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IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

In Re: Estate of Dorothy Sue Campbell  
Simmons  
Fiduciary No. FI-2002-0069480

Commissioner's Report

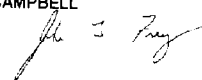
To the Honorable Judges of the Circuit Court of Fairfax County, Virginia:

At the request of Paula Simmons, a beneficiary of the above named estate, the undersigned gave the notice required under Virginia Code § 26-29 setting the 22<sup>nd</sup> day of December, 2009, at 10:00 a.m. at the office of your Commissioner in Fairfax, Virginia, as the time and place for receiving proof concerning objections to the accounts filed for the estate of Dorothy Sue Campbell Simmons by the former executor, Kara Grindle.

Dorothy Sue Campbell Simmons passed away on November 14, 2000. Her will directed that the residue of her estate be distributed to her living trust. The trust in turn directs that upon Dorothy Simmons death the residue is to be distributed in equal shares to Kara Grindle, Paula Simmons and Andrew Grindle, with Andrew's share to be held in trust until he attains thirty-five years of age. Kara Grindle qualified as executor of the estate of Dorothy Sue Campbell Simmons on May 3, 2003. Over the next several years this office received numerous complaints from Ms. Simmons regarding the executor's delay in properly administering the estate. After correspondence and initial enforcement proceedings on the part of your commissioner, Ms. Grindle was unable or unwilling to complete the administration of the estate. Paula Simmons filed a petition to have her removed as executor of the estate. On February 29, 2008 this Court entered an Order removing Ms. Grindle as executor and appointing Michael Doherty as the successor fiduciary of the estate.

At the hearing before your commissioner, Ms. Simmons' counsel, Dillina Stickley, appeared to request that Ms. Grindle's share of the estate be surcharged in an amount equal to the cost of various fees and penalties that the estate incurred due to Ms. Grindle's delay in properly administering the estate, as well as surcharging Ms. Grindle's share of the estate for the attorney's fees which Ms. Simmons incurred. Julianne Squier, an accountant with Fritz and Company, attended the hearing as a witness on behalf of Ms. Simmons. Also present at the hearing were the former executor, Ms. Grindle, and the successor fiduciary, Michael Doherty.

Fiduciary # FI-2002-0069480 # of Pages 8  
Date 07/12/2010 WILL BK 00894 PG 0048  
Estate SIMMONS, DOROTHY SUE CAMPBELL  
Recorded in  
FAIRFAX COUNTY CIRCUIT COURT  
TESTE JOHN T. FREY



## *Tax Interest and Penalties*

Ms. Stickley contended that Ms. Grindle's share of the estate should be offset due to her delay in filing the necessary tax returns. Ms. Stickley presented evidence showing that the estate had incurred \$60,866.68 in interest and penalties due to the untimely filing of the necessary tax returns for the decedent and the estate. Ms. Grindle stated that she had relied upon the advice of her attorney in hiring an accountant to file the tax returns. She further stated that when she realized nothing was being done she hired a different accountant who prepared all of the necessary tax returns in 2006.

The decedent died on November 14, 2000. Her personal tax return for the 2000 tax year was due April 15, 2001. Ms. Grindle qualified on May 2, 2003, two years after that tax return was due. Penalties and interest in connection with the decedent's personal tax returns had already begun accruing at the time Ms. Grindle qualified. The returns were finally filed on or after May 30, 2006, with interest calculated through June 15, 2006. The estate incurred penalties and interest as follows: Federal income taxes - interest \$2,691.05, late filing penalties \$1,289.48, non-payment penalties \$1,432.75; Virginia income taxes - interest \$170.39, late filing penalties \$100.00, non-payment penalties \$55.25; North Carolina income taxes - interest \$290.86, late filing penalties \$246.75, non-payment penalties \$98.70. Your commissioner believes that a fiduciary is entitled to a reasonable time to gather the assets of the estate, make a determination of its liabilities, and file any tax returns due without incurring personal liability for the failure to file. In the opinion of your commissioner, nine months from qualification is a reasonable time to be allowed an executor for such work. Allowing the executor nine months following her date of qualification to file the necessary tax returns, your commissioner finds that Ms. Grindle reasonably should have filed the tax returns on or before February 2, 2004. Your commissioner is therefore of the opinion that the executor's share of the estate should be offset in the amount equal to the interest which accrued during the period after February 2, 2004. Based upon the above, Ms. Grindle's share of the estate should be offset in the amount of \$1,462.15 in connection with interest incurred on the decedent's personal tax returns for the year 2000.

As to the penalties, the total Federal late-filing penalty is usually five percent of the tax owed for each month, or part of a month, that the return is late, up to five months. As the returns in the instant case were already well over five months overdue when Ms. Grindle qualified as executor, your commissioner is of the opinion that she should not be held responsible for the Federal late filing penalties

associated with the late filing of the decedent's personal tax returns, as the same were already assessed at the date of her qualification. Similarly in Virginia, the late filing penalty is six percent of the tax owed for each month, or part of a month, that the return is late, up to five months. Therefore, your commissioner is also of the opinion that Ms. Grindle should not be held responsible for any Virginia late filing penalties.

The Federal late payment penalty is assessed at 0.5% each month that the tax is not paid. Therefore, Ms. Grindle should be responsible for the Federal late payment penalties in the same proportions as she is responsible for the interest assessed. Ms. Simmons presented tax returns which included calculations of Virginia late payment penalties for the individual Virginia income tax returns. Your commissioner is unable to find a basis for such penalties continuing to accrue more than five months after the due date of the Virginia 2000 individual income tax return and declines to assess such charges against Ms. Grindle. Ms. Simmons also presented tax returns which included calculations of North Carolina late payment penalties for individual North Carolina income tax returns. Your commissioner is unable to find a basis for such penalties continuing to accrue more than five months after the due date of the North Carolina individual income tax return and declines to assess such charges against Ms. Grindle. Based upon the above, Ms. Grindle's share of the estate should be offset in the amount of \$664.56 in connection with the Federal late payment penalties assessed on the decedent's personal tax returns for the year 2000.

Federal and Virginia estate taxes are due nine months after death, on August 14, 2001. Ms. Grindle qualified approximately twenty-one months after such estate taxes were due. The returns were finally filed on or after June 9, 2006, with interest calculated through June 15, 2006. The estate incurred penalties and interest as follows: Federal estate taxes - interest \$3,225.68, late filing penalties \$1,711.13, non-payment penalties \$1,901.25; Virginia estate taxes - interest \$9,082.00, penalties \$1,022.00. Virginia non-payment penalties are assessed upon delinquency and do not depend upon the date of payment. There is no non-filing penalty. Therefore, no amount of the Virginia penalties should be allocated against Ms. Grindle. Applying the same standard as to the estate taxes as to the individual income taxes, Ms. Grindle should be responsible for the interest accrued after February 2, 2004. As penalties other than the Federal non-payment penalties had already accrued on both estate tax returns, your commissioner is of the opinion that Ms. Grindle should not be responsible for the penalties associated with late filing of the estate tax returns and non-payment of the Virginia estate taxes. Based upon the above, Ms. Grindle's share of the estate should be offset in the amount of

\$6,021.58 in connection with the interest incurred on the Federal and Virginia estate tax returns. In addition, she should be responsible for non-payment penalties upon the Federal estate tax return in the amount of \$930.17.

In Virginia, one may not receive refunds that may be due more than three years after the due date of the income tax return. Although there were Virginia income taxes due in the decedent's year of death, Ms. Simmons presented a claim for refunds that the Virginia Department of Taxation denied for the tax years 2001 - \$578.00 and 2002 - \$19.00. Your commissioner is uncertain how claims for refunds accrue after the date of the decedent's death; however, given the delay in the executor's qualification, it is the opinion of your commissioner that Ms. Grindle should not be held responsible for refund amounts that the Virginia Department of Taxation declined to pay because the returns were filed late.

In addition to the decedent's personal tax returns and the estate tax returns, Ms. Grindle also failed to file estate income tax returns for the years 2001-2007 in a timely manner. The late federal filings cost the estate \$22,005.44 in penalties and \$18,456.03 in interest. The late Virginia filings cost the estate \$708.90 in penalties and \$667.11 in interest. As is the case with the decedent's personal tax return, the fiduciary should not be responsible for penalties and interest incurred on returns already delinquent at the date of her qualification. Therefore, your commissioner finds that Ms. Grindle is not responsible for the penalties and interest incurred on the 2000 federal and state tax returns. However, it is the opinion of your commissioner that Ms. Grindle is responsible for the penalties and interest incurred on the 2003-2007 returns. Ms. Grindle's share of the estate should therefore be offset in the amount of \$41,632.36 in connection with penalties and interest on the estate income tax returns.

#### *Accountant Fees*

In addition to the above penalties and interest, Ms. Stickley submitted that Ms. Grindle's share of the estate should be further offset based upon fees the estate paid to Fritz and Company to review and prepare all of the necessary tax returns upon Ms. Grindle's removal. Julianne Squier, an accountant with Fritz and Company, testified that the total bill was \$17,801.00. Of this amount, Ms. Squier estimated that \$9,505.00 was in connection with work that was made necessary by Ms. Grindle's mis-administration. Your commissioner of therefore of the opinion that Ms. Grindle's share of the estate should be offset in the amount of \$9,505.00 in connection with the above described accountant fees.

### *Successor Fiduciary Fees*

At the hearing, Mr. Doherty testified that he had spent approximately forty-three and a half hours preparing for the hearing before your commissioner. As the hearing was necessitated by Ms. Grindle's failure to timely administer the estate, Mr. Doherty asked that he be allowed a fee in excess of the fiduciary guidelines for his time preparing for the hearing. He additionally requested that said amount be charged against Ms. Grindle's share of the estate. Your commissioner is of the opinion that Ms. Grindle's share of the estate should be offset in the amount of \$8,700 in connection with Mr. Doherty's time preparing for the hearing. Said amount is in addition to the fiduciary fee Mr. Doherty is entitled to under the guidelines, which should be paid from the estate.

### *Apple Federal Account*

At the hearing before your commissioner Ms. Stickley questioned Ms. Grindle regarding the status of the decedent's Apple Federal Credit Union checking account which was held jointly with Ms. Grindle and did not appear on the estate accounts. Ms. Grindle testified that the decedent had added her name to the account many years prior to her death. Absent proof that a joint account was intended to be set up as a convenience account, any funds in the account at the time of the decedent's death are presumed to be the sole property of the surviving owner. Va. Code § 6.1-125.5. Based upon the evidence presented, including Ms. Grindle's testimony, your commissioner does not find that the account was simply a convenience account. Therefore, in the opinion of your commissioner, the monies in the account were not probate assets and correctly passed directly to Ms. Grindle upon Dorothy Simmons' death.

During the discussion regarding the above account, Ms. Grindle indicated that she had paid for all of the funeral expenses from the account. As all monies in the account passed directly to Ms. Grindle upon the decedent's death, to the extent Ms. Grindle is able to substantiate payments for funeral expenses, she would be entitled to a credit equal to the amount paid from the Apple Federal account. The Federal Estate tax return filed in this estate lists funeral expenses of \$9,785, consisting of the following payments:

Demaines Funeral Home -	\$9,190
Flowers -	260
Obituary -	125
Minister -	50

None of these expenses appear as disbursements in the estate accounts filed with your commissioner. Therefore, your commissioner is of the opinion that Ms. Grindle is entitled to a credit equal to \$9,785 in connection with her payment of funeral expenses from her personal funds.

### *Personal Property*

During Ms. Grindle's administration of the estate there had been some disagreements regarding the distribution of the decedent's personal property. At the hearing, Ms. Stickley confirmed that Ms. Simmons had received all personal property due her.

### *Attorney Fee Agreement*

In March 2008 Ms. Grindle and Ms. Simmons entered into an Agreement whereby the parties agreed that the \$6,653.00 that Ms. Simmons incurred between 2006 and 2008 in attorney fees and expenses in her efforts to "move the estate forward" would be paid from the estate. Upon review of the agreement, your commissioner indicated to Ms. Grindle and Ms. Stickley that he was concerned that the third beneficiary of the trust, Andrew Grindle, had not joined in the agreement. Your commissioner therefore asked the successor fiduciary, Michael Doherty, to discuss the matter with Mr. Grindle and determine whether he wished to consent to the terms of the agreement. By letter dated January 15, 2010 Mr. Doherty informed your commissioner that Mr. Grindle did not consent to the terms of the agreement. As the agreement only binds Ms. Grindle and Ms. Simmons, it is the opinion of your commissioner that each of them shall be deemed to have received distributions equal to half of the agreed expenses - \$3,326.50.

Subsequent to the above agreement, Ms. Simmons incurred additional attorney fees in the amount of \$3,860.00 in connection with the hearing before your commissioner. At the hearing, Ms. Stickley asked that said fees be charged against Ms. Grindle's share of the estate. As the hearing was necessitated by Ms. Grindle's failure to timely administer the estate, your commissioner is of the opinion that Ms. Grindle's share of the estate should be offset in the amount of \$3,860.00 in connection with the above described attorney fees.

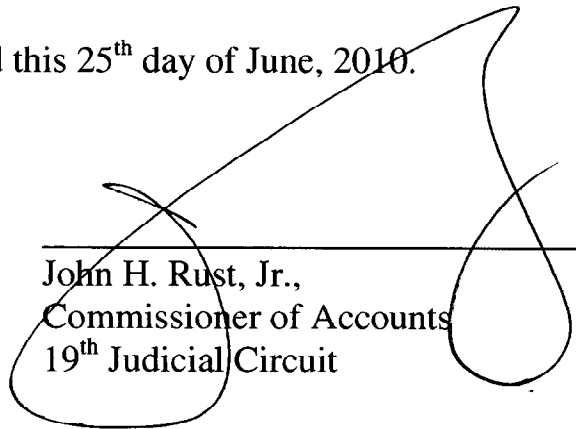
*Conclusion*

In sum, as calculated below, Ms. Grindle's share of the estate should be offset in the amount of \$66,317.32, set forth as follows:

<i>Tax Interest and Penalties</i>	\$50,710.82
<i>Accountant Fees</i>	\$9,505.00
<i>Successor Fiduciary Fees</i>	\$8,700.00
<i>Attorney Fee Agreement</i>	\$3,326.50
<i>Attorney Fees</i>	<u>\$3,860.00</u>
Total	\$76,102.32
<i>Less Funeral Expenses</i>	<u>(\$9,785.00)</u>
Total Surcharge	\$66,317.32

Finally, Ms. Simmons' share of the estate should be offset in the amount of \$3,326.50, based upon the attorney fee agreement discussed above.

Respectfully submitted this 25<sup>th</sup> day of June, 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

## CERTIFICATE OF SERVICE

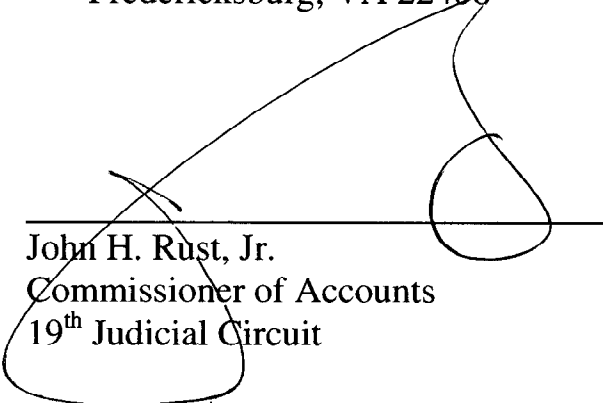
I hereby certify that on this 25<sup>th</sup> day of June, 2010, a true and correct copy of the above Commissioner's Report was mailed, first-class mail, postage prepaid, to the following persons at the addresses shown below:

Kara Grindle  
701 Excaliber Circle #204  
Fredericksburg, VA 22406

Michael H. Doherty  
4010 University Dr.  
Suite 102  
Fairfax, VA 22030

Dillina Stickley  
Hoover Penrod PLC  
342 S. Main St.  
Harrisonburg, VA 22801

Andrew Grindle  
58 Malvern Lake Circle #201  
Fredericksburg, VA 22406



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

I, JOHN T. FREY, Clerk of the Circuit Court of Fairfax County, Virginia, do hereby certify that the foregoing Account or Report has been filed in my office for more than fifteen days, and that no exceptions have been filed thereto, and the same is now recorded pursuant to the provisions of §§26-33 and 26-35 of the Code of Virginia, as amended.

Teste: JOHN T. FREY, Clerk

7-12-10  
Date

By:   
Deputy Clerk