

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

In re: Estate of Jeanne F. Drakulich,  
an incapacitated adult

Fiduciary No. FI-2004-0073324  
Commissioner's Report

To the Honorable Judges of the Circuit Court of Fairfax County, Virginia:

On June 25, 2004, this Court entered an order appointing Needham Mitnick & Pollack, PLC as guardian and conservator over the estate of Jeanne F. Drakulich, an incapacitated adult. In its order of appointment, the Court directed that the fiduciary "shall be paid for their services at their usual hourly rate for professional services." The fiduciary qualified on June 29, 2004.

The fiduciary filed an inventory with your commissioner listing assets over which it has control as \$717,762.11. The fiduciary filed six accounts with your commissioner listing disbursements for fiduciary compensation totaling \$126,103.68. The allowable fiduciary fee for the same period for an estate of this size under Court's Fiduciary Compensation Schedule for Conservator for Incapacitated Adult would be \$55,708.03. Your commissioner has approved accounts one through three, on February 14, 2005, April 13, 2006, and February 10, 2009, respectively. Your commissioner has not yet approved the fourth through sixth accounts. The breakdown of fiduciary fees taken and guideline fiduciary fees for each account is as follows:

Account	Fiduciary Fees Taken	Guideline Fiduciary Fees
1 (4 month account)	\$34,670.63	\$6,028.49
2	\$35,451.62	\$11,939.59
3	\$8,637.66	\$8,802.29
4	\$35,724.51	\$11,115.74
5	\$6,046.78	\$9,164.64
6	\$5,572.48	\$8,657.28
Total	\$126,103.68	\$55,708.03

The ward died on December 19, 2010. The fiduciary has qualified as the executor of the ward's decedent's estate, but has not yet filed her final account as conservator.

On May 22, 2007, subsequent to the approval of the first and second account, your commissioner received a letter of complaint from the children of the ward, objecting to the sale of the ward's house. The letter also addressed the fiduciary fees in the first two accounts, as follows:

We don't understand why Ms. Mitnick charged our parents over \$70,000 in legal fees during the first 16 mos of her conservatorship, from 6/29/2004 - 10/31/2005, when there was no court time. There is no itemizing of why these fees were charged in Mitnick's 1<sup>st</sup> and 2<sup>nd</sup> accounting. We would like to know what these fees were for?

On May 25, 2007, your commissioner forwarded a copy of the letter of complaint to the fiduciary, requesting that the fiduciary "respond to your concerns in writing with a copy to this office." In his letter, your commissioner noted that the Court had directed that the estate pay the fiduciary at its usual and customary hourly rate and that as a result the Court's fiduciary fee guidelines did not apply in this matter. Your commissioner stated that it was his understanding that the payment to the fiduciary had been in part for services during litigation.

On June 16, 2007, Diane Drakulich-Clarke, one of the children, wrote again to your commissioner renewing her objection to the legal fees and stating that the fiduciary had no role in the litigation to establish the conservatorship and that there was no basis for the fiduciary to charge the estate for litigation which concluded with the appointment of the fiduciary as conservator and guardian. The children also noted that the fiduciary received approximately twice the amount billed by Jean Galloway Ball, the lead counsel in the conservatorship proceeding. Ms. Drakulich-Clarke indicated that they understood that the Court had required the estate pay the fiduciary at its usual hourly rate, "but I assume the court did not give Ms. Mitnick carte blanche to bill unreasonably?"

On June 15, 2007, the fiduciary responded to your commissioner's letter of May 25, 2007, stating with regard to the fees taken,

The Court's order directing that we be paid an hourly fee reflects the complexity of dealing with this family situation. Our billing records attached to our accounting detail our work. These cases involve hands on attention. They are simply not

cases in which a percent of income or assets equate to the work that is required. Few attorneys are willing to assume the responsibility for these cases and even fewer are able to take on the work without appropriate compensation. Unfortunately in a family such as the Drakulich family much time is spent on problems presented by the sibling interaction with one another, defending ourselves against their continuing accusation, and their inability to care for their parents (now just Jeanne) without Court intervention.

On July 24, 2009, your commissioner notified the fiduciary of concerns regarding the reasonableness of its compensation, noting that “[t]he above named estate is one in which the amount of fiduciary fees charged is significantly higher than the amount otherwise allowed by the Court’s guidelines in similar situations.” Your commissioner requested that the fiduciary provide your commissioner with an analysis of the reasonableness of the fees using the criteria set forth in Virginia Rules of Professional Conduct 1.5. The fiduciary did not respond and your commissioner sent a further letter to the fiduciary on October 30, 2009, requesting a response to his July 24, 2009 inquiry.

On November 30, 2009, the fiduciary responded to your commissioner, indicating that the earlier letter had not been received as the fiduciary had relocated to a new address. The fiduciary indicated that it had reviewed invoices reported in the 4<sup>th</sup> and 5<sup>th</sup> accounts (then unapproved) as well as the charges in prior years. The fiduciary challenged whether your commissioner had the authority to require such a review, stating that “[o]ur fees are those we customarily charge for the services we perform and, thus, comply with the Court’s Order authorizing us to bill for our services.” Your commissioner respectfully disagrees. The Virginia Code provides that the commissioner of accounts “shall have a general supervision of all fiduciaries admitted to qualify in such court or before the clerk thereof and make all ex parte settlements of their accounts.”<sup>1</sup> A commissioner, as a quasi-judicial officer charged with responsibility for fiduciary matters, has a duty to render a complete opinion on the matters that are before him. When a party brings an action to settle an account, the court has a duty “to try all the issues, administer full relief to the parties, and to either render an order for the amount found to be due, or to issue an order showing that there is nothing

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<sup>1</sup> VA. CODE ANN. § 26-8.

due. The court enjoys broad discretionary power in account matters to make any order or decree as justice requires.”<sup>2</sup> The commissioner of accounts has a similar duty. The Circuit Court for the City of Norfolk had occasion to consider the limitations upon the inquiries of the commissioner of accounts in the matter of *Trustee’s Sale of the Property of Willie Brown*.<sup>3</sup> The Court stated

To perform his duties on behalf of the court, a Commissioner’s authority must extend to every aspect of law or fact related to a fiduciary’s duties, qualifications, and actions that may affect the rights of a beneficiary of an estate or a fund before him. No question of law, equity, or disputed fact concerning an account should be insulated from a Commissioner’s inquiry. Were a Commissioner of Accounts to be prohibited from considering such matters, how could he accurately and effectively assist the court?

Thus, within the scope of the commissioner’s statutory duties, the commissioner has broad authority to address all the issues affecting those duties.

Judge Lamb described the commissioner of accounts eloquently, stating

If the probate courts are “the courts of widows and orphans”, as they are sometimes called, the Commissioner of Accounts is the executive arm of the court, supporting the shield by which protection is afforded to those inadequately armed to protect themselves.<sup>4</sup>

Fundamental to the commissioner’s oversight of fiduciaries is the review of the reasonableness of the fees fiduciaries charge. Virginia Code § 26-30 provides that “The commissioner, in stating and settling the account, shall allow the fiduciary any reasonable expenses incurred by him as such; and also, except in cases in which it is otherwise provided, a reasonable compensation . . .” In the *Estate of Hyman J. Fine*, the Circuit Court of the City of Norfolk reviewed the commissioner’s determination to reduce

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<sup>2</sup> 1 AM. JUR. 2d *Accounts and Accountings* § 67 (2006).

<sup>3</sup> 67 Va. Cir. 204 (2005).

<sup>4</sup> Lamb, VIRGINIA PROBATE PRACTICE § 107 (1957).

Crestar Bank's executor's fee from the amount dictated in its standard fee schedule to an amount that the commissioner determined to be reasonable.<sup>5</sup> The Court stated that the testator's agreement that the fee should be in accordance with the Bank's fee schedule did not establish a definite and ascertainable provision concerning the amount of the fee, as the fee schedule could change from time to time and there was no limit upon the amount of that fee.<sup>6</sup> The Court held that

Absent a clear, definite provision setting the compensation of an executor, the Court had not only the authority but also the duty to inquire as to the reasonableness of the executor's compensation. This inquiry is normally done through the Commissioner of Accounts, the officer of the Court to whom this responsibility is delegated. His findings and recommendations are subject to review by the Court.<sup>7</sup>

In the opinion of your commissioner, when the Court authorizes a lawyer fiduciary to charge his or her standard hourly rate in connection with a matter under the supervision of your commissioner, the Court has not determined that that hourly rate is the standard for determining the reasonableness of compensation to that lawyer for acting as a fiduciary. To the contrary, any fee calculated pursuant to that hourly rate is indefinite, subject to change, and without limit as to amount. In such circumstances, the Court and its commissioner have both the authority and the duty to review the reasonableness of the fees which the lawyer fiduciary seeks.

In its response of November 30, 2009, the fiduciary did address your commissioner's questions with regard to the fees billed in the five accounts. The fiduciary indicated that the invoices detailing the work that the fiduciary performed provided with each account provide a better understanding of the work performed and the fiduciary urged your commissioner to review these invoices. With regard to the significant fees in the fourth account, the fiduciary indicated that disputes between a caregiver and one of the children living in the ward's home had resulted in the filing of an eviction proceeding

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<sup>5</sup> In re Estate of Hyman J. Fine, 41 Va. Cir. 597 (Norfolk Cir. Ct. 1995).

<sup>6</sup> 41 Va. Cir. at 598-599.

<sup>7</sup> In re Estate of Hyman J. Fine, 41 Va. Cir. 597, 599 (Norfolk Cir. Ct. 1995). It should be noted that in 2005, the General Assembly amended Virginia Code § 26-30 to provide an express provision authorizing the adoption of institutional fiduciaries fee schedules in a will or trust; nevertheless, the General Assembly still allowed review of that fee for reasonableness if "such compensation is excessive in light of the compensation institutional fiduciaries generally receive in similar situations."

against the ward's child and removal of the ward from her home to a new placement outside the home. The fiduciary also dealt with distribution of personalty to the ward's children, preparing to sell the ward's home, responding to an IRS inquiry and dealing with maintenance and repair issues at the home.

Your commissioner is satisfied that the fiduciary fees charged in connection with accounts three, five and six are reasonable in hours and amount. Two of the three accounts are below the guideline amounts and the third is reasonably close to the guideline amount. Therefore, your commissioner approves the fiduciary fees taken in accounts three, five and six.

Unlike decedent's estates, fiduciary fees in conservatorships are calculated separately for each accounting period. Your commissioner has approved accounts one and two previously and such approval would normally constrain his review of the fiduciary fees in those accounts. However, your commissioner is of the opinion that he has authority and jurisdiction to review those fees based upon the complaints of the ward's children and the provisions of Virginia Code § 26-29, which provides in pertinent part:

Any person who is interested . . . in any such account, may, before the commissioner, insist upon or object to anything which could be insisted upon or objected to by him . . . , if the commissioner were acting under an order of a circuit court for the settlement thereof, made in a suit to which he . . . was a party.

Thus, your commissioner may hear and determine objections to an account which might be brought in litigation before the circuit court. Virginia Code § 26-34 provides that confirmation of a commissioner's report shall not bar a timely suit to surcharge or falsify the account.<sup>8</sup> Virginia Code § 8.01-245 requires that any such suit be brought within ten years of the confirmation of the report. Therefore, your commissioner is of the opinion that he has jurisdiction and authority to consider the objections of the children of the ward to the fiduciary fees taken in accounts one and two.

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<sup>8</sup> Virginia Code § 26-34 does prohibit one who filed exceptions to the account from bringing such an action; however, in the instant case the children of the ward did not except to the initial approvals of accounts one and two.

Rule 1.5 of the Virginia Rules of Professional Conduct governs the determination of the reasonableness of a lawyer's fee.<sup>9</sup> The rule requires that "a lawyer's fee shall be reasonable." In *Trotman v. Trotman*,<sup>10</sup> the Court stated that the word "reasonable" as used in Virginia Code § 26-30 "is but another way of saying that they [commissions] are to be measured by the conscience of the court."<sup>11</sup> While there is no hard and fast rule regarding the proper amount of fiduciary fees, the Court has stated that factors to be considered include: the value of the estate, the character of the work, the difficulties encountered, the results obtained, the responsibilities assumed, and the risks incurred.<sup>12</sup> These factors, however, do not stand alone. The Court has further instructed that said factors are to be evaluated in light of the fiduciary's duty to exercise "the highest fidelity and utmost good faith" in their administration of the estate.<sup>13</sup>

While Virginia law does not forbid a fiduciary from hiring his own company to perform services for the estate he is administering, the Virginia Supreme Court has repeatedly stated that "[A fiduciary cannot] unite his personal and fiduciary character in the same transaction without consent of the *cestui que* trust."<sup>14</sup> Indeed, it is a long standing principle that

as long as the confidential relation lasts, the trustee or other fiduciary owes an undivided duty to his beneficiary, and cannot place himself in any other position which would subject him to conflicting duties, or expose him to the temptation of acting contrary to the best interests of his original *cestui que* trust. The rule applies alike to agents, partners, guardians, executors and administrators, directors and managing officers of corporations, as well as to technical trustees.<sup>15</sup>

When the fiduciary engages itself to perform services for the ward's estate, it places itself in a position which inherently subjects it to conflicting duties.

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<sup>9</sup> See *Dickerson v. Ford Motor Company*, 74 Va. Cir. 509 (Roanoke Cir. Ct. 2008); *O'Neil v. Chrysler Corp.*, 54 Va. Cir. 64 (Loudoun Cir. Ct. 2000).

<sup>10</sup> 148 Va. 860 (1927).

<sup>11</sup> *Trotman* at 868

<sup>12</sup> *Pritchett v. First Nat. Bank of Danville*, 195 Va. 406, 432, 78 S.E.2d 650, 653 (1953)

<sup>13</sup> *Id.* at 412

<sup>14</sup> *Rowland v. Kable*, 174 Va. 343 at 368 (1940)

<sup>15</sup> *Id.* at 367

In the instant case, your commissioner reports that the billing records of the fiduciary show 246.77 hours billed during the first four months of the conservatorship; however, the fiduciary makes no distinction in its billing records or its hourly rates between legal, conservatorship and guardian services. Your commissioner is of the opinion that the fiduciary's hourly rate for legal services was reasonable; however, it appears that substantial legal work was performed in anticipation of the fiduciary's appointment. The fiduciary incurred \$1,770.00 in legal fees for services prior to the hearing at which the Court appointed the fiduciary as conservator and guardian. These services involved principally review of the petition, order and guardian *ad litem* report. Your commissioner is of the opinion that the fiduciary's legal fees incurred prior to its appointment are not a proper expense of the estate, absent specific provision for those expenses in the Court's order of appointment. The conservatorship derives its existence from the entry of the Court's order appointing the fiduciary. Expenses that the fiduciary incurs in anticipation of that appointment are incurred in for the benefit of the fiduciary and not for the benefit of the ward. Absent provision in the Court's order or specific statutory authority, these are not expenses of the conservatorship. Your commissioner reviewed the remaining hours in the billing statements reported in the first account and did not identify other charges that might be characterized as legal services.

In the instant case, your commissioner reports that the billing records of the fiduciary show \$35,724.51 billed during the period which the fourth account covers; however, the fiduciary makes no distinction in its billing records or its hourly rates between legal, conservatorship and guardian services. The fiduciary advised your commissioner that during the period of the fourth account, a dispute arose between a caretaker and one of the ward's children, the fiduciary relocated the ward to another facility and the fiduciary instituted eviction procedures against the ward's adult child who remained in the family home. A review of the fiduciary's billing statements indicates that the fiduciary did not provide legal services in connection with the eviction proceedings, rather, the fiduciary testified at the hearing. Another law firm, Karpoff & Title, provided legal services and billed the estate \$1,068 for handling the matter. Therefore, your commissioner makes no allowance for legal services in the fourth account.

The billing statements reported in the first, second and fourth accounts included services as guardian as well as legal services and conservator services. While legal services to the estate and the services that a

conservator routinely performs, such as the management and investment of assets, the accounting for receipts and expenditures, and the protection of the ward's estate, involve professional judgment and require a certain level of expertise, not all the services that a guardian routinely performs require the same level of skill or judgment. The guardian of the person of the ward often acts as a companion, a caretaker, and a personal assistant to the ward. The tasks can be as routine as accompanying the ward on a shopping trip, planning a birthday party or scheduling a hair appointment.

This Court has adopted fiduciary compensation guidelines for conservators but not for guardians. The Code does provide that a guardian is entitled to reasonable compensation for his or her services.<sup>16</sup> In the opinion of your commissioner, to the extent the conservator pays himself for services that the fiduciary rendered as guardian, there is an inherent conflict of interest which requires special scrutiny. *See discussion infra*. When the fiduciary engages itself to perform services for the ward's estate, it placed itself in a position which inherently subjected it to conflicting duties.

As a general rule, when the conservator and the guardian are the same person, your commissioner requires separate time records to support fees for guardian services. Moreover, as a general rule, your commissioner does not allow a professional fiduciary to charge at his or her professional hourly rate for guardian services. It is the opinion of your commissioner that any such compensation paid to a professional fiduciary serving as guardian should be commensurate with the fees charged by lay firms or individuals who routinely provide such services. In the instant case, the Court has allowed that the fiduciary may bill for guardian services at its hourly rate; however, these fees must be reasonable and the Virginia Supreme Court has determined that any fees must be evaluated in light of the fiduciary's duty to exercise "the highest fidelity and utmost good faith" in their administration of the estate.<sup>17</sup>

In the instant case, the fiduciary has, as a part of its duties and as a part of its charges to the ward's estate in the first account, arranged for child care, made visits to the ward, set up accounts for grocery delivery, arranged for plumbing repairs, made inquiries concerning the location of the ward's photo identification, and sorted through boxes of personal items. In the

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<sup>16</sup> VA. CODE ANN. § 37.2-1022.

<sup>17</sup> *Pritchett v. First Nat. Bank of Danville*, 195 Va. 406 at 412 (1953).

fourth account, the fiduciary has, as a part of its duties and as a part of its charges to the ward's estate, made arrangements for lawn services, researched dental and vision plans for the ward, made arrangements for family visitation with the ward in her new assisted living facility, scheduled medical appointments, and completed medical forms for the ward. These are necessary and reasonable services for the care and maintenance of the ward; however, it is neither necessary nor reasonable that such services be performed by lawyers billing at \$250 per hour.

A conservator has a fiduciary duty to manage the property of his ward with "the judgment of care, skill, prudence and diligence . . . that a prudent person familiar with such matters and acting in his own behalf would exercise . . ."<sup>18</sup> In the opinion of your commissioner, it is reasonable that the fiduciary charge its normal hourly rate for the management of guardian services and for undertaking those guardian services that require professional skill and judgment; however, not all guardian services require such professional skill and judgment. In the case of guardian services that require no professional skill or judgment, such services are more properly delegated to commercial services which bill at substantially lesser rates, usually, in the experience of your commissioner, between \$25 to \$50 per hour.<sup>19</sup> Rates for managers of such care services are also less than the fiduciary's hourly rates, usually in the experience of your commissioner between \$70 to \$100 per hour.<sup>20</sup> The fiduciary has recognized the requirements of prudent management, using the services of a geriatric care management agency to reduce costs in many instances.

To the extent that the fiduciary elects to perform such services through legal professionals, it has a fiduciary duty to the ward not to bill at rates in excess of those rates commercially available for the same services. As the Circuit Court of Warren County decided in the *Estate of Beulah Mae Stokes*,<sup>21</sup> when a fiduciary engages services at a rate significantly above the market rate charges for such services, the fiduciary fails to manage the estate with reasonable prudence. In such cases, the fiduciary will be responsible

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<sup>18</sup> VA. CODE ANN. § 26-45.1.

<sup>19</sup> According to the American Association of Homes and Services for the Aging, the national average hourly rate in 2008 for a certified home health aide was \$32. The average hourly rate for non-certified workers was \$19.

<sup>20</sup> *Cf.* In re Larry Banton, FI-2004-72484, CL-2006-999, Circuit Court of Fairfax County (Letter opinion dated June 26, 2007)(allowed \$70 per hour as "reasonable fee").

<sup>21</sup> In re Estate of Beulah Mae Stokes, 37 Va. Cir. 3 (Warren County 1995).

for the difference between the rates charged to the estate and the market rates for the same services.<sup>22</sup>

In the instant case, while your commissioner finds that some of the guardian services might well have been delegated to those charging lesser amounts, your commissioner is of the opinion that the extent of such guardian services was minimal and that the fiduciary did seek to delegate those services to the extent feasible. Therefore, your commissioner declines to hold the fiduciary responsible for any difference in rates charged for such guardian services.

The fiduciary reports \$34,670.63 in fees in connection with legal services rendered and its role as conservator and guardian in its first account. Your commissioner has disallowed \$1,770 of such fees for legal services rendered prior to the Court appointing the fiduciary. Therefore, the issue before your commissioner is the reasonableness of \$32,900.63 in fees for fiduciary services rendered during the first four months of the conservatorship. Your commissioner finds that the hourly rate at which the fiduciary billed for such services to be reasonable, in accordance with the Court's order of appointment. Your commissioner is concerned, however, with the hours billed. A detailed examination of the time records reveals charges disproportionate to the services in many instances. By way of example, the fiduciary billed 1.5 hours to set up a conservatorship account, 4.0 hours to sort and organize material in binders, 1.03 hours to change the name on the conservatorship account, 1.08 hours for a telephone transfer of funds, 3.47 hours to prepare change of address letters, 5.97 hours for phone calls and opening bills. The billing records are replete with similar examples.

Your commissioner notes that these fees were incurred during the first four months of administration. Your commissioner does recognize that disproportionate time is required at the beginning of a conservatorship to take charge of the assets of the ward and arrange for his care; however, an allowance of disproportionate charges is not the same as an allowance of exorbitant charges. The fiduciary noted that it had disputes with certain of the ward's relatives which complicated its role; however, your commissioner finds that such conflicts are not unusual or novel in the administration of a

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<sup>22</sup> *Accord*, In re Larry Banton, FI-2004-72484, CL-2006-999, Circuit Court of Fairfax County (Letter opinion dated June 26, 2007).

conservatorship. There were issues with various parcels of real property and the need for additional liquid assets in the estate which required the time and attention of the fiduciary; however, there is nothing that the fiduciary has presented that indicates any undue complication in the estate. It appears that the loan which the fiduciary placed upon the ward's property is in approximately the amount of the fees paid to the fiduciary.

In the second account, the fiduciary reports \$35,451.62 in fees in connection with its role as conservator and guardian. Your commissioner finds that the hourly rate at which the fiduciary billed for such services to be reasonable, in accordance with the Court's order of appointment. Your commissioner is concerned, however, with the hours billed. A detailed examination of the time records reveals similar disproportionate charges to those identified in the first account. As the fiduciary indicates in the letter of November 30, 2009, the "invoices cover the general work of monitoring and paying bills, discussing care issues with the care manager, preparing information for tax preparation and preparing the accountings for [this] office." Again, there is nothing that the fiduciary has present that indicates any undue complication in the estate.

In the fourth account, the fiduciary reports \$35,724.51 in fees in connection with its role as conservator and guardian. Your commissioner finds that the hourly rate at which the fiduciary billed for such services to be reasonable, in accordance with the Court's order of appointment. Your commissioner is concerned, however, with the hours billed. A detailed examination of the time records reveals charges disproportionate to the services in many instances. The great bulk of the time was spent preparing for and supervising the sale of the ward's personalty from her home and then dealing with the fix-up and sale of the ward's home. By way of example, the fiduciary reported proceeds, net of the auctioneer's commission, of \$1,827.15 from the auction sale of the ward's personalty. Your commissioner reviewed the billing records in connection with that sale and determined that the fiduciary had billed \$6,296.50 for services related to the sale of the personal property. Your commissioner also reviewed the billing records in connection with the sale of the ward's real property and determined that the fiduciary billed \$9,041.75 for such fiduciary services related to the sale of the real estate. There are numerous other examples in the billing records of charges disproportionate to the services rendered.

Your commissioner is of the opinion that the analysis of Judge Ney in *Unger v. Beatty*<sup>23</sup> is on all fours with the instant case. Judge Ney stated

The major reservation the Court has with the amount of fees claimed is that the total amount of the fees - albeit legitimately incurred - seem out of proportion to the nature of the lawsuit. The underlying suit, its successful defense, the fee claim were straightforward matters involving nothing especially complex. Simply put, this litigation should not have cost this much.<sup>24</sup>

In the instant case, this administration should not have cost this much. The total amount of the fees is out of proportion to the size of the estate and the administration was a straightforward matter involving nothing especially complex. As the Circuit Court of the City of Richmond noted, in *Iuorno v. Ford Motor Co.*, “[a]ttorneys should not be rewarded for excessively working a case simply because they know that their requested fees will be forthcoming.”<sup>25</sup> This is the general rule throughout the United States.<sup>26</sup>

Simply put, there was nothing novel or difficult in the instant proceeding; the fees charged in the first, second and fourth accounts exceeded the fee guidelines that this Court adopted more than threefold; the amount of the fees required the fiduciary to incur debt on the ward’s behalf; there was no long term professional relationship with the ward; and the fiduciary bore no risk for payment of its fees other than its own actions in exhausting the liquid assets in the ward’s estate.<sup>27</sup> Your commissioner finds that the charges for fiduciary services in this estate are unreasonable and not a prudent management of the ward’s estate notwithstanding the Court’s authorization that the fiduciary may bill for conservatorship and guardian services at its usual and customary hourly rate. Your commissioner is of the opinion that a reasonable fee for the services rendered in connection with the first, second and fourth account is \$60,000.00. The fiduciary is directed to reduce its claim for fiduciary services to the ward’s estate as reported in the first, second and fourth accounts by the sum of \$45,846.76.

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<sup>23</sup> 52 Va. Cir. 289 (Fairfax 2000).

<sup>24</sup> 52 Va. at 293.

<sup>25</sup> 40 Va. Cir. 387 (1996).

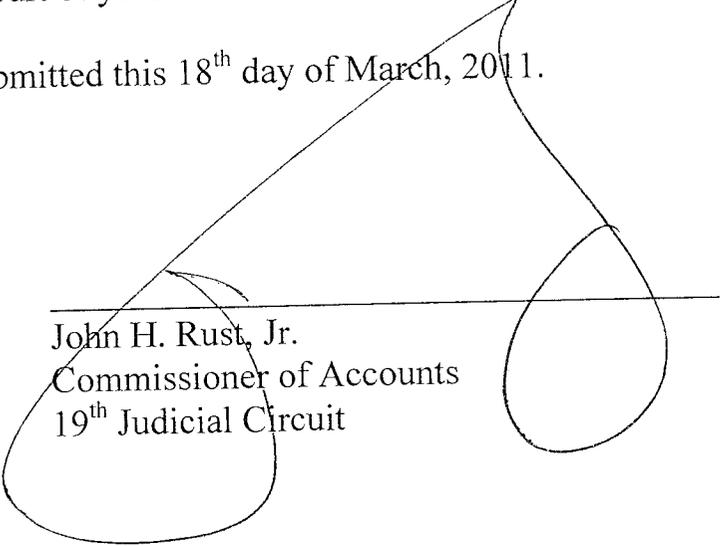
<sup>26</sup> See, e.g., *In re Comstock*, 664 N.E.2d 1165 (Ind. 1996); *In re Estate of Langland*, 2006 WL 1752261 (Mich. Ct. App. 2006); *In re Coffey’s Case*, 880 A.2d 403 (N.H. 2005); *In re Dorothy*, 605 N.W.2d 493 (S.D. 2000).

<sup>27</sup> See Rule 1.5, Virginia Rules of Professional Conduct, setting out eight factors to be considered in determining the reasonableness of attorney’s fees.

In summary, your commissioner finds that the fiduciary is entitled to reasonable compensation of \$60,000. The fiduciary has been paid \$105,846.76. The fiduciary is directed to restore to the ward's decedent's estate the sum of \$45,846.76.

Your commissioner is of the further opinion that any fees, costs or expenses incurred in any objection to the findings in this report as to the reasonableness of the fiduciary fees are not properly expenses of the estate. Your commissioner directs that the fiduciary may not bill for its time or for any expense it may incur with respect to any exception to this report or other objection to the determination of reasonable fees herein without the express authorization of the Court or your commissioner.

Respectfully submitted this 18<sup>th</sup> day of March, 2011.



John H. Rust, Jr.  
Commissioner of Accounts  
19<sup>th</sup> Judicial Circuit

## CERTIFICATE OF MAILING

I hereby certify that on this 18<sup>th</sup> day of March, 2011, a true and correct copy of the above Commissioner's Report was mailed, first-class mail, postage prepaid, to the following persons at the addresses shown below:

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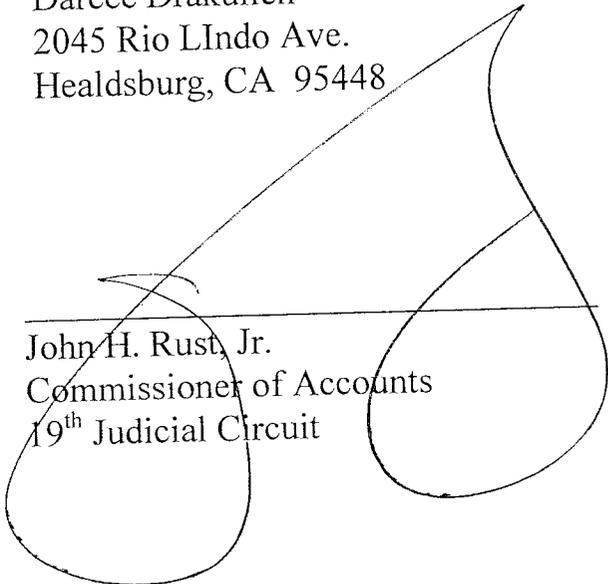
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Liberty Mutual Insurance Company  
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