes, there must be safeguards for the elderly but there should be an easier process for indigent people.

County of Residence: Maricopa

My Interest is from the following point of view: prior experience with an incapacitated parent

Your Comments:

I found the process to be very expensive, and the attorneys know that, and unless you have alot of money, or more money than the incapacitated parent, you cannot win. I used all my savings and equity in my house, then when I ran out of money, filed on my own till I ran out of money. Once that happened, I lost all ability

to determine what my parents future would be. Also,incapacitated adults are given a 'mini-mental status test' by the attorneys to determine their mental status, which frequently is not the same as an eval from a healthcare professional. Lastly, these attorneys frequently have local feduciaries they refer to for 'doing the heavy lifing' in these type of cases, in housing the parent for instance in a group home for their safety ,and many other reasons to take up guardianship or primary control of the monies of the parent from the adult children, and end up gutting the accounts having their own agendas. There are many doctors locally who are also on the feduciary/attorney payrolls who basically do as they want them to do with regard to the parent.The incapacitated parent gets confused by all the shuffling around in court and group homes, and come to view their adult children as untrustworthy because 'they' let it all happen. The judges in these courts do as the attorneys want and rarely do anything with respect to the adult childrens wishes,and only hear issues with regard to the feduciary wants and needs. The feduciary group comes between the child and the parent, the attorneys take all that they can and leave both parent and child feeling betrayed. It is a horrible process and greatly needs to be overhauled.

Lectori salutem:

1) First of all, there should be a series of articles published in the AZ Republic making it very clear how to avoid getting entangled with the probate court in case one becomes incapacitated. For example, is it wise to make a long list of possible powers-of-attorney, in case one or more cannot serve?

2) If the matter does end up in court, such an incapacitated person basically needs a business manager: this does not have to be an attorney making \$ 300. an hour.

3) The appointing judge should send the request to another (perhaps non-profit?) organization that carries out this type of work and not directly appoint the administrator. The administrator should NOT be in the same professional group as the judge, as for example that SV group.

4) The manager should have a fiduciary duty to his ward: to make the best possible plans for his/her future medical and housing needs and care of his/her money. This manager should earn a modest honorarium for his time. Things like charging a lot of money to go pick up hearing aids, for example, should be forbidden.

5) Wlthin the organization, a supervisor should from time to check on the managers, to be sure none of them are charging exorbitant amounts or neglecting the needs of their wards.

In short, this functionary should come from an organization dedicated to seeing to the needs of the elderly and infirm, and not be a court official.

I hope you on the committee realize how terrifying it is to those of us who will be aging in Arizona to read how quickly your entire estate can be sucked dry if it falls into the hands of the court. I think Laurie Roberts has done an enormous service to the people of Arizona by bringing this all to light.

Personally I have experience only with one particular administrator and that was very damaging: he was extremely arrogant, unhelpful and only interested in the money.

Hopefully you will not be charging me \$ 300/hr to read this e-mail...

County of Residence: Pima

My Interest is from the following point of view: Attorney

Your Comments: There are several issues worth mentioning but the biggest by far is fees charged by fiduciaries and their attorneys. I see the following problems.

1. Failure of fee requests to be set forth in a manner which allows critical determinations. The typical affidavit of fees I see is an affidavit setting forth qualifications and a statement that the attached billing statements are fair and reasonable. Attached to the affidavit are billing statements of variable size. There is no report in the affidavit of what was actually done or accomplished and how much time was directed to each task. It would take 100 hours to comb through these billing statements for a critical review to be done. The burden of proving that the fees are fair and reasonable should be on the fiduciary and the attorney and these breakdowns should be done from the start by the fiduciaries.

2. I see too much extraneous billing which accomplishes nothing other than to line the pockets of the fiduciary and the attorney. The fiduciary is supposed to do the underlying work, not the attorney. The attorney is there to represent the fiduciary in court and to answer legal questions. If a fiduciary needs an attorney to handle all the managing tasks, what is the point of having a separate fiduciary? So I see the fiduciary billing to tell the attorney a problem (which the fiduciary should be handling by him/herself), the attorney billing for the conference with the fiduciary, the attorney then bills for writing the letter that the fiduciary should have written, the fiduciary then charges for reviewing and editing the letter that he/she should have written, then the attorney charges for making the changes. A simple 10 minute letter becomes a two hour project. I see fiduciaries charging \$150 - 200 per hour for tasks that do not involve skill such as waiting in line at banks, filing, reading bills and writing checks. Secretarial or filing work should not be billed at all and simple tasks should either be handled by lower billing staff or billed at a lower rate. I see attorneys billing secretarial work as paralegal work. I see attorneys acting as fiduciaries and billing their attorney rates rather than a fiduciary rate and then having another member of their firm be their "attorney" so they get to bill twice.

3. I see attorneys who have been hired by the fiduciary, trying to represent the fiduciary in every legal problem even if the attorney isn't competent or has a huge learning curve on the legal issues. I see hourly billing where contingency billing is more appropriate and vice versa.

4. I see the judiciary abandoning their jobs as the critical reviewers of fee applications and essentially rubber stamping the applications. There are many cases where the judiciary is the

only possible objective reviewer (no one else to object) and yet no critical analysis is done.

5. I see the judiciary making it very difficult for an objection to be made or prosecuted. So court appointed attorneys or other parties are afraid to object because they will be put on the spot and/or they are afraid that their objection will only double the fees because the fiduciary and attorney will charge for defending their fees.

6. I see typical arguments made by fiduciaries and attorneys to justify fees such as "family fighting." There always is family fighting and it doesn't mean that thousands more has to be spent. There are professional ways to deal with family fighting and certain litigation does not have to cost tens of thousands. Also, litigation has to be justified. Just because there is a claim against a defendant does not mean that you are justified in pursuing it. It doesn't help to spend \$50,000 in fees to get at \$5,000 judgment. I don't get this. The Bar has lots of procedures for having competent clients challenge fees including an inexpensive fee arbitration and yet incompetent people don't get as much protection. The process is expensive and potentially dangerous as you may incur the wrath of the judiciary. The bench and bar should be much more diligent at the fees charged against the estate of a protected person.

Fixes: (1) Some fixed billing rates for certain tasks; (2) requirement of the fee affidavits to describe the tasks accomplished and the hours billed against the specific task (much easier to critically examine) and any other specificity required by the bench; (3) the bench should be much more diligent at critically reviewing fees and there should be an easy way to object to fees which puts the burden on the fiduciary and attorney to justify those fees; (4) there has to be easy processes to object to fees: special masters or arbitration or other ways to get this done.

County of Residence: Maricopa

My Interest is from the following point of view:

Semi-retired attorney working for nonprofits to maximize their bequests and also mediating trust and estate disputes plus occasional expert witness engagements.

Your Comments:

To Workgroups 2 and 3:

Generally, the process works. The bench just doesn't see it. There are a few factors that contribute to the problems that do occur.

First, the replacement of the pre-1974 probate system with its judicial involvement and effective fee cap of 2% meant the judges do not see the routine estates and fees need not bear any

relationship to an "efforts + results" analysis - one, perhaps, but not both.

Second, Maricopa County's policy of appointing a probate judge and, usually, probate commissioners that have no probate or estate planning experience may yield the benefit of no prejudging of cases, but it also robs the bench of any knowledge of the field and how it functions in practice.

The result is that any planned estate is settled outside the judicial system and disputes are mediated, not referred to the bench. Bench sees only messes, usually involving modest estates.

1) Suggest that the probate bench have more hands on probate and trust experience 2) Suggest that a Mar Cty Rule 5.2 affidavit for fiduciaries and lawyers be sent to benes in ALL estate and trust settlements with easy review process.

3) Suggest, in light of 14-5652 repeal of Fickett, Shano etc that some fiduciary protection of benes be put in place.

4) Suggest limits on professional fees for secretarial tasks and overhead.

Hope Committee consults a few estate and trust specialists before conclusion. ACTEC, Bar Section Council, Corp Fiduciary estate settlement officers etc
