

RECEIVED MAY 14 2010

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IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

In re: Estate of Paul C. Cooke, Deceased

Fiduciary Number FI-2003-0070674

In re: Estate of Margaret R. Cooke, Deceased

Fiduciary Number FI-2003-0070675

Commissioner's Report

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

Introduction

At the request of Timothy J. McEvoy, the attorney for the estate of Ethel Jones Durham, a beneficiary of the above estate, the undersigned gave the notice required under § 26-29 of the Virginia Code, setting September 18, 2007, at the office of your commissioner in Fairfax, Virginia, as the time and place for a hearing upon objections to additional fiduciary fees requested by the executor, Sharon Spratley. At the said time and place, Karen Bond-Louden, personal representative of the estate of Ethel Jones Durham, together with the estate's attorneys. Timothy J. McEvoy and Jeffrey F. Higdon, appeared on behalf of the estate of Ethel Jones Durham to state objections to the executor's request for additional fees. Katherine Cooke Mundle and Anne E. Cooke, beneficiaries of one-half of the estate, appeared pro se to make similar objections. Sharon Spratley, along with her attorney, John F. Boland, appeared to support Ms. Spratley's request for additional fees. Thomas O. Murphy, the former co-executor, testified the hearing as a witness. Winfred Mundle also attended the hearing.

Paul C. Cooke and Margaret R. Cooke were murdered in 2003. They had executed substantially identical wills leaving one-half of the residuary estate 80% to Ethel Louise Durham and 20% to Sharon Spratley. Ms. Durham passed away subsequent to the deaths of the Cookes. The remaining one-half of the residuary estate was to be divided evenly between Kelsey Cooke Meyersburg, Anne E. Cooke, and Katherine M. Cooke, if they survive the testator. Kelsey Cooke Meyersburg predeceased the Cookes.

A previous hearing was held at your commissioner's office on the August 24, 2006, concerning the request of the then co-executor, Thomas O. Murphy, to resign as co-executor of the estates. Your commissioner recommended that the Court accept the resignation of Mr. Murphy as co-executor of both estates,

John T. Frey



effective August 31, 2006, and that a reasonable compensation to Mr. Murphy for his services as co-executor of both estates was the sum of \$18,750, to be split evenly between the estates. Your commissioner further recommended that the Court allow Ms. Spratley to complete the administration of the estates as the sole executor, noting that the award of compensation to Mr. Murphy for his services as co-executor would reduce the available fiduciary compensation to Ms. Spratley under the guidelines which this Court has promulgated. Finally, your commissioner noted that Ms. Spratley's fiduciary compensation should be calculated according the fee schedule that was in place at the time of her qualification as executor in 2003.

Based upon the fiduciary fee guidelines in effect in 2003, your commissioner finds that the Court would allow total aggregate fiduciary fees in the two estates in the amount of \$122,533.41. Pursuant to your commissioner's previous report, from such amount would be subtracted the sum of \$18,750.00 allowed to Mr. Murphy for his prior service. Therefore, your commissioner finds that under the Court's guidelines in effect as of the date of Ms. Spratley's qualification, an aggregate fiduciary fee of \$103,783.41 is available to Ms. Spratley absent your commissioner or the Court establishing a greater or lesser fee.

### *Procedural History*

On May 2, 2007, Ms. Spratley wrote to your commissioner requesting additional compensation in the Estate of Paul Cooke in the amount of \$37,591.76, for a total fiduciary fee to her of \$97,591.76 in the Estate of Paul Cooke. On the same date she wrote to your commissioner requesting additional compensation in the Estate of Margaret Cooke in the amount of \$33,021.74, for a total fiduciary compensation to her of \$90,888.74 in the Estate of Margaret Cooke. The requests made no provision for offset of any amount previously allowed to Mr. Murphy. The total aggregate fiduciary fees requested were \$188,480.50, excluding the fees paid to Mr. Murphy in the amount of \$18,750. In both letters, Ms. Spratley refers to the cumulative time she expended on the administration of the estates. She noted the complexity of the estates, the necessity of filing a federal estate tax return, and the numerous legal proceedings concerning the estates that she attended. She notes in both letters that she spent 4,369 hours in the administration of the two estates.

On May 9, 2007, Anne E. Cook, one of the beneficiaries of the estate, wrote to your commissioner alleging that Ms. Spratley mismanaged the administration of the above estates, objecting to allowing her any fiduciary fees whatsoever, and

requesting strongly that she not receive fees in excess of the fiduciary fee guidelines. Ms. Cooke also noted that a significant amount of the estate administration expense had been paid to Five Fingers, a company that Ms. Spratley controlled. Ms. Cooke further pointed out that Ms. Spratley had not informed the beneficiaries of her interest in Five Fingers until she was questioned about it during litigation. On May 18, 2007, Timothy J. McEvoy, counsel for the Estate of Ethel Jones Durham requested a hearing on whether Ms. Spratley was to receive any enhanced fiduciary fees as set forth in her letters of May 2, 2007.

On May 11, 2007, Ms. Spratley filed a fourth account in each estate with your commissioner. Although the accounts showed disbursements to professionals engaged on behalf of the estates and reimbursements to Ms. Spratley for out-of-pocket expenditures, neither account showed payment of any fiduciary fees to Ms. Spratley.

On June 14, 2007, the parties appeared before the Circuit Court in connection with a motion by several of the beneficiaries to remove Ms. Spratley as executor of each estate. The transcript of the hearing before Judge McKay indicates that when questioned regarding the fiduciary fees she had taken, Ms. Spratley represented that she had paid herself \$120,000. Her counsel inaccurately represented that the fees were in accordance with the fiduciary fee guidelines and that prior approval from your commissioner was therefore unnecessary. In fact, such payment is in excess of the fiduciary fee guidelines and your commissioner had not approved such payment. Judge McKay requested that the parties set up a hearing before your commissioner to resolve the fee disputes prior to the trial date. On June 22, 2007, Jean Galloway Ball wrote to your commissioner on behalf of Katherine Cooke Mundle, advising your commissioner of the hearing on June 14, 2007, and noting that Judge McKay set the matter down for trial on September 18, 2007. Ms. Ball also advised your commissioner that Ms. Spratley had taken substantial compensation beyond that allowed under the fiduciary guidelines. Counsel for the Estate of Ethel Jones Durham represented to your commissioner that in fact Ms. Spratley had taken in the amount of not less than \$188,590.51, and had paid her counsel the additional sum of \$45,000. Counsel further represented that Ms. Spratley also paid invoices to her corporation in the amount of \$180,000.

On June 18, 2007, Ms. Spratley wrote to your commissioner seeking a further increase in her fees. She noted that she had then spent 4,524 hours in the administration of the two estates. She allocated 64% of that time to the estate of Paul C. Cooke and estimated the value of fiduciary services to the estate of Paul C. Cooke at \$319,472.52, based upon her hourly rate assumption of \$125 per hour.

She requested compensation for one-half that time, or \$159,736.26. She allocated 36% of that time to the estate of Margaret R. Cooke and estimated the value of fiduciary services to the estate of Margaret R. Cooke at \$181,777.48, based upon her hourly rate assumption of \$125 per hour. She requested compensation for one-half of that time, or \$90,888.74. Again, no credit was made for the prior payments to Mr. Murphy.

On July 2, 2007, Anne E. Cooke wrote to your commissioner responding to Ms. Spratley's request for additional funds and objecting to any payments to her. Ms. Cooke renewed her concerns about the administration of the estate and the conflict inherent in the payments to Ms. Spratley's controlled corporation.

On August 12, 2007, Timothy McEvoy, counsel for the Estate of Ethel Jones Durham, wrote to your commissioner, advising him of the June 14, 2007, hearing and the fee disputes. Mr. McEvoy also detailed certain costs and expenses paid to Ms. Spratley or to her corporation to which he objected. He detailed evidence of alleged mismanagement which he wished to present to your commissioner.

On August 20, 2007, Ms. Spratley responded to the correspondence from Ms. Ball and Mr. McEvoy, restating her justification for additional fees. In that letter, she indicated to your commissioner that she had taken the increased fees she requested on May 19, 2007, and June 10, 2007, notwithstanding the objections of the parties and the lack of authorization from the Court or your commissioner. She defended her administration of both estates and the services that her corporation provided to the estates.

On September 4, 2007, your commissioner, after consulting with Judge McKay, set September 18, 2007 at 1:00 p.m. as the date and time for a hearing before your commissioner pursuant to Virginia Code § 26-29 to deal with Ms. Spratley's fee requests and the complaints raised in the correspondence from Ms. Cooke, Ms. Ball, and Mr. McEvoy. Your commissioner noted that Judge McKay had taken the trial set for that date off the civil action docket in the Circuit Court pending resolution of these issues.

On September 17 2007, the day prior to the hearing, Ms. Spratley filed the fifth and final accounts in the estates showing distribution of all the assets. These accounts showed payments of fiduciary fees to Ms. Spratley as follows:

Date	Paul Cooke	Margaret Cooke
5/9/2007	\$60,292.81	\$57,867.01
6/10/2007	\$37,298.95	\$33,021.74
9/12/2007	\$62,144.50	
Total	\$159,736.26	\$90,888.75

At the September 18, 2007 hearing Ms. Spratley testified that she was seeking fiduciary compensation in excess of the guidelines based on the difficulties encountered, the nature of the assets, the character of the work, the time and expertise required, and the results obtained. Ms. Spratley testified that she spent over 4,300 hours over four years working on the estates. She testified that in order to carry out her duties she was required to make more than 70 trips between Virginia and her home in Texas. Ms. Spratley stated that during these trips she attended numerous hearing and oversaw the renovation of the Cooke's property.

The beneficiaries objected to Ms. Spratley's request for fees in excess of the guidelines and raised numerous concerns regarding Ms. Spratley's actions as executor. The beneficiaries opined that the majority of Ms. Spratley's trips to Virginia were not necessary, as up until the middle of 2006 her co-executor lived in Virginia and could have handled many of the activities for which she traveled to Virginia, including checking the estates' mail and attending hearings that did not require Ms. Spratley's presence. The beneficiaries noted that in addition to charging the estates for the airplane tickets and rental cars for each of these trips, Ms. Spratley also charged the estates 1,120 hours of travel time for these trips.

The beneficiaries further alleged that many of the difficulties associated with the administration of the estate were due to Ms. Spratley's own actions, including her filing of the law suit to exclude the estate of Ethel Jones Durham as a beneficiary under the Cookes' wills, and her failure to maintain adequate communication with the beneficiaries. The beneficiaries also noted that according to Ms. Spratley's log of her hours, she spent an inordinately large amount of time, a total of 570 hours, preparing the first four accountings.

In the weeks following the hearing, your commissioner received a letter from each of the three objecting beneficiaries restating and elaborating their objections to Ms. Spratley's request for additionally fiduciary compensation.

On January 13, 2010, in response to exceptions which your commissioner raised to prior accounts, the fiduciary filed amended final accounts in both estates. The account for the Estate of Paul C. Cooke shows disbursements of \$294,518.75 and distributions to beneficiaries of \$637,836.24. More than one-half of the disbursements were fiduciary fee payments to Ms. Spratley.

### *Fiduciary Fees*

Virginia Code § 26-30 states that the commissioner “shall allow the fiduciary any reasonable expenses incurred by him as such; and also ... a reasonable compensation.” In *Trotman v. Trotman*, 148 Va. 860 (1927), the Court stated that the word “reasonable” as used in the statute “is but another way of saying that they [commissions] are to be measured by the conscience of the court.”<sup>1</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>2</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>3</sup>

In the instant case, your commissioner does not question the unusual and, at times, difficult administration of the two estates in light of the decedents’ untimely murders. Nevertheless, your commissioner also finds that the compensation allowed under the fiduciary guidelines is not insignificant. \$103,783.41 is adequate compensation for most complex estates. In the opinion of your commissioner, the fiduciary would have the burden to demonstrate that the administration of these estates was significantly more complex and burdensome than other large estates to be entitled to any additional fee.

Equally as important, the fiduciary must demonstrate that her efforts to administer the estates were undertaken with the “highest fidelity and utmost good faith.” The fiduciary has the burden to demonstrate that the time spent and costs incurred were clearly for the benefit of the estate. She also has a responsibility to avoid self-dealing and potential conflicts of interest when incurring those costs.

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<sup>1</sup> *Trotman* at 868

<sup>2</sup> *Pritchett v. First Nat. Bank of Danville*, 195 Va. 406 at 432 (1953)

<sup>3</sup> *Id.* at 412

In the opinion of your commissioner, the fiduciary has not demonstrated that additional fees are appropriate and she has incurred costs on behalf of the estate which are not solely for the benefit of the estate and in which she has a personal interest in conflict with the interests of the estate.

### *Log of Hours*

Ms. Spratley submitted a log of her hours spent on estate administration together with her June 17, 2007 letter requesting enhanced fiduciary compensation. A careful examination of the log raises numerous concerns regarding Ms. Spratley's judgment in the use of her time. Of the 4,524 hours Ms. Spratley claims to have spent working on the estates, 1,120 hours – approximately one-fourth of all the hours logged – can be attributed to her time traveling between Texas and Virginia or Maryland. Each time the fiduciary flew across the country, she seeks to charge the estates for eight hours each way. Your commissioner also observes that the number of hours Ms. Spratley claims to have spent on routine estate administration, such as the 570 hours logged for preparation of the first four accounts, seems unusually high. A further examination of Ms. Spratley's log raises concerns regarding Ms. Spratley's use of time. Numerous entries relate to supervision or review of renovation projects conducted by Five Fingers, a corporation wholly owned by the fiduciary and her brother. For example, nine hours in one day are claimed for time spent at Lowe's obtaining "estimates for renovations" and 154 hours during one month are recorded as spent "reviewing co-op renovation." Your commissioner is of the opinion that the data contained in hourly log is unreliable and the hours allocated to the tasks in question are not reasonable .

Secondly, the fiduciary seeks reimbursement for these hourly services at the rate of \$125 per hour. There is no evidence before your commissioner supporting such an hourly rate for Ms. Spratley. Moreover, even if Ms. Spratley were to demonstrate some professional expertise justifying payment at that rate, few of the hourly tasks she records required any particular expertise. As noted, approximately one-quarter of the time entries were for travel time and represented no particular service to the estates.

For the foregoing reasons, in the opinion of your commissioner, the hourly log provides no credible support to Ms. Spratley's request for enhanced fiduciary fees. Your commissioner finds that Ms. Spratley is entitled only to those fees, net of amounts paid to Mr. Murphy, permitted under the fiduciary fee guidelines, to-wit: \$103,783.41. The accounts filed with your commissioner indicate that Ms.

Spratley has paid herself the total sum of \$253,080.30. Therefore, you commissioner finds that Ms. Spratley is required to reimburse the estates \$149,341.89.

### *Five Fingers*

No party disputes the fact that the decedents' real properties required renovation in order to prepare them for sale. The accounts filed by Ms. Spratley show payments for property renovations totaling \$101,200.13 to a company called Five Fingers. The fiduciary also engaged Five Fingers to perform tax preparation services, for which the estates paid the company \$31,550. There is no evidence that Five Fingers had any particular expertise in either of these fields. During the course of these proceedings Ms. Spratley has stated that Five Fingers is a corporation owned by herself and her brother. This fact was not disclosed to the beneficiaries prior to engaging the company to perform the above services.

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>4</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>5</sup>

When Ms. Spratley hired a company she controls to perform extensive renovation services for the estates she placed herself in a position which inherently subjected her to conflicting duties. Furthermore, hiring her company before obtaining the consent of the beneficiaries, and before even informing them of her interest in the company, was a breach of her duty of loyalty.<sup>6</sup> While no party has presented evidence as to the unreasonableness of the fees paid to Five Fingers for the renovation work performed, the Court has stated that in the face of a fiduciary's

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<sup>4</sup> *Rowland v. Kable*, 174 Va. 343 at 368 (1940)

<sup>5</sup> *Id.* at 367

<sup>6</sup> See e.g. *Kitchen v. Throckmorton*, 223 Va. 164 (1982)



non-disclosure of self-dealing “the fairness of the contract or injury to the principal or *cestui que* trust is immaterial.”<sup>7</sup>

Your commissioner is of the opinion that the engagement of Five Fingers to perform services for the two estates and the failure to disclose the relationship of the fiduciary and the contractor is breach of fiduciary duty. Ms. Spratley paid \$88,392.50 from the estate of Paul Cooke to Five Fingers and \$44,179.63 from the estate of Margaret Cooke to Five Fingers, a total payment of \$132,572.13. Your commissioner is of the opinion that Ms. Spratley should return the profits from such engagement to the two estates. Absent evidence to the contrary, your commissioner is of the opinion that it is customary and usual in the contracting business to seek a profit equal to 25% of the charges to the customer. Therefore, your commissioner is of the opinion that Five Fingers was paid \$33,143.03 representing its profit from the contracts with the two estates. Your commissioner will consider any evidence that Ms. Spratley or Five Fingers may wish to present of actual costs which Five Fingers incurred that reduce the company’s profit below such amount for a period of 30 days after the filing of this report. Absent receipt of such evidence, your commissioner finds that Ms. Spratley should return the sum of \$33,143.03 to the estates.

#### *Estate of Ethel Jones Durham*

The wills of Paul Cooke and Margaret Cooke directed that one-half of each estate was to be divided 80% to Margaret’s mother, Ethel Durham, and 20% to Sharon Spratley. At the time of the Cookes’ deaths, Margaret’s mother was living and she was known by the name of Ethel Jones. Ms. Durham passed away during the administration of the estate. Following her death, Ms. Spratley filed a lawsuit to have Ms. Durham’s estate excluded as a beneficiary under the will. Based upon the wording of the wills, the only person who stood to gain from the exclusion of Ms. Durham’s estate as a beneficiary was Ms. Spratley. Counsel for the estate of Ms. Durham testified that Ms. Spratley repeatedly refused to inform the other beneficiaries of her legal basis for filing the suit. In fact, Ms. Spratley’s determination in pursuing said lawsuit led her attorney, John Boland, to seek leave of court to withdraw as Ms. Spratley’s counsel. In his Motion to Withdraw Mr. Boland stated that Ms. Spratley’s chosen course of action was “imprudent and unjust to the beneficiaries and without support in law.” (Exhibit 1) Ultimately, counsel for Ms. Durham’s estate had to file a motion to compel distribution, which motion was granted on January 26, 2007. (Exhibit 2)

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<sup>7</sup> Rowland at 368.

Your commissioner has reviewed the charges which Mr. Boland submitted to the estates, including the hourly account of his services. The two estates paid Mr. Boland \$76,015.98, including “reserves” of \$5,310. Based upon your commissioner’s review, \$25,790.46 of such fees were related solely to the litigation against the estate of Ethel Jones Durham. In *Gaymon v. Gaymon*, 63 Va. Cir. 264 (Fairfax Cir. Ct. 2003), this Court held

if the contest merely involves a question of who will take from a decedent's estate, an executor or administrator should leave the interested parties to litigate that issue. An executor should not seek the aid and direction as to matters where significant expense is involved and such expense is more properly borne by the parties in interest. Accordingly, actions taken by a fiduciary to promote his own interests, as distinguished from those necessary to assist him in the performance of his duties, are not chargeable to the estate.

Your commissioner is of the opinion that the opinion in *Gaymon* is on all fours with the instant case. Therefore, your commissioner finds that Ms. Spratley should return the sum of \$25,790.46 to the two estates. Similarly, it is appropriate that expenses that other beneficiaries may have incurred in defending such litigation are borne by the litigants themselves rather than the estate.

#### *Travel Expenses*

Of the 4,300 hours Ms. Spratley claims to have spent working on the estates, 1,120 – approximately a fourth of all the hours logged – can be attributed to her time traveling between Texas and Virginia. An examination of the activities engaged in by Ms. Spratley during these 60 trips demonstrate that the trips were, at best, uncalled for, and, at worst, wasteful and not in the best interest of the estate. According to her own records, the majority of Ms. Spratley’s trips to Virginia or Maryland were spent cleaning the Cookes’ properties, checking the mail, attending hearings, preparing accounts or visiting the Cookes’ properties that her corporation, Five Fingers, was renovating. It is unclear to your commissioner whether Ms. Spratley’s charges to the estates for her travel expenses were principally in conjunction with her duties as fiduciary or were a part of her duties as the owner of Five Fingers, the company engaged to do the renovations of the Cooke properties. In any event, Five Fingers contracted to provide the supervision, cleaning, and related work on the Cookes’ property. It is also unclear why Ms. Spratley needed to charge the estates for her travel expenses in order for her to

check the mail and prepare accounts. Any estate mail could easily have been forwarded to Texas or collected by Ms. Spratley's co-executor, Mr. Murphy, who resided in Virginia. Likewise, the estates' accounts could have been prepared in Texas and mailed to your Commissioner's office.

The estates' accounts show that Ms. Spratley reimbursed herself \$52,188.19 for "estate expenses" during her time as executor. Of this amount, \$17,764.03 was taken on the 1<sup>st</sup> and 2<sup>nd</sup> accounts, which were approved by this office. Of the remaining \$34,424.16, your commissioner finds that, based upon the receipts submitted, \$2,620.54 was for legitimate estate administration expenses, such as copies, postage and court fees. Based on the receipts submitted, the remaining \$31,803.62 is related to Ms. Spratley's travels between Texas and Virginia, for items such as airplane tickets, rental cars, parking, gas and food.

Based upon the activities Ms. Spratley engaged in while on these trips your commissioner is of the opinion that the majority of these expenses were not "reasonable expenses" within the meaning of Virginia Code § 26-30. Of the 60 trips Ms. Spratley made, your commissioner finds that 14 were for reasonable estate activities, such as meeting with the co-executor and estate attorney, closing on the estate properties, attending the hearing at your commissioner's office, and one trip each for overseeing the renovations of the Cookes' properties. On the other hand, your commissioner finds that expenses attributable to trips made in order to check the mail, prepare accounts and make copies are not reasonable estate expenses. Your commissioner further finds that expenses attributable to trips Ms. Spratley made in order to attend proceedings related to Joshua Cooke's criminal trial, proceedings related to her attorney's motion to withdraw, as well as activities related to her attempt to exclude the estate of Ethel Jones Durham as a beneficiary are not reasonable estate expenses. Finally, while a few trips may have been necessary to Ms. Spratley's oversight of the properties' renovation and sale, Ms. Spratley's time sheets show many instances in which she would fly out for 3 days to "clean the house" then fly back to Texas, only to return 2 days later to "clean the house", then fly back to Texas, only to return 4 days later to "clean the house." This pattern repeats itself throughout Ms. Spratley's four years as executor. Your commissioner finds that these numerous, repeated trips were an improvident use of estate assets.

Additionally, upon review of the receipts submitted, your commissioner notes that a number of the charges incurred were unusual, unreasonable and unnecessary under the circumstances. While in certain circumstances an executor may be allowed to charge the estate for food expenses while traveling for estate

related business, said expenses should be reasonable and consistent with the resources of the estate. In the case at hand, Ms. Spratley's restaurant bills range from \$20.00, a reasonable amount, to \$161.00, which appears excessive.

After review of the expenses, your commissioner is of the opinion that the expenses are best allocated between the estates and Ms. Spratley based upon the trips for which Ms. Spratley was reimbursed. Based upon the foregoing analysis, your commissioner finds that 23% (14/60) of Ms. Spratley's travel related expenses on the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> accounts, equal to \$7,314.83, were reasonable expenses within the meaning of Virginia Code § 26-30. Your commissioner further finds that \$24,488.79 (\$31,803.62 - \$7,314.83) of the expenses incurred were unreasonable and should be returned to the estates.

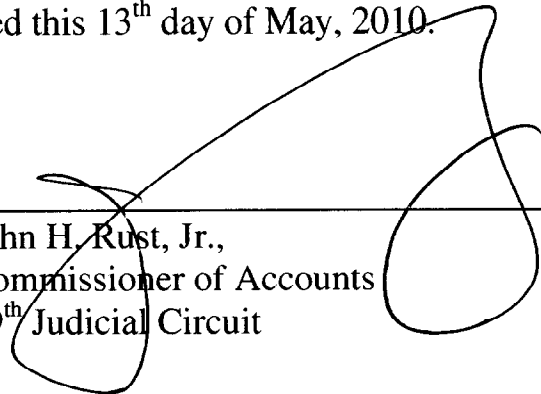
### *Conclusion*

Based upon the foregoing, your commissioner is of the opinion and therefore finds that Ms. Spratley is required to return the sum of \$232,764.17 to the two estates, consisting of excess fiduciary fees in the amount of \$149,341.89, improper profits from fiduciary self-dealing in the amount of \$33,143.03, attorney's fees paid in pursuit of shifting the beneficial interest in the estate in the amount of \$25,790.46, and unreasonable and excessive travel expenses in the amount of \$24,488.79. As a final account has been filed in each of these matters, Ms. Spratley should pay such sum as follows:

Commissioner of Accounts (cost of this proceeding)	\$ 750.00
Estate of Ethel Jones Durham - 40% (80% of 1/2)	\$93,105.67
Anne Cooke - 25% (1/2 of 1/2)	\$58,191.04
Katherine Cooke Mundle - 25% (1/2 of 1/2)	\$58,191.04

Ms. Spratley may retain the remaining balance as a portion of her 10% distribution from the estates. The two estates shall remain open in your commissioner's office and Ms. Spratley shall remain liable on her bond until Ms. Spratley has provided appropriate vouchers demonstrating the distribution of such payments.

Respectfully submitted this 13<sup>th</sup> day of May, 2010.



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

Commissioner's Fee for this Report \$ 750.00 - UNPAID

cc: Sharon Spratley  
John F. Boland, Esquire  
Timothy J. McEvoy, Esquire  
Jeffrey F. Higdon, Esquire  
Anne E. Cooke  
Katherine Cooke Mundle  
Rasnake Insurance Agency

In the Clerk's Office of the Circuit of  
Fairfax County, Virginia 05-10-2010  
the foregoing document(s) was/were received and  
admitted to record.

Teste: JOHN T. FREY, Clerk

By: Matthew A. Munkel  
Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRAX COUNTY

IN RE: :

ESTATE OF MARGARET R. COOKE : FIDUCIARY NO. 70675

Deceased. :

**MOTION FOR ORDER TO PERMIT COUNSEL TO WITHDRAW  
AS ATTORNEY OF RECORD FOR EXECUTRIX AND ESTATE**

COME NOW REES BROOME, PC (formerly Rees, Broome & Diaz, P.C.), and JOHN F. BOLAND, a member of said law firm, and move this Court pursuant to Rule 1:16 of the Virginia State Bar Rules of Professional Conduct, for entry of an order authorizing the firm and named counsel to withdraw as counsel of record for the Estate of Margaret R. Cooke (the "Estate") and for the Executrix of the Estate, SHARON SPRATLEY (the "Executrix") in this fiduciary action. In support thereof, Movants state further as follows:

1. REES BROOME, PC, and JOHN F. BOLAND (collectively "Counsel") have represented the Estate and the Executrix in various matters concerning the administration of the Estate and in related litigation since the summer of 2004, and remain as counsel of record in this fiduciary action.

2. In the second half of 2006, matters arose in the administration of the Estate in which the Executrix and certain beneficiaries became in disagreement, resulting in a course of conduct by the Executrix which Counsel believed to be imprudent and unjust to the beneficiaries and without support in law, and which would result in Counsel violating the Rules of Professional Conduct if required to advance the conduct before this Court.

3. That situation led one of the beneficiaries of the Margaret Cooke Estate, the Estate of Ethel Jones, to file motions to compel the Executrix to disburse funds and to seek her removal, and Counsel to file a motion to withdraw as counsel for the Estate.

4. The Jones Estate motion to compel distributions and the motion by Counsel to withdraw were heard on January 26, 2007, at which time the Executrix conceded to the Court that her conduct in question had no support under Virginia law and the Court entered an order to compel the distributions requested by the Jones Estate. At that time, the Executrix opposed the withdrawal of Counsel and Judge Vieregg, after admonishing the Executrix that counsel was of value only if its advise was followed, asked if Counsel were willing to withdraw their then motion to withdraw. Counsel indicated their willingness to continue to represent the Estate if the Executrix was willing to act under the provisions of Virginia law, and agreed to withdraw their motion in view of the opposition of the Executrix.

5. Since withdrawal of Counsel's prior motion to withdraw as counsel, the Executrix has systematically ignored the advice of Counsel, refused to respond to recommendations by Counsel, and refused to respond to many matters at all, and ignored continuing requests for information from the Jones Estate and perhaps from other beneficiaries as well, thereby leading to continuing demands to Counsel from the beneficiaries for action by the Executrix, all of which consume significant time and efforts by Counsel on behalf of the Estate.

6. Counsel have made several requests since January 26, 2007, to the Executrix that she agree to the withdrawal of Counsel if she does not desire to follow the advice of Counsel, but she continues to refuse to so agree.

7. Counsel continue to believe that the conduct of the Executrix in her dealings with the beneficiaries since January 26, 2007, is unjust, unreasonable and imprudent, and is wasteful of the time and expense of the beneficiaries and of the Estate, and Counsel no longer wish to be associated in any way with the conduct of the Executrix as continuing counsel for the Estate.

8. In addition, Executrix has not paid any invoice of Counsel for services to the Estate for over six months and refuses to state any reason for her continuing refusal to pay Counsel for services while concurrently refusing to agree to permit Counsel to withdraw from the representation. The Estate is and has at all relevant times been able to pay the invoices of Counsel in a timely fashion; its remaining assets are substantially all cash and until recent partial distributions to beneficiaries the Estate has had cash on hand in the amount of several hundred thousand dollars.

9. By virtue of Executrix's refusal to pay Counsel's invoices, without reason, Executrix has caused an irreconcilable conflict with Counsel who desire and intend to file a claim and/or lawsuit against the Estate for payment of their fees.

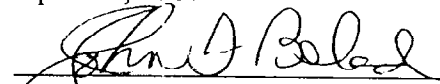
10. Counsel have no reason to believe that their withdrawal from further representation would have any material adverse effect on the interests of the Estate or of the Executrix.

11. To the best of Counsel's information and belief, the Executrix continues to oppose Counsel's withdrawal.

WHEREFORE, Counsel move this Court for an order authorizing and accepting their withdrawal as counsel of record for the Estate and for the Executrix in this action in accordance with the proposed order attached hereto.

JOHN F. BOLAND,  
REES BROOME, PC

April 24, 2007

  
\_\_\_\_\_  
John F. Boland (Virginia State Bar No.: 15054)  
REES BROOME, PC  
8133 Leeburg Pike, Ninth Floor  
Vienna, Virginia 22182  
(703) 790-1911  
Fax No. (703) 848-2530



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion was mailed by first class mail to the following:

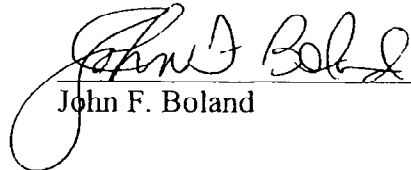
Sharon Spratley, *Executrix*  
8537 Chuck Drive  
N. Richland Hills, Texas 76180

Timothy J. McEvoy, Esquire  
9302 Lee Highway, Suite 1100  
Fairfax, VA 22031  
*Counsel for Karen L. Bond, Personal Representative of the Estate of Ethel Jones, Deceased*

Jean Galloway Ball, Esquire  
Jean Galloway Ball PLC  
10306 Eaton Place, Suite 130  
Fairfax, VA 22030  
*Counsel for Katherine M. Cooke*

Anne E. Cooke, *Pro Se*  
2480 16<sup>th</sup> Street, N.W., Apt. 442  
Washington, D.C. 20009

on this 24<sup>th</sup> day of April, 2007.

  
\_\_\_\_\_  
John F. Boland

VIRGINIA:

21207

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

IN RE PAUL COOKE  
IN RE MARGARET COOKE )  
Plaintiff/Complainant, )  
v. )  
Defendant. )

F 70674  
F 70675  
Chancery/Law No.  
C106-6141 ✓

ORDER

This matter came to be heard on the 26 day of JANUARY 2007 on the Plaintiff(s)/Complainant(s)/Defendant(s)'s motion of the Estate of Ethel Jones Durham to Compel Distribution AND FOR RULE TO SHOW CAUSE, THE RULE TO SHOW CAUSE BEING DEFERRED WITHOUT  
Upon the matters presented to the Court it is hereby PREJUDICE,

ORDERED as follows:

The motion to distribute is GRANTED.

1) the Estates shall, within five days (January 31, 2007), distribute to the Estate of Ethel Jones Durham, the following amounts as initial distributions:

- A) FROM THE MARGARET COOKE ESTATE, \$98,500.00
- B) FROM THE PAUL COOKE ESTATE, \$131,500.00

2) All amounts to be paid c/o TIMOTHY J. MCELROY, ODIN, FELDMAN & PITTLEMAN, P.C., 9302 LEE HIGHWAY #1100 FAIRFAX VA 22031

ENTERED this 27 day of January, 2007.

*[Signature]*  
Judge

PLEASE FOR THIS:

SEEN and

*[Signature]* 33277  
703 218 2149  
Counsel for Plaintiff/Complainant JONES-DURHAM

SEEN and

*[Signature]*  
Counsel for Estate of Ethel Jones Durham

\* 3) The Estates shall make further distributions to the Estate of Ethel Jones Durham in accordance with the COOKE WILLS AT THE SAME TIME AS OTHER BENEFICIARIES.

2-9-07  
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file to distribute 2/7/07