

1990

Kipp Quinn v. Fenton Quinn, Jr. : Brief of Appellant

Utah Court of Appeals

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Chris Schmutz; Nielson and Senior; Attorneys for Respondent.

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Recommended Citation

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**UTAH COURT OF APPEALS
BRIEF**

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In The Utah Court of Appeals

In the Matter of the Estate of,
FENTON GLADE QUINN (Deceased)

KIPP QUINN, successor personal
representative,

Appellant

vs.

FENTON QUINN, JR.,

Respondent

Case No 900169-CA

Priority No. 16

BRIEF OF APPELLANT

**APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT OF SALT
LAKE COUNTY, STATE OF UTAH,**

The Honorable Scott Daniels presiding

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In The Utah Court of Appeals

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I.

PARTIES

1. Nielson & Senior, Attorneys at Law, 1100 Eagle Gate Tower, 60 East South Temple, Salt Lake City, Utah.

2. Fenton Quinn, Jr., 2601 West Rustic Roads Drive, South Jordan, Utah, former personal representative of the estate of Fenton Quinn.

3. Kipp Quinn, 7747 Biscayne Drive, Salt Lake City, Utah 84117, successor, personal representative of the estate of Fenton Quinn.

4. Robert Felton, Attorney at Law, 310 South Main Street, Suite 1305, Salt Lake City, Utah 84101, attorney for Appellant.

II.

STANDARD OF REVIEW

An award of attorney's fees will not be overturned in the absence of a clear abuse of discretion. *Turtle Management, Inc. v. Haggis Management, Inc.*, 645 P.2d 667 (Utah, 1982). The fee must be supported by the record, *Associated Industrial Development, Inc. v. Jewkes*, 701 P.2d 486 (Utah, 1984). The award of attorney's fees should be made on the basis of findings of fact supported by the evidence and appropriate conclusions of law. *Cabrera v. Cottrell*, 694 P.2d 622 (Utah 1985). In the event the evidence does not support the award of the fees such action constitutes an abuse of discretion requiring the award to be overturned. *Hal Taylor Associates v. Union America, Inc.*, 667 P.2d 743 (Utah, 1982).

An award of costs is reviewed under an abuse of discretion standard. *Frampton v. Wilson*, 605 P.2d 771 (Utah, 1980).

III.

JURISDICTION

The judgment that is the subject of this Appeal is a final order of the Third Judicial District Court of Salt Lake County awarding attorney's fees to former counsel in a probate estate (R, pp. 325-326, Add. 1). The Utah Court of Appeals has jurisdiction of this matter pursuant to Utah Code Ann. § 78-2-3 (2)(j) (1953). Pursuant to Rule 4-A, Rules of the Utah Supreme Court, this appeal was transferred to the Court of Appeals for disposition pursuant to an Order of the Supreme Court dated March 28, 1990.

The judgment of the District Court was dated December 19, 1989 (R, pp. 325-26; Add. 1). No findings of facts and conclusions and law were entered. Notice of Appeal was timely filed January 17, 1990 (R, p. 362).

IV.

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Did the trial court abuse its discretion in awarding over \$58,000.00 in fees and costs to the former, personal representative's counsel, especially in light of his removal as personal representative for wasting the estate?

2. Did the evidence presented by applicant, law firm justify fees of over 1/2 the estate when little or nothing applicant did benefited the estate.

3. Were costs of copying, expert witnesses, etc., properly awarded to law firm representing former personal representative?

4. Does the failure to make findings of fact and conclusions of law constitute reversible error?

V.

STATUTES AND ORDINANCES

1. 75-3-703 U.C.A. (1953 as amended 1975) - set out in Addendum.

2. 75-3-705 U.C.A. (1953 as amended 1977) - set out in Addendum.

3. 75-3-708 U.C.A. (1953 as amended 1975) - set out in Addendum.

4. 75-3-711 U.C.A. (1953 as amended 1975).

5. 75-3-712 U.C.A. (1953 as amended 1977) - set out in Addendum.

6. 75-3-718 U.C.A. (1953 as amended 1977) - set out in Addendum.

7. 75-3-719 U.C.A. (1953 as amended 1975) - set out in Addendum.

8. 75-3-611(2)(a) U.C.A. (1953 as amended 1975) - set out in Addendum.

9. 75-7-301 U.C.A. (1953 as amended 1975) - set out in Addendum.

10. 78-2-3(2)(j) U.C.A. (1953) - set out in Addendum

VI.

STATEMENT OF THE CASE

A. Nature of the Case. This is an appeal by the successor personal representative of the estate of Fenton Quinn from the award of attorney's fees to legal counsel for the former, personal representative, in the amount of \$51,668.00 plus \$4,477.24 reimbursement for costs in an estate which was valued by the former personal representative at \$90,300.00 (Ex. D-8, R. pp. 78-9). The former, personal representative was removed for cause for incurring excessive legal expenses (R. p. 190, Add. 2).

Appellant contends that it was evident that the claims of creditors would exceed the value of the assets of the estate, and that the former, personal representative and his legal counsel improvidently and in derogation of their fiduciary duty, unreasonably incurred legal services to deplete the estate and thereby deprive the creditors of any payment.

B. Course of Proceedings. This action was commenced June 12, 1984 (R. p. 15). Fenton Quinn, son of the deceased, was appointed personal representative June 27, 1984 (R. p. 18). The estate of the deceased's, former wife, whom he had murdered, petitioned the court for supervised administration and an order enjoining the waste of assets on September 14, 1984 (R. p. 34). On October 25, 1988, it filed a second Petition for Removal of Personal Representative (R. p. 175). The personal representative was ordered to file an inventory and to submit all legal fees and costs to the Court (R. p. 185). The personal representative was subsequently removed by the Court for wasting the assets of the estate and failing to file the

inventory (R. p. 190, Add. 2), and Kipp Quinn, deceased's stepson, was appointed successor, personal representative on June 20, 1989 (R. p. 197). He is the Appellant in this appeal.

Appellant was required to file a Petition to force former counsel for the estate to submit their application for fees they claimed (R. p. 205). At the initial hearing, former counsel were ordered to submit a detailed accounting by September 21, 1990 (R. p. 207). The trial was set on the attorney's fees issue for October 17, 1990. Appellant filed a Motion in Limine or to Strike on the grounds that none of the documentation nor fee information had been provided as of October 5, 1990 (R. p. 212).

C. Disposition At Trial. This matter was tried on November 7, 1990, before the Honorable Scott Daniels. The Court refused to grant the Motion in Limine or to Strike submitted by the Appellant and entered an order awarding former counsel and representative the sum of \$51,668.00 in legal fees and \$4,477.24 as reimbursement for costs. The Order also provided that payment of those sums shall have priority as a cost of expense of administration of the estate of Fenton Quinn (R. p. 325, Add. 1).

D. Relevant Facts. On May 24, 1984, Fenton Quinn shot and killed his wife while she was sleeping in her home. Shortly thereafter, he committed suicide (R. p. 15). Both Dawana and Fenton Quinn had children from previous marriages who were their respective heirs.

Fenton Quinn, Jr., (son), was appointed personal representative on June 27, 1984 (R. p. 18). An initial request by the heirs of Mrs. Quinn to have supervised administration and to obtain an order to

prevent the wasting of the assets of this estate was filed in September 1984 (R. p. 34), but was unsuccessful. Also, a Petition to determine the sequence of death arising from this homicide was filed August 10, 1987 (R. p. 43). The response filed on behalf of the Respondent alleged that Mrs. Quinn's estate could not recover based on such theories as suicide, estoppel, entrapment, assumption of the risk, consent, etc. (R. pp. 46-9).

A wrongful death action was commenced by the heirs of Dawana Quinn in the District Court. At the trial on the fee application, neither that file nor any other was introduced as evidence by Respondent. Appellant introduced a copy of the partial summary judgment as to liability which was granted in the tort action (R. p. 323, Exhibit D-5, Add. 3) and the subsequent judgment for approximately \$450,000.00 (R. p. 323, Ex. D-6, Add. 4). That judgment was appealed by Respondent solely on the sufficiency of the written claim which had been submitted. The Utah Court of Appeals rejected that appeal in total (R. p. 323, Exhibit D-12, Add. 5) (The fees for this appeal were not awarded by Judge Daniels).

In addition to the foregoing, Respondent commenced an action against a former partner of the deceased, Penny McGrath, to recover for a partnership interest. That case was later concluded by Appellant, after Respondent had been removed as personal representative. No file or other documentation was introduced by the Respondents to establish what work they had done other than a billing summary prepared immediately before trial (R. pp. 264-279).

The Appellant filed a Petition to remove the personal representative on the basis that he was wasting the estate by

incurring exorbitant debt for legal fees and had failed to file an inventory as provided by law (R. p. 175). On December 9, 1988, Judge Timothy Hansen entered an Order which stated as follows (R. p. 185-7, Ex. D-9):

1. The personal representative is hereby ordered to file an inventory of the estate and to send a copy to counsel for the Petitioner,
2. The personal representative and/or his attorney is hereby ordered to submit all legal fees and costs which they contend are due from the above entitled estate, up to and including the date of this hearing.

A trial was held on the Petition to remove Fenton Quinn before Judge Daniels on January 10, 1989 (R. p. 190). The trial court entered its Order, which stated in part (R. p. 190):

It appears to the Court that the personal representative may have improvidently incurred legal expenses and costs which approximate \$73,000.00 at the present time. There now exists the substantial likelihood that there will be little or nothing remaining for the heirs or creditors and the personal representative may not act in the best interest of the Estate and he should be removed pursuant to § 75-3-611(2)(a) U.C.A. (1953 as amended 1975) (subject to the stipulation or appointment of a successor representative) (Add. 2).

Kipp Quinn, Dawana's natural son and Fenton's stepbrother, was appointed successor, personal representative (R. p. 197). It was he who filed the Petition to force Nielson & Senior to submit their application for fees (R. p. 205). Prior to the trial, Judge Kenneth Rigtrup ordered Nielson & Senior to "submit detailed accounting and all back up documentation regarding their fees before

September 21, 1989 (R. p. 207).” They did not file their request for fees until October 10, 1989 (R. p. 214). This application, on the eve of trial, differed significantly from the earlier Application for \$73,000.00 in fees which they claimed as of January, 1989 (R. p. 190, Ex. D-3, Add. 6). In fact, the October, 1989, Application was for less compensation even though it included several months additional work. No “back up documentation” was ever provided or introduced into evidence. The new application also claimed compensation for work done after Respondent was removed by the Court. Kipp Quinn was appointed June 20, 1989 (R. p. 197). The trial court awarded fees for work after Nielson & Senior’s termination (R, pp. 258-9; 278).

At the trial regarding the award of fees, former counsel, Mr. Schmutz, on behalf of Nielson & Senior, proffered that they should be awarded a total of \$58,228.50 in legal fees and \$4,830.34 in costs (T. pp. 214-17, T. p. 6). Appellant reserved objections to the proffer as to adequacy, foundation, and on the basis of his previously filed Motion to Strike or Motion In Limine (T. p. 7, R. p. 212). The Motion was resubmitted to the Court at the conclusion of the evidence (T. p. 105-6), but not ruled upon. The fee application was accompanied by a billing summary prepared within 30 days of trial (R. pp. 218-317). Mr. Schmutz described the four areas for which they desired compensation as (1) estate administration; (2) action “brought by the estate against Penny McGrath to recover amounts that we believed Ms. McGrath owed to the estate”; (3) wrongful death claim; and (4) appeal from the wrongful death claim (T. p. 8).

Mr. Schmutz then proffered to the Court that the fees requested were (1) “necessary and beneficial to the estate”; (2) “they were reasonable in the amount of time spent and the items of work performed”; and (3) “they were reasonable in terms of billing amounts” (T. p. 9). No other evidence was presented except “average” billing rates for their lawyers (T. p. 10) and some general testimony by Mr. Ludlow as to difficulties in the probate (T. pp. 45-53). This was elicited on cross examination since the Court allowed the proffer without further elucidation. The trial court directed counsel for the Appellant to cross-examine the lawyers after the proffer (T. p. 9).

Fenton Quinn was originally appointed as personal representative on June 27, 1984 (R. p. 18). § 75-3-705 U.C.A. (1953), requires an inventory be prepared within three months. He refused to do this and Judge T. Hansen ordered him to complete it (R. p. 185). The inventory was prepared in 1988 (R. p. 78, Ex. D-8), four years after the death. The estimate of the estate was approximately \$100,000.00 (Ex. D-8, Add. 7).

Mr. Ludlow, one of Mr. Quinn’s lawyers, testified that he originally thought the estate was worth \$600,000.00 (T. p. 42). No basis for that valuation was given and none was possible since no inventory was prepared. By November, 1986, they “thought” the estate was worth between \$100,000.00 and \$175,000.00 (T. p. 26). The wrongful death trial was one month later, December 16, 1986. In 1988 they valued the estate at \$100,000.00 (T. p. 27). In January of 1989, Nielson & Senior submitted their legal bill of \$73,767.38 (T.

p. 13, Ex. D-3, Add. 6). This was after judgment had been entered against the estate for \$451,000.00 (T. p. 30, Ex. D-6, Add. 5).

The “inventory” (Ex. D-8, Add. 7) prepared four years late, contained nine items which were evaluated by Fenton Quinn on cross examination (T. pp. 78-80). The testimony demonstrated this estate was as follows:

1.	Home had been sold and after payment of the mortgage (T. p. 78)	\$19,000.00
2.	23 acres unimproved land (T. p. 79)	(-5,000.00)
3.	McGrath claim (T. p. 79)	\$75,000.00
4.	Misc. clothing, etc. (Ex. D-8, Add. 7)	\$ 50.00
5.	Checking account (Ex. D-8, Add. 7)	\$ 950.00
6.	Cadillac - gone (T. p. 79)	-0-
7.	1979 Chevrolet - gone (T. p. 79)	-0-
8.	Coins (Ex. D-8, Add. 7)	\$ 300.00
TOTAL:		\$90,300.00

The insurance company, under the homeowner’s policy, undertook the primary defense of the wrongful death action (T. p. 67). After summary judgment, they withdrew because the homicide was found to be intentional and, therefore, not compensable under their policy. The cost of appeal of the wrongful death judgment was not awarded and is not at issue in this appeal.

Nielson & Senior had no fee agreement (T. p. 22). Their arrangement according to Mr. Schmutz (T. p. 22):

* * * The understanding that I have always had was that we would seek approval and payment of our fees from the estate.

No statements were ever sent to Fenton Quinn. Mr. Schmutz gave the reasons as (T. p. 17):

The reason was because we knew that he wouldn't be able to pay it and we knew we would be presenting a fee application to the court. We weren't anticipating payment from him.

The initial estimate by Mr. Ludlow to probate this case was between \$2,000.00 and \$2,500.00 (T. p. 79). Based upon the former statutory fee schedule, § 75-3-718, U.C.A (1953), Mr. Ludlow confirmed that the fee for a \$90,000.00 estate would be approximately \$3,600.00 (T. p. 53).

The heirs of Dawana Quinn retained present counsel to probate her estate; prepare and complete the wrongful death action (resulting in a \$451,000.00 judgment); defend the appeal (which was won); and successfully challenge the administration of Fenton Quinn's estate (resulting in the removal of the personal representative). At the time of trial, the heirs had successfully prevailed in all matters and this counsel settled the McGrath case for this estate (R. p. 85). The former representative and their counsel produced no results nor benefit to the estate.

The Appellant testified regarding discrepancies between the billings of the attorneys for both parties (T. p. 94). Certain days when counsel were involved in the same activity (i.e., phone calls to each other or hearings), Nielson & Senior billed three to four times more time for the same activity (T. p. 94, Ex. D-13). Respondents had billed an insolvent estate 750 hours by November 1987 (Ex. D-4) and never advanced anything for the benefit of the estate. The Appellant had to expend approximately \$20,000.00 to protect this estate (T. p. 94) by obtaining removal of the Respondent and prove their claim which, except as to the exact amount of damages, was decided by summary judgment.

Immediately prior to trial, Respondents altered their billing (T. p. 14) and decided to reduce the amount from the \$73,000.00+ billed a year earlier (T. p. 14, Ex. D-3) to \$58,000.00 (T. p. 14) because now they “didn’t want to bill the estate where more than one attorney had done research on the same topic” Additional information was added to the fee application before trial (T. p. 15) yet none of the backup records were ever produced as ordered.

VII

SUMMARY OF ARGUMENT

1. Submission of a computer printout of time allegedly spent in regards to an insolvent estate is insufficient to support an award of attorney’s fees. This is especially true when no evidence was introduced demonstrating that any benefit was achieved. No fees should be awarded when the personal representative and his counsel deplete the estate through outrageous legal costs to deprive

creditors and he has been removed for breach of his fiduciary duty to the estate.

2. The trial court improperly measured the requested legal fees by what was billed and Respondents did not establish (1) difficulty of litigation; (2) efficiency of the work performed; (3) reasonableness of hours; (4) fee customarily charged; (5) amount involved in the case; (6) result attained; (7) expertise involved; and (8) how much work was necessary.

3. The trial court abused its discretion in awarding litigation expenses to the Respondent for copying, telephone charges, and something called “professional services” (not legal fees).

4. The trial court was required to enter findings of facts and conclusions of law.

VIII ARGUMENT

Point 1

THE EVIDENCE DOES NOT SUPPORT AWARDING OVER ONE-HALF THE ESTATE IN LEGAL FEES TO A PERSONAL REPRESENTATIVE AFTER HIS REMOVAL FOR WASTING THE ESTATE AND WHEN NO BENEFIT WAS ACHIEVED FOR THE ESTATE.

A personal representative is entitled to reasonable compensation. § 75-3-718 U.C.A. (1953) (Add. 8). Prior to 1987, the maximum amount allowed for a \$90,000.00 estate was approximately \$3,600.00. This section has now been amended to provide for “reasonable compensation” and the maximum fee

schedule deleted. § 75-3-719 U.C.A. (1953) (Add. 8), also provides for a personal representative to recover “necessary” expenses if proceedings are in “good faith”.

The fiduciary standard of the personal representative is that of a “prudent man dealing with the property of another”, §§ 75-7-301 and 75-3-711 U.C.A. (1953) (Add. 8). The representative must manage, protect, and preserve the estate, §§ 75-3-703 and 75-3-708 U.C.A. (1953 as amended 1975) (Add. 8), and prepare an inventory within three months § 75-3-705 U.C.A. (1953 as amended 1977) (Add. 8). If he improperly exercises his powers, he is liable to interested parties for the loss, 75-3-711 U.C.A. (1953) (Add. 8) and any transaction which is affected by a substantial conflict of interest is voidable by the interested parties, § 75-3-712 U.C.A. (1953 as amended 1977).

The only inventory of this estate (Exhibit 8, Add. 7) as explained by Respondent, showed the estate to be between \$90,000.00 and \$100,000.00 (T. p. 79). The estate’s liability on the wrongful death action was decided by summary judgment (R. p 323, Add. 4) and the trial on damages resulted in judgment of \$451,476.00 against the estate (R. p 323, Add. 5). The “McGrath” case was not resolved until the Appellant took it over and settled it for \$80,000.00 (T. p. 85). The probate was not completed and that responsibility has also been assumed by the Appellant.

In January, 1989, Nielson & Senior requested \$73,767.48 in fees and costs (Exhibit D-3, Add. 6). Immediately before trial, they reconstructed their billing schedules and requested a total of

\$63,058.84 (R. pp. 214-319). No backup documentation was ever provided as ordered by the Court on two occasions (R. pp. 184, 208).

During the time most of this work was performed, §75-3-718 U.C.A. (1953) established a maximum fee schedule under which Respondent would have recovered about \$3,600.00 in legal fees (See 1984 Ut. L. Rev. 553). Respondents attempted to establish entitlement to additional fees with a newly created billing statement; self-serving testimony that it was all “reasonable”; and, statements that the proceedings were more complicated than anticipated. The trial court was not and should not have followed the evidence submitted in that regard, *In re. Smith’s Estate*, 108 Utah 537, 162 P.2d 105 (1945).

The trial court apparently did not consider that the Appellants had expended \$20,000.00 (T. p. 94) for the benefit of the estate and that said fee was less than one-third the fee sought by the Respondent, nor that the Appellants had prevailed on every issue.

There is authority to the effect that the reasonable value of services rendered by an attorney in contesting the account of the personal representative is chargeable against the estate. *In re. Smith’s Estate*, supra. p. 111.

It is difficult to describe the trial court’s reasoning since no findings or conclusions were entered.

It was the Appellant that successfully established the wrongful death claim, settled the McGrath case; prevailed on the appeal; is currently completing the probate, and had the former representative

removed for wasting the estate. The record does not support that Respondent or counsel ever did anything for the benefit of the estate.

The Respondent cannot recover legal fees because he has no obligation to Nielson & Senior. There was no fee agreement (T. p. 22). The verbal agreement between Nielson & Senior and Respondent was that the firm would only seek its fees from the estate, not Fenton Quinn (T. p. 17). *Dennett v. First Security Bank*, 21 Ut.2d 5, 439 P.2d 459 (1968) citing *Banc. Prob. Prac.* 2nd Section 434:

* * * any contract of the executor . . . as to the amount of compensation for such services is no more binding upon the estate or upon the probate court than a like contract employing a watchman or a stenographer. For that matter, the fees of an attorney employed by an executor or administrator are not paid out of an estate by virtue of a contract of employment, but rather because the executor . . . is entitled to reimbursement (emphasis added) for such fees necessarily incurred in the administration of his trust or in litigation for the benefit of the estate.

Since the original representative had no obligation for legal fees, he is not entitled to reimbursement and the award is improper.

The evidence and inventory clearly indicated that, after payment to creditors, there was not going to be a distribution to the heirs. Respondents were represented by a large Salt Lake firm, well versed and competent in all aspects of this case. In spite of that, Mr.

Ludlow testified that this estate was insolvent and explained (T. p. 74):

* * * Estates may have assets of a million dollars or more, but if the claims exceed the assets, the estate, for purposes of administration, is insolvent.

Knowing the estate was insolvent, Respondent and counsel set out to deplete the estate by wasting it on attorney's fees and administrative costs. No offer of judgment was ever made as to the wrongful death action nor any benefit to the estate produced. In order to recover attorney's fees, the Respondent must show that services rendered were to benefit the estate not in furtherance of personal interests. *Matter of Eliason's Estate*, 105 Id. 234, 668 P.2d 110 (1983).

On two occasions, the Appellant sought removal of the personal representative. Upon the second application, the personal representative was removed (R. p. 190, Add. 2). The trial court improperly awarded the personal representative expenses regarding the litigation on letters of administration which were improperly charged to the estate. *In re. Pingree's Estate*, 82 U. 437, 25 P.2d 937, 90 ALR 96 (1933). Because of the lack of findings, it is confused with the total award.

The order of the court constitutes a clear abuse of discretion requiring reversal. The evidence that was submitted by the Respondent's law firm was a computer printout and self-serving statements that the work that was done was reasonable. It is

apparent that the fee award was measured simply by the billing hours and the Respondents did not submit nor did the court consider:

1. Difficulty of the litigation;
2. Efficiency of the attorneys;
3. Reasonableness of the hours spent on each part of the case;
4. Fee customarily charged;
5. Amount involved in the case;
6. Result attained;
7. How much of the work actually performed was necessary; and
8. the novelty and difficulty of the issues.

Cabrera v. Cottrell, 694 P.2d 622 (Utah, 1985); *Parents Against Drunk Drivers v. Greystone Pines Homeowner's Assn.*, 129 Ut. Adv. Rep. 45 (Utah Ct. App., 1990). *Dixie State Bank v. Bracken*, 764 P.2d 985 (Utah, 1988).

Point 2

IN ORDER TO RECOVER LEGAL FEES FOR EXTRAORDINARY WORK THE ACTIVITY MUST BE REASONABLY EXPECTED TO BENEFIT THE ESTATE.

The Respondent never addressed the issue off what benefit, if any, had resulted from this massive expenditure of legal fees. The personal representative was removed from administration of this estate for wasting its assets by using them for unnecessary, legal fees

(R. p. 190, Add. 2). To this date, the actual probate file and records, still in the possession of the Respondent, have not been produced to allow the successor personal representative to perform his duties (see Motion to Compel Discovery, T. p. 364 et. al.).

While the issue of the reasonableness of the total award of fees overlaps, somewhat, with the issue of benefit to the estate, this issue is clearly distinguishable and important to justification of the award of any administrative fees. The assets of the estate belong first to the creditor and any fees which are reimbursed should be reasonably expected to benefit the estate. *Dennett v. First Security Bank*, 21 Ut. 2d 5, 439 P.2d 459 (1968). The trial court made a substantive finding on January 10, 1989 (R. p. 190, Add. 2), that the Respondent and his legal counsel were improvidently incurring legal expenses to the detriment of the creditors. This was in spite of the fact that the representative had a fiduciary duty to maximize and protect this estate, § 75-7-301 U.C.A. (1953) (Add. 8), and is statutorily directed to manage, protect, and preserve the estate, § 75-3-708 U.C.A. (1953) (Add. 8). If one looks through the haze created by this lengthy billing statement, the fact becomes abundantly clear that the Respondent knew that none of the heirs would recover anything in this estate and he and his counsel protested, objected, and fought every action, motion, or proceeding with no expectation of payment from the Respondent. They set out on a course to extend this estate for legal fees to deprive the creditors of any compensation. They were looking to the estate for payment yet the work they did did not accrue to the benefit of the estate but simply depleted its assets.

Similar circumstances arose in the case of *In re. Smith's Estate*, 149 Mt. 362, 426 P.2d 575 (1967). In this action, the asset of the estate was a ranch which sold for \$286,000.00. Because of delays in administration, the sales price was not paid for two years. The inventory was not filed on time and the amended inventory was inadequate. After an initial hearing to remove the personal representative, he was maintained in office but was instructed to accomplish the work of the estate. At a second hearing, the personal representative was removed because: a) mismanagement of the estate and neglect of duty; b) he failed to render accountings and inventory; c) he failed to provide any information requiring court orders; and d) delays caused the estate hardship. This is almost analogous to the situation in this instance. The holding in that case set the attorney's fees at \$7,000.00.

It should be emphasized that not only did the actions of the Respondent not benefit the estate, the creditors expended \$20,000.00 in correcting and supervising the Respondent, yet the estate is still not complete. Assuming the information can be obtained from the Respondent, there are going to be additional fees now payable by the estate to complete its administration.

Point 3

THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING LITIGATION EXPENSES TO THE RESPONDENT FOR COPYING, TELEPHONE CHARGES, AND PROFESSIONAL SERVICES.

The trial court awarded the Respondent a total of \$4,477.24 as “costs” to be reimbursed by the estate. Those “costs” are as follows:

1. “Professional services rendered during December 1986 (T. p. 306). This has something to do with the wrongful death action, not legal fees \$3,604.00
2. Copying costs (T. pp. 259-61; 278-9; 305-6) \$ 618.35
3. Filing fee for Answer and Counterclaim (T. p 259) \$ 30.00
4. Long distance charges (T. pp. 261; 278-9) \$ 7.89
5. Witness fees regarding the probate (T. p. 260) \$ 18.50
6. Witness fees for seven witnesses in the wrongful death defense. Only one person was identified (T. p. 305-6) \$ 110.90
7. Jury fee for wrongful death act (T. p. 305) \$ 50.00
8. Postal charges (T. p. 279) \$ 3.30

The only litigation which was completed in this action was the wrongful death action which resulted in summary judgment as to liability and judgment and damages in excess of \$450,000.00. The McGrath case was settled by new counsel and the probate will be completed by new counsel.

This Court has recently reviewed the allowance of costs in *Morgan v. Morgan*, 137 Ut. Adv. Rep. 35 (June 29, 1990). This Court stated at page 36:

The Utah Supreme Court has defined costs to mean “those fees which are required to be paid to the court and to witnesses, and for which the statutes authorize to be included in the judgment”. *Frampton*, 605 P.2d at 774. Thus, witness fees, travel expenses, and service of process expense are chargeable only in accordance with the fee schedule set by statute . . . witness compensation in excess of the statutory schedule is generally inappropriate as a cost, *Frampton*, at 774.

Using the probate statute, the Respondent has attempted to obtain reimbursement for costs to which he would not be otherwise entitled. Buttressing the abuse of discretion, in the award of these costs is the fact that payment of these costs will be subtracted from the available proceeds to pay the judgment of the party that prevailed in the litigation, i.e., the estate of Dawana Quinn. The prevailing party is, in effect, paying the losing party its costs and attorney’s fees. This is in a case where liability was decided as a matter of law and substantial damages awarded yet the prevailing party must pay.

The award of these costs as “reimbursement” to the Respondent was an abuse of discretion. Any amounts awarded should be to reimburse the personal representative for necessary and beneficial expenditures. *Dennett v. First Security Bank*, 21 Ut.2d 5, 439 P.2d 459 (1968). See also *Frampton v. Wilson*, 605 P.2d 771 (Utah, 1980). Since Respondent’s had no obligation to pay or assume these costs (T.

pp. 17, 22), the estate cannot be looked upon to compensate him for a nonexistent obligation.

Point 4

THE COURT'S FAILURE TO ENTER FINDINGS OF FACT AND CONCLUSIONS OF LAW CONSTITUTES REVERSIBLE ERROR.

The Order of the trial court (p. 325, Add. 1) orders compensation of \$56,145.24. No findings of fact or conclusions of law explaining the rationale behind this award were stated.

There are at least eight factors which should be considered in the award of legal fees. *Cabrera v. Cottrell*, 694 P.2d 622 (Utah, 1985). Failure to enter adequate findings is reversible error. *Ostler v. Ostler*, 789 P.2d 713 (Ut. Ct. App. 1990). This deficiency in the trial court's award is magnified in light of the fact that, approximately one year earlier, the same judge had removed the Respondent for dissipating the estate by means of exorbitant legal costs (R. p. 190, Add. 2).

In *Acton v. Deliran*, 737 P.2d 996 (Utah, 1987), this Court stated at page 999:

* * * Failure of the trial court to make findings on all material issues is reversible error unless the facts in the record are "clear, uncontroverted, and capable of supporting only a finding in favor of the judgment".

See also, *Allred v. Allred*, 141 Ut. Adv. Rep. 14 (1990); *Cabrera v. Cottrell*, 694 P.2d 622 (Utah, 1985); *Parents Against Drunk Drivers v. Greystone*, 129 Ut. Adv. Rep. 45 (1990).

Failure to enter findings and conclusions deprives this Court of the ability to review the decision of the lower court and requires reversal of the judgment.


IX.

CONCLUSION

Appellant requests that this Court reverse the judgment of the trial court awarding legal fees and costs to Respondent. The evidence adduced does not support a contractual, statutory, or evidentiary basis for this award.

In the alternative, this judgment should be reversed and remanded for entry of proper findings of facts and conclusions of law.

RESPECTFULLY submitted this 19 day of September, 1990.



Robert Felton

Noel S. Hyde
Chris L. Schmutz
NIELSEN & SENIOR
1100 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84147
Telephone: (801) 532-1900

DEC 19 1989

For Rust

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

In the matter of the Estate of)	ORDER FOR COMPENSATION OF
FENTON GLADE QUINN (deceased))	ATTORNEYS AND REIMBURSEMENT
)	OF EXPENSES IN ESTATE
)	LITIGATION
)	
)	843900547 ²⁵
)	Probate No. P84547
)	
)	Judge Scott Daniels
)	

The Petition for Compensation of Attorneys and Reimbursement of Expenses in Estate Litigation (hereinafter referred to as "Petition"), which was filed herein by Nielsen & Senior, the attorneys for Fenton G. Quinn, Jr. as former personal representative of the above-captioned probate estate, was heard before the undersigned, pursuant to notice, on November 7, 1989. Chris L. Schmutz represented Nielsen & Senior, and Robert Felton represented Kip Quinn as successor personal representative. Exhibits were offered and received in evidence, witnesses were sworn and testified, and the Court heard oral argument from each party.

The Court having fully considered the Petition, as well as the evidence and the arguments at the hearing, and all the pleadings and other documents in the file, and the Court being

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fully advised in the premises, and good cause appearing therefor,
it is hereby

ORDERED that Kip Quinn, as successor personal representative of the estate of Fenton Glade Quinn, pay to the law firm of Nielsen & Senior, from available assets and funds of the above-captioned estate, the amount of \$51,668.00 as compensation for professional services and the amount of \$4,477.24 as reimbursement for costs incurred, for a total payment of \$56,145.24, which payment shall have priority as a cost and expense of administration under Utah Code Annotated Section 75-3-805(1)(b), from available assets and funds of the above-captioned estate.

DATED this 10th day of ^{Dec}November, 1989.



Scott Daniels, District Judge

Robert Felton, 1056
310 South Main, Suite 1309
Salt Lake City, Utah 84101
Telephone: (801) 359-9216
Attorney for Kip Quinn, Personal
Representative of the Estate of
Dawna W. Quinn

THIRD DISTRICT COURT
Third Judicial District

MAR 6 1989

SALT LAKE COUNTY
By Karen B. [Signature]
Deputy Clerk

**In The Third Judicial District Court
Salt Lake County State of Utah**

In the Matter of the Estate of:

FENTON GLADE QUINN,

Deceased.

)
)
)
)
)
)

ORDER

Probate No. P84-547

843900547

* * * * *

This matter came on for hearing before the Honorable Scott Daniels, Judge of this Court on the 10th day of January, 1989. The matter before the Court was the Petition for Removal of Fenton Quinn, Jr. as Personal Representative of the Estate of Fenton Glade Quinn. Kip Quinn appeared in person and was represented by counsel Robert Felton. Fenton Quinn, Jr. was present and represented by Chris Schmutz of the firm of NIELSON & SENIOR. Testimony was presented and evidence introduced and based thereon this Court enters its ORDER as follows:

1. Because of the pending appeal there is an inherent conflict of interest between the Estate of Fenton Glade Quinn and Kip Quinn acting as personal representative and, therefore, the request to appoint Kip Quinn as successor personal representative is denied..

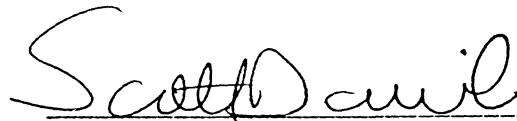
2. It appears to the Court that the personal representative may have improvidently incurred legal expenses and costs which approximate \$73,000.00 at the present time. There now exists the substantial likelihood that there will be little or nothing remaining for the heirs or creditors and the personal

representative may not act in the best interest of the Estate and he should be removed pursuant to the terms of § 75-3-611(2)(a) U.C.A. (1953 amended 1975). (Subject to the Stipulation or appointment of a successor representative.)

3. Fenton Quinn, Jr. may continue to serve as personal representative of this Estate subject to a successor personal representative being agreed upon by the parties hereto. In the event a successor personal representative cannot be agreed to by the parties, either party may petition this Court to appoint said successor personal representative and shall submit the names and addresses of potential nominees with their motion for appointment. In the event a successor cannot be agreed upon, this Court shall appoint a successor.

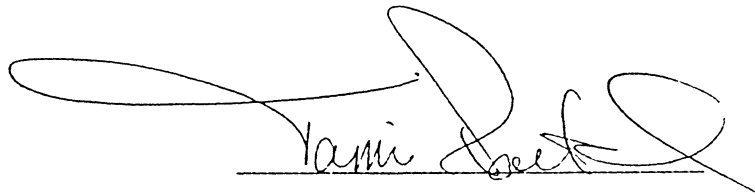
DATED this 6 day of January, 1989.

By the Court:

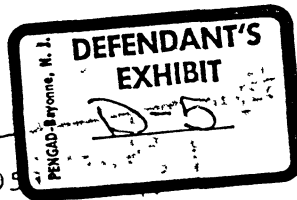

Scott Daniels, Judge

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing ORDER by United States first-class mail, postage prepaid to Chris Schmutz, Attorney at Law, P.O. Box 11808, Salt Lake City, Utah 84147 on the 25 day of January, 1989.


Yami Beck

Robert Felton, 1056
George H. Specialer, 309
5 Triad Center
Suite 585
Salt Lake City, Utah 84180
Phone: (801) 359-9216
Attorney for Plaintiffs



FILED IN CLERKS OFFICE
Salt Lake County Utah

DEC 27 1985

H. Dixon Hinkley Clerk of Court
By [Signature] Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

KIP QUINN, Personal Repre-
sentative of the Estate of
Dawna W. Quinn and THE ESTATE
OF DAWNA W. QUINN,

Plaintiffs,

vs.

THE ESTATE OF FENTON GLADE
QUINN and FENTON QUINN, JR.,
the Personal Representative
of the Estate of Fenton Glade
Quinn,

Defendants.

PARTIAL SUMMARY JUDGMENT

Civil No. C-85-165A
Judge John Rokich

This matter came on for hearing before the Honorable John
Rokich, Judge of the above-entitled Court on the 3rd day of
December, 1985 at the hour of 10:00 a.m.

Robert Felton appeared on behalf of the Plaintiffs and the
Defendants were represented by Joy L. Sanders of the law offices
of SNOW, CHRISTENSEN & MARTINEAU. B. Kent Ludlow of the law
offices of NIELSON & SENIOR also appeared on behalf of the
Defendants.

The matter before the Court was the Motion for Partial
Summary Judgment made on behalf of the Plaintiffs pursuant to
Rule 56 of the Utah Rules of Civil Procedure that the Defendants
were, as a matter of law, liable to the Plaintiffs on the ground

CCC13

That there was no genuine issue of fact that Fenton Glade Quinn did unlawfully take the life of Dawna W. Quinn.

Counsel for Plaintiffs and Defendants argued the matter before the Court and the Court, having heretofore made a ruling as to the negligence allegation of Plaintiff's Complaint took the matter under advisement. The Court having heard the arguments of counsel, having reviewed the pleadings and having read the depositions which were published in support of the Motion and for good cause appearing now enters its Order as follows:

1. The Court finds that there is no genuine issue of material fact as to the liability of the Defendants in this action.

2. Fenton Glade Quinn, Deceased, did, on or about May 23, 1984 unlawfully take the life of Dawna W. Quinn.

Pursuant to Rule 56 of the Utah Rules of Civil Procedure Plaintiffs are entitled to and are hereby awarded Partial Summary Judgment against the Defendants as to the issue of liability.

All issues as to the amount of damages are reserved until trial.

DATED this 21 day of December, 1985.

By the Court:

John A. Rokich
Judge John Rokich

ATTEST

H. DIXON HINDLEY

CLERK

MAILING CERTIFICATE

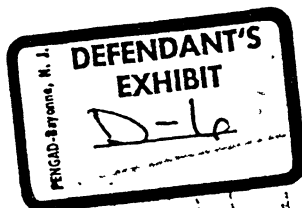
By

W. D. H. H. H.

Deputy Clerk

I certify that I mailed a true and correct copy of the foregoing PARTIAL SUMMARY JUDGMENT postage prepaid, to B. Kent

Robert Felton, 1056
5 Triad Center
Suite 585
Salt Lake City, Utah 84180
Phone: (801) 359-9216
Attorney for Plaintiff



FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

FEB 9 1 04 PM '87

H. DIXON HINDLEY CLERK
3RD DIST. COURT
BY *Charles Amon*
DEPUTY CLERK

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

wit

KIP QUINN, Personal
Representative of the Estate
of Dawna W. Quinn and THE
ESTATE OF DAWNA W. QUINN,

Plaintiffs,

vs.

THE ESTATE OF FENTON GLADE
QUINN and FENTON QUINN, JR.,
Personal Representative of
the Estate of Fenton Glade
Quinn,

Defendants.

BA 212 NO. 3851
2-10-87 - 8:08 a.m.

JUDGMENT

Civil No. C85-165A
Judge John Rokich

This matter came on for jury trial on the 16th day of
December, 1986, the Honorable John Rokich presiding.

Robert Felton appeared for and on behalf of the Plaintiffs
and the Defendants were represented by Richard Hincks and Chris
Schmutz.

Upon conclusion of the evidence the Court required the jury
to return a special verdict pursuant to Rule 49 of the Utah Rules
of Civil Procedure. The jury did thereafter return its special
verdict and in accordance therewith judgment is hereby entered in
favor of the Plaintiffs and against the Defendants as follows:

1. Judgment for economic loss \$101,293.00
2. Judgment for funeral expenses \$3,200.00

3. Judgment for value of loss of society, \$346,983.00
love, companionship, affection and protection

TOTAL \$451,476.00

Signed under the direction of the Court and in accordance
with the verdict of the jury this 6 day of February, 1987.

By

John A. Bokun

~~Clerk~~

Judge

ATTEST

H. DIXON HINDLEY

CLERK

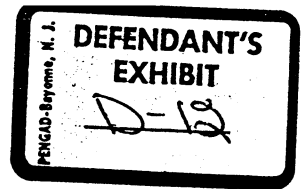
BY

Charles Hindley

Deputy Clerk

IN THE UTAH COURT OF APPEALS

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Kip Quinn, Personal)
Representative of the Estate)
of Dawana W. Quinn; and the)
Estate of Dawana W. Quinn,)
Plaintiffs and Respondents,)
v.)
Estate of Fenton Glade Quinn;)
and Fenton Quinn, Jr.,)
Personal Representative of the)
Estate of Fenton Glade Quinn,)
Defendants and Appellants.)

OPINION
(For Publication)

Case No. 880504-CA

FILED

APR 18 1989
Gary T. Noonan
Gary T. Noonan
Clerk of the Court
Utah Court of Appeals

Third District, Salt Lake County
The Honorable Timothy R. Hanson

Attorneys: B. Kent Ludlow, Richard K. Hincks, Chris L. Schmutz,
Salt Lake City, for Appellants
Robert M. Felton, Salt Lake City, for Respondents

Before Judges Garff, Greenwood, and Jackson.

JACKSON, Judge:

Defendant Fenton Quinn, Jr. ("Fenton"), personal representative of the estate of Fenton Glade Quinn, appeals from a judgment awarding wrongful death damages in an action filed by plaintiff Kip Quinn ("Kip"), personal representative of the estate of Dawana Quinn. We affirm.

FACTS

Dawana Quinn died from a gunshot wound inflicted by her husband, Fenton Glade Quinn. He died immediately thereafter as the result of a self-inflicted gunshot wound. Theirs was a

the estate of the decedent and making distribution to his successors." Utah Code Ann. § 75-1-102(1), (2)(c) (1978). The relationship between identical provisions of the Colorado Probate Code was analyzed in Strong Bros. Enters. v. Estate of Strong, 666 P.2d 1109 (Colo. Ct. App. 1983). After stressing the need to observe strictly the time limitations applicable to the filing of claims against an estate, the Colorado court held that

similar strict construction of the statute specifying the manner in which claims are to be presented . . . is not necessary to promote the purposes of the Probate Code and, indeed, would exalt form over substance to the detriment of legitimate claims without any corresponding furtherance of the goals of speedy and efficient distribution.

Id. at 1111. See also Tangren v. Synder, 13 Utah 2d 95, 368 P.2d 711 (1962) (applying liberal construction rule to requirements of the content of a claim against estate under prior statute).

In Dementas v. Estate of Tallas, 764 P.2d 628 (Utah Ct. App. 1988), the claim filed was for \$50,000 pursuant to a document executed by the deceased which was appended to the claim. The estate's personal representative argued that the claim gave adequate notice of a quantum meruit theory but not of an "account stated" theory of recovery. We rejected this unduly restrictive view of the requirements for presenting valid claims, noting that the last part of section 75-3-804(1)(a) itself disavows undue precision in the framing of such claims. Id. at 630. Dementas's claim was found sufficient under the statute when measured against a "notice-pleading" standard that would have applied if he had chosen to proceed directly with a court action under section 75-3-804(1)(b). Id. "If a claim acquaints a personal representative with a specific amount allegedly due and the general nature of the obligation, the purpose of the statute has been satisfied." Id.

Here, Kip's written claim for \$650,000 stated, with our emphasis, "The basis of this claim is that on or about May 24, 1984, Fenton G. Quinn caused the death of Dawana W. Quinn and that said action was done in a willful and malicious manner with the premeditated attempt to cause the death of Dawana W. Quinn." It also stated that the exact amount of the claim "as

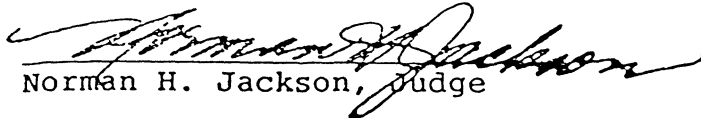
We hold that Kip's claim was sufficient for purposes of section 75-3-803 and section 75-3-804(1)(a) insofar as it gave Fenton fair notice that the estate was facing a sizeable tort claim, that the basis of the \$650,000 claim was the death of Dawana at the hands of Fenton Glade, and that a trial would be necessary to fix the exact amount of liability if he decided not to approve or compromise the claim. Fenton, as personal representative, had those facts to take into account as he acted on all claims, thus furthering his speedy and efficient administration and distribution of the estate.² Because he was adequately advised of the basis of this claim and the likely amount, he could make an informed decision concerning the effect his action on it would have on the administration of the estate as a whole. Sections 75-3-803 and -804 should be applied to facilitate settlement of estates without unduly restricting the rights of timely claimants who in good faith endeavor to comply with the requirements of the statute.

CLAIMANT'S NAME AND ADDRESS

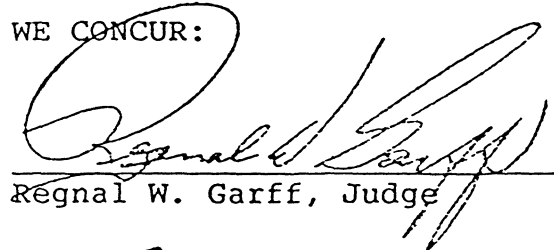
Fenton's second argument is that Kip did not sufficiently indicate the name and address of the claimant, as required by section 75-3-804(1)(a), because Kip presented the claim in his capacity as personal representative, without naming each individual heir of Dawana's estate. He contends that a wrongful death action must be brought in the names of the heirs; thus, they should have been named or identified in Kip's claim. However, the so-called wrongful death statute, titled "Death of Adult--Suit by heir or personal representative," specifically provides that a damage action against a person who causes the death of an adult may be maintained by the decedent's "heirs, or his personal representatives for the benefit of his heirs." Utah Code Ann. § 78-11-7 (1987) (emphasis added).

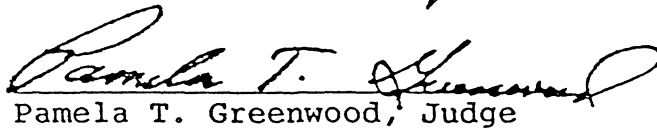
2. Furthermore, as the Colorado court noted in Strong Bros., 666 P.2d at 1112, the information known by the personal representative beyond that contained in the claim itself was relevant to the sufficiency of the notice provided by the claim: "While the letter to the attorney of the personal representative may not have been sufficiently clear to explain the nature of the claim to a stranger to the transaction, we are not dealing with such a situation here." Id. Likewise, Fenton had as much essential information as Kip concerning Dawana's wrongful death and the factual foundation for the claim, and he had personal knowledge of her heirs.

The judgment of the trial court is affirmed.


Norman H. Jackson, Judge

WE CONCUR:

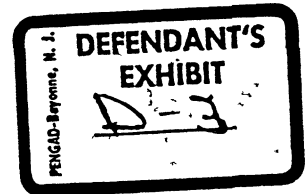

Regnal W. Garff, Judge


Pamela T. Greenwood, Judge

NIELSEN & SENIOR
1100 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111

Client No. QU365

Fenton Quinn
2601 Rustic Roads Drive
South Jordan, Utah 84065



05/31/84	.5	Research re: Simultaneous death effect on house.
06/01/84	1.0	Conference re: intestacy devolution.
06/02/84	.5	Conference re: probate proceedings.
06/04/84	3.0	Prepare Petition, Order and Acceptance.
06/05/84	1.0	Proof and correct Petition, Acceptance, Nomination and Renunciation and Order.
06/06/84	1.0	Search status of house title at County Recorder's Office.
06/06/84	.5	Conference with Fenton re: probate.
06/11/84	1.0	Conferences and filing Probate Opening Documents.
06/15/84	.5	Conference with Fenton and contact Howard Landa re: Penny McGraft.
06/21/84	.5	Conference with Fenton.
06/26/84	1.5	Review request for notice from Mr. Speciale and conference with Mr. Felton, prepare Notice to Creditors and prepare for hearing.
06/27/84	3.0	Complete preparation for hearing and appear re: hearing on Petition, Prepare letters of Administration and Notice to Creditors.
07/05/84	.5	Review letter and forms from Speciale re: Donna Quinn Estate.
07/11/84	1.0	Conferences with Fenton Quinn and George Speciale re: Dawna Quinn's Will and Bond Waivers.
07/13/84	1.5	Review information from George Speciale and conference with Fenton and research re: diminished capacity.
07/16/84	.3	Conference re: Autopsy report and Police report.
07/16/84	1.0	Consider stipulation concerning order of death of Dawna and Glade.
07/25/84	.3	Review claim against estate from Yengich.
07/27/84	1.0	Conference re: sale of vehicle and accounting.
07/30/84	2.0	Travel to Clerk's office and review Dawna W. Quinn probate file including Petition for Probate re: allegations of survivorship and conference with Fenton re: bond request.
07/31/84	2.0	Review Dawna Quinn's Will and consider request for bond and conferences with Fenton; review requirements for interested party.
08/01/84	2.0	Appear at Court re: Dawna Quinn Petition and Will Probate.

08/09/84	2.0	Review claim from Dawna's Estate, conference with Joyce.
08/13/84	.3	Conference re: sale of Cadillac.
08/18/84	.7	Conferences with Fenton and Joyce Quinn re: Notice of Hearing, Objection and Creditor's Claims.
08/23/84	.7	Conference re: claim by Dawna's Estate and Bank request of auto surrender.
08/24/84	2.7	Conference with Chase Manhattan Representative re: claim; consider defense against Wrongful Death Action and review insurance coverage and claims.
08/24/84	1.0	Attorneys conference concerning cause of action for wrongful death and insurance problem.
08/28/84	.8	Conference with Personal Representative re: objection to Dawna Quinn Petition.
08/29/84	3.0	Prepare for and appear re: objection, review Police report, examine areas of discovery re: Dawna Quinn Petition.
08/29/84	1.0	Conference re: trial setting and continuance and conference with Fenton re: jewelry
08/30/84	1.0	Conferences with Fenton and Capital City Bank re: release of lien on Cadillac and payout.
08/31/84	.8	Conferences with Personal Representative and Robert Felton re: car theft.
08/31/84	1.5	Conferences with Fenton and Sheriff's Office re: stolen car and reobtaining possession and contact County Attorney and conference with Fenton.
09/04/84	1.0	Conference with Fenton re: offer from Dawna's children and effect of code provisions on respective estates.
09/04/84	2.0	Prepare Motion for Continuance and contact Court re: hearing and prepare Notice of Hearing; conference with Fenton and Joyce and review coroner's report; conference with United Pacific Insurance Company.
09/04/84	1.0	Review correspondence re: Discovery and Petition for Special Administration.
09/05/84	.5	Conference with Glen Stringham re: insurance claim and defense of action.
09/06/84	.7	Conferences with County Attorney and Fenton Quinn re: car theft and recovery.
09/06/84	2.0	Review alternatives to answer and draft response to Petition.
09/07/84	2.0	Draft First Set of Interrogatories, Stipulation and Order re: Sheriff, County Attorney and Medical Examiner's Office.
09/07/84	4.5	Proof and correct documents, review Notice of Hearing re: Supervised Administration; conference with Fenton re: proposed documents and finalize same and forward to opposing counsel; preparation for hearing and research re: authority for position.
09/11/84	.3	Conference re: hearing.
09/12/84	2.5	Prepare for appearance re: Motion for Continuance and Petition for Supervised Administration.

09/13/84	2.0	Prepare for and court appearance re: hearing on Motion to Continue Trial Date and Motion for Supervised Administration.
09/14/84	.5	Review claim for personal injury against estate and contact PR.
09/17/84	2.0	Conference with Fenton re: time of deposition, contact Robert Felton re: changing date, conferences with Richard Shepherd, Lt. Ben Forbes, and Medical Examiner re: review of records, obtain certified copies of Order.
09/19/84	2.0	Conferences with Probate Clerk and Judge Daniels re: Order re: release of information and conference with Lt. Forbes re: Sheriff's investigation.
09/19/84	.5	Review proposed Answers to Interrogatories.
09/21/84	.3	Conference with Court re: locating order and obtain certified copies.
09/24/84	1.0	Research re: form and parties to claim for wrongful death and review insurance statement.
09/25/84	.5	Conference re: deposition and letter to Pacific Reliance re: defense.
09/26/84	3.5	Prepare for and appear re: Fenton Quinn deposition; conference re: witnesses and facts re: double suicide.
09/28/84	.5	Review Motion for Restraining Order and Notice of Hearing.
10/01/84	.5	Review signed Answers to Interrogatories.
10/02/84	1.4	Conference re: Aunt's testimony and prepare Request for Production of Documents and Request for Medical Release.
10/04/84	2.0	Proof and correct Request for Production of Documents, prepare for hearing re: Restraining Order and review Quinn Deposition.
10/05/84	2.0	Conference with Lt. Forbes re: pictures, appear re: Pre-Trial and Motion for Restraining Order.
10/09/84	1.0	Consider insurance and review code re: disposition of insurance on Dawna with Glade as beneficiary.
10/10/84	1.3	Conference with Clerk re: claims filed with Court, review effect of failure to sign claim and contact claimants re: security instruments securing claims.
10/11/84	.3	Contact Tony Eyre re: documentation of Citizen's claim.
10/17/84	1.5	Conference with Forbes re: condition of swimsuits, bloody towel, blood on sheets and review pictures.
10/18/84	1.0	Conference re: review of Fenton Quinn deposition and execution of same.
10/19/84	1.0	Review Menlove Complaint and examine Statute of Limitations.
10/22/84	2.5	Conference with Court re: date of filing of Menlove Properties Complaint; conference with Menlove's attorney re: voluntary withdrawal of Complaint and facts; review Requests for Admissions and Interrogatories from Kip Quinn.

10/23/84	6.0	Research re: Wrongful Death and Personal Injury claims and analyze defenses based on claims as presented.
10/23/84	1.0	Conference regarding interpretation of the survivorship of claims statute and wrongful death statute.
10/24/84	1.5	Complete research re: claims and obtain legal description on home from county.
10/24/84	1.0	Review security documents supporting Capital City Bank claim and conference with Brad Rich re: substantiation of Yengitch claim.
10/25/84	.5	Conference with PR re: interviews and marshalling assets.
10/29/84	1.5	Review Sentry Life Policy and application of Utah Code re: payee and prepare letter re: Complaint withdrawal re: Menlove action.
10/30/84	1.0	Letters to Insurance Companies re: coverage and claims procedure; conference with Mr. Morgan re: Menlove Complaint.
10/30/84	1.0	Conference with Mr. Raymond re: Defense by Insurance Company of Menlove and Dawna claims, forward information; proof and correct letter re: insurance claim.
11/05/84	1.5	Review second set of Interrogatories; conferences with Raymond Berry and Stephen Morgan re: Menlove action, contact Continental Insurance Agency re: coverage.
11/06/84	.8	Conference with Steve Morgan re: extension to file answer and draft letter confirming same.
11/06/84	.7	Contact Continental Insurance and review rules re: Production and relevancy of Interrogatories.
11/08/84	1.5	Review response to Request for Production of Documents and review policy information.
11/09/84	.5	Conference re: answers to interrogatories from Dawna's Estate.
11/14/84	.5	Conference with Robert Felton re: copies of full policies.
11/19/84	1.5	Draft Response to Requests for Admissions and Interrogatories.
11/20/84	.6	Conference with Robert Felton re: continuance due to hospitalization and copies of insurance.
11/20/84	.5	Review Autopsy re: negligence.
11/26/84	2.5	Conference with Fenton Quinn re: Responses to Requests for Admissions and Interrogatories; results of discussion with Penny McGrath; Home Owner's Insurer at time of Sojourner fire and review Tax Returns and Micheal re: treating Drs.
11/27/84	.5	Forward Discovery replies.
11/30/84	.3	Conference with Yengitch office re: copies of billings to support claim.

12/03/84	3.0	Prepare claim disallowances re: claims filed for Estate of Dawna W. Quinn; prepare Notice of Deposition and Subpoena re: Kelly's deposition; prepare Response to Second Set of Interrogatories; prepare Motion to Dismiss and Notice of same; conference with Fenton re: claim disallowance.
12/03/84	.3	Conferences re: motion to dismiss.
12/04/84	1.0	File claim disallowances with Court and forward to Claimants and Claimant's counsel; contact court re: hearing on Motion to Dismiss.
12/05/84	1.0	Prepare Notice of Hearing on Motion to Dismiss and cause same to be filed and served and contact Northwestern National Insurance re: Menlove action re: Homeowner's.
12/05/84	.5	Conference with Lt. Forbes re: copies of pictures and testimony.
12/06/84	.5	Review Notice of Deposition and Subpoena; review statute on witness fees.
12/06/84	2.5	Preparation for hearing on Motion, revise Affidavit, conferences with Fenton re: Stipulations to Election against Will; Dawna's polycys and severance of home and execution of Affidavit, delivery, notice of deposition for Kelly Quinn and review information re: Yengitch claim.
12/10/84	1.5	Conference with opposing counsel re: code interpretation and changing date of deposition; change deposition date; conference with Kelly Quinn re: change of deposition for his convenience; review comments to applicable code provision.
12/12/84	1.5	Conferences with Fenton Quinn re: deposition areas of discussion; with Speciale re: Friday hearing and with Court Clerks re: reason Motion not on Calendar and getting same on calendar.
12/13/84	1.7	Conference regarding liability of estate and construction of felonious killing statute.
12/13/84	1.5	Contact Sheriff's Department re: picture copies
12/13/84	4.3	Preparation for Kelly Quinn Deposition and taking of deposition and preparation for hearing on Motion to Dismiss.
12/14/84	1.0	Complete preparation for hearing re: Motion to Dismiss.
12/14/84	2.5	Appear at Law and Motion Argument re: Motion to Dismiss.
12/17/84	.8	Conferences with Lt. Forbes re: pictures; court re: striking trial date, and counsel for Pacific Reliance re: appearance and dismissal.
12/19/84	.3	Conference with George Speciale re: Order.
12/26/84	1.0	Prepare Order Dismissing Petition of Kip Quinn and review letter from Sentry Life.
12/26/84	.5	Prepare response to Sentry Life.
12/27/84	.8	Final review of Order and forward to George Speciale.

01/03/85	.5	Conference with George Speciale re: Order and Stipulation.
01/08/85	1.0	Review Kelly's deposition.
01/10/85	2.0	Review letter from Felton re: Order and review complaint re: wrongful death and consider methods of defending against and complete review of Kelly's deposition.
01/11/85	1.0	Determine response to letter re: Order and conference with Fenton Quinn re: Lawsuit and Order.
01/11/85	1.5	Prepare response to inquiry from Felton re: Judge Daniels' Order and our Stipulations and consider defenses to wrongful death action.
01/14/85	1.0	Final draft of letters detailing position on joint tenancy and claims in light of wrongful death action and Order.
01/15/85	.3	Conference re: Yengitch claim.
01/25/85	.5	Review letter re: Order and house sale; contact Fenton.
01/29/85	.3	Contact Felton re: home and Fenton.
01/30/85	1.3	Conference with Fenton Quinn re: home sale and service of process re: lawsuit; conference with Court Clerk re: filing of lawsuit and examine limitations; conference with George Speciale re: home sale.
01/31/85	.3	Conference with Fenton and contact New York attorney.
02/01/85	1.0	Research re: extension of time to file Estate Tax Return.
02/05/85	.3	Order extension form re: Federal Estate Tax.
02/07/85	.3	Conference with Fenton re: Wrongful Death Action and Chase Manhattan claim.
02/11/85	.8	Conferences with Attorney re: Chase Manhattan and with Fenton re: Club sale and note due.
02/12/85	.3	Conference re: Club sale and note.
02/13/85	.4	Conference with Fenton re: estate assets re: Estate Tax.
02/14/85	.3	Review letter from opposing counsel.
02/19/85	.3	Conference re: Club and sale of house.
02/23/85	.5	Conference re: Wrongful Death action.
02/25/85	.4	Conference re: change in place of burial and taking possession of personal assets in home.
02/26/85	.5	Review correspondence re: Club sale and conference with Fenton.
03/04/85	.3	Conference with Fenton re. proceedings.
03/04/85	.8	Telephone conference with Fenton Quinn regarding preparation for hearing on objection to claims.
03/05/85	.3	Conference with Fenton.
03/07/85	1.0	Research re: response to Complaint.
03/08/85	3.0	Research re: Survival vs. Wrongful Death and basis for Motion to Dismiss for lack of jurisdiction.
03/11/85	1.0	Prepare Motion to Dismiss and finalize research.
03/12/85	.5	Proof and correct Motion.
03/14/85	.4	File Motion to Dismiss.

03/21/85	1.0	Conference with Airline re: Creditor Claim, calendar hearing notice, conference with Fenton Quinn re: home sale.
03/26/85	.3	Conference with Fenton re: home sale.
04/01/85	.5	Conference re: 1984 Income Tax and debt due from club.
04/05/85	.5	Conference with Fenton Quinn re: offer from Dawna's estate, etc.
04/10/85	1.5	Review lists of estate assets in possession of Dawna's children and draft letter re: demand for delivery of possession, review Article 9 re: sales of security upon default and draft letter re: accounting and notice of sale.
04/11/85	.3	Finalize demand letters.
04/12/85	3.0	Prepare for hearing re: Motion to Dismiss.
04/15/85	4.5	Appearance re: Motion to Dismiss Wrongful Death Action.
04/15/85	1.3	Research for Memo ordered by Court and conference with Fenton.
04/16/85	2.0	Work on Memo to Court in support of position.
04/17/85	1.5	Preparation of first draft of memorandum.
04/17/85	.5	Work on Memo to Court.
04/18/85	.3	Proof and revise memo.
04/19/85	.5	Revision and condensation of memorandum in support of motion.
04/22/85	2.0	Complete preparation of Memo in Support and editing of same; file Memo and deliver copies to Judge Hansen and opposing counsel per Court order.
04/23/85	.5	Delivering documents to Robert Felton.
04/23/85	.3	Follow up delivery of Memo.
04/29/85	.5	Review demand letter from Dawna's Estate and forward same to Fenton.
04/30/85	2.0	Review Response of Plaintiff's counsel and read cases cited.
05/01/85	2.0	Work on response to Plaintiff's Memo.
05/02/85	1.2	Work on response to Plaintiff's Memo.
05/02/85	1.2	Work on Memo response.
05/03/85	2.2	Finalize rebuttal memo and file same.
05/03/85	.5	Conference with Fenton re: demand letter from Dawna's children and the Club debt.
05/23/85	.3	Review Cadillac sale accounting.
05/30/85	1.5	Review Order denying Motion and examine alternatives re: appeal timing.
05/31/85	.7	Research on interlocutory appeal.
06/03/85	.4	Conference re: Interlocutory Appeal.
06/04/85	1.0	Conferences with Fenton Quinn and Raymond Berry re: Wrongful Death Action and begin preparation of Answer.
06/05/85	2.6	Prepare Answer to Complaint and Counterclaim; review proposed Order and note comments.
06/06/85	.7	Conference re: Counterclaim against Kelly Quinn and prepare letter stating objections to proposed Order.
06/10/85	1.0	Final proof of answer and counterclaim - file same and serve copies on counsel.

06/14/85	.5	Forward Complaint and Answer to insurance counsel.
06/14/85	1.0	Review response to Answer and Counterclaim.
06/17/85	1.0	Approve Order re: Dismissal as to form and prepare Objection to Certification of Readiness for Trial.
06/18/85	.3	Proof and correct Objection and forward approved copy of Order.
06/24/85	.5	Review letter from Counsel for Insurance Co. re: defense and conference with Fenton Quinn.
06/25/85	.3	Conference with Fenton Quinn re: Sojourner note.
07/02/85	1.0	Review letter from Insurance Co. re: scope of defense and consider approach re: joint defense.
07/03/85	.8	Review and consider letters re: Sojourner offer and conference with Fenton.
07/08/85	.5	Conference re: Club offer and deposition scheduling.
07/09/85	.5	Conference re: deposition dates.
07/09/85	.8	Conference with Ray Berry re: Sojourner letters and with Kathy re: deposition scheduling.
07/09/85	1.0	Conference re: offer from Penny McGrath.
07/10/85	1.5	Conference with Howard Landa and consider Partnership status of Penny's and Glade's Management Contracts.
07/11/85	1.0	Conference with Joy Sanders re: Defense of Wrongful Death Action and information needed.
07/11/85	1.0	Review documents requested by counsel for insurance company.
07/12/85	1.5	Review letter and Amended Complaint re: Menlove and letters to Insurance Companies.
07/15/85	.5	Conference with Northwestern National Insurance re: Menlove action.
07/16/85	1.0	Forward requested information to insurance counsel and review correspondence to insurer.
07/17/85	.5	Review letter from Mr. Berry re: Sojourner offer.
07/19/85	1.0	Conferences with Northwestern International and Home re: coverage and defense of Menlove action.
07/22/85	.3	Letter from Insurance Counsel.
07/29/85	.5	Review correspondence from Insurer and Insurer's counsel and forward to Fenton.
08/07/85	.5	Review answer to Menlove Complaint.
08/14/85	.6	Conference re: depositions re: wrongful death and preparation re: home issue.
08/15/85	2.5	Conference with Medical Examiner's office re: reports and records and travel to Medical Examiner's office and review records re: Dawna and Glade.
08/15/85	1.2	Preparation for depositions.
08/16/85	1.0	Deposition preparation re: claims for relief in Counterclaim.
08/16/85	1.0	Consider deposition examination of police officers and areas of inquiry.
08/19/85	2.0	Prepare examination questions for Police, Penny and Kory.
08/20/85	9.0	Depositions of Kory, Kelly and Kip Quinn and Penny McGrath and review Sojourner Club documents.

08/21/85	3.5	Depositions of Lt. Forbes and Mr. Shepherd; conference re: potential conflict due to consequences of negligence versus felonious and intentional killing.
08/21/85	1.5	Review pictures of Dawna re: pattern of bleeding; review Medical Examiners statement re: lacerations and conference re: defense strategy and witnesses.
08/21/85	1.5	Attorney conferences re: depositions and liability.
08/22/85	.5	Research re: Suicide as evidence of mental illness.
08/23/85	3.0	Research re: defense of insanity to claim of felonious and intentional action, review insurance policy.
08/26/85	2.0	Research re: insanity as defense.
09/12/85	.3	Conference with Fenton re: depositions.
09/18/85	.3	Conference with Chase Manhattan representative re: Bank card balance of Glade Quinn.
09/19/85	.5	Conference with Sears representative re: claim.
10/18/85	1.0	Conference with Joy Sanders re: Wrongful death action and review letter re: Sojourner offer.
10/18/85	.5	Review deposition notes re: areas of inquiry re: discovery.
10/21/85	1.3	Research re: Dawna's claim re: \$50,000 and statute of limitations.
10/23/85	2.2	Draft Interrogatories and Request for Production; research re: legal consequences of stipulation to waive limitations and letter to Felton responding to request re: second mortgage.
10/24/85	.7	Conference with Fenton re: bank demand re: home and examine alternatives.
10/28/85	.5	Conference re: Penny McGrath and Club debt.
10/28/85	1.3	Revise letter re: Dawna's claims re: \$50,000 and revise interrogatories and request for production.
10/28/85	.8	Final proof of Interrogatories and Request for Production, letter to Capital City Attorney re: home mortgage.
10/29/85	1.5	Research re: Bank's right of setoff re: excess proceeds from Cadillac sale.
11/01/85	.3	Conference with Joy Sanders.
11/07/85	1.5	Review Motion and Memo re: Partial Summary Judgment and conference with Joy Sanders re: response and significance of intentional versus negligent.
11/07/85	1.2	Research re: City Banks right of offset re: excess proceeds of Cadillac sale.
11/08/85	2.0	Research re: Bank's right of setoff against overage from sale of secured asset.
11/08/85	.6	Conference with Felton re: Medical Release, Motion for Summary Judgment and accounting from Club Sojourner.
11/08/85	.5	Conference with George Speciale re: home foreclosure and suit against Penny and Club.

11/12/85	2.4	Review Motions and memos re: discovery and research re: authorities cited and begin preparation of memos in opposition.
11/13/85	2.0	Complete research and finish drafts of memos in opposition to Plaintiffs' Motions.
11/13/85	.9	Revise Memo in Opposition to Motion to Dismiss or Sever.
11/14/85	1.0	Finalize Memos in Opposition to Plaintiffs' Motions re: Counterclaim and Discovery.
11/14/85	.3	File Memos in Opposition.
11/15/85	.7	Conferences with Felton and Fenton re: new note re: Bruce St. home.
11/19/85	3.5	Preparation for and appearance re: Motion to Dismiss or Sever and Protective Order re: discovery.
11/19/85	1.0	Conference with Joy Sanders re: Opposition to motion for partial summary judgment and strategy and research.
11/22/85	.3	Conference re: Sojourner records and change of bank account.
11/23/85	.5	Conference re: Penny McGrath and Club Sojourner.
11/26/85	1.0	Review Cross Motion for Summary Judgment and Memo in Support and consider response; revise Order re: Felton's Motion to Sever.
12/02/85	1.2	Review Motions and Affidavits and Deposition summaries and begin preparation for argument re: Summary Judgment.
12/03/85	3.5	Complete preparation for and appear re: Motion for Partial Summary Judgment.
12/09/85	.5	Review Consolidation Agreement re: house.
12/10/85	1.6	Review Court Order per minute entry and review alternatives available re: appeal now or after all matters re: damages are determined.
12/11/85	.5	Review law re: definition of final order or Judgment re: appeals.
12/12/85	1.5	Research re: status of partial summary judgment as a final judgment and appealability thereof.
12/13/85	.3	Review Order re: Partial Summary Judgment.
12/16/85	1.0	Consider and prepare Objections to form of Order.
12/17/85	1.0	Review consolidation agreement re: Capital City Bank, consider effect of insolvent estate and conference with Tony Eyre re: Agreement and alternatives.
12/18/85	1.0	Conference with Fenton Quinn re: status of Wrongful Death Action and meaning of Court Order and questions still open and lack of response to Discovery and Bank Loan Consolidation Agreement and problems with consolidation.
12/23/85	.5	Calendar hearing re: Motion on form of Order and begin to prepare for same.
12/30/85	2.0	Conference with Felton re: new home loan on house and court re: change in hearing date, prepare argument
12/31/85	.3	Conference with Fenton Quinn re: new loan on house.

01/07/86	4.0	Appear re: clarification of Order re: Partial Summary Judgment and effect on defenses and consider action re: home based on Order and review need for bond on appeal.
01/15/86	.5	Review answers to discovery re: counterclaim.
01/22/86	.5	Letter to Citicorp re: expiration of claim period and barred claim.
01/24/86	1.0	Review answers to interrogatories and consider motion to compel answers.
01/28/86	.3	Conference with Steve Morgan re: Menlove action.
01/29/86	1.0	Conference re: information needed re: severance of joint tenancy re: home.
01/29/86	.5	Review files re: home mortgage and relationship between Equitable Life and Western Mortgage.
02/04/86	1.0	Review notice of foreclosure re: Bruce Street and consider response.
02/05/86	.5	Conference with Court Clerk re: review of Penny McGrath's deposition.
02/11/86	.6	Conference re: compelling response to discovery and refinancing home.
03/07/86	.5	Letter to George Speciale re: new loan on Bruce Street home.
03/11/86	1.0	Review answers to interrogatories; attorney conference regarding additional discovery.
03/11/86	.5	Conference re: additional discovery re: damage claimed in Wrongful Death Action.
03/17/86	.5	Letter from Robert Felton re: Home Loan.
03/25/86	.5	Conference with George Speciale re: home and reliance re: refinancing.
03/26/86	.3	Conference with City Bank re: barred claim.
04/02/86	.6	Follow up re: foreclosure date and consider methods available to stop foreclosure.
04/09/86	1.0	Conference re: options available to stop foreclosure of home.
04/15/86	.5	Conference re: Bruce Street home foreclosure.
04/16/86	.5	Conference re: Bruce Street home and alternatives.
04/21/86	1.5	Conference re: alternatives available re: Bruce Street foreclosure.
04/28/86	.5	Conference with Fenton Quinn re: information needed re: house and jewelry litigation.
05/01/86	.5	Review notice from Bank re: house and conference re: further notice of sale.
05/07/86	.5	Review correspondence re: Bruce Street home.
05/09/86	.3	Conference with Fenton re: new notice on Bruce Street home and pressing for sale.
05/14/86	.3	Notice of scheduling conference.
05/15/86	.5	Conference re: scheduling conference and conference with Joy Sanders and get deposition copies.
05/21/86	.3	Conference with Fenton Quinn re: withdrawal of insurance company counsel.
06/02/86	.5	Conference with Fenton re: loan secured by home.
06/04/86	3.0	Summarize depositions for trial.

06/06/86	.6	Review letter re: Bruce Street home loan to pay off foreclosure and conference with George Speciale.
06/09/86	.5	Conference with Fenton re: loan on Bruce Street home.
06/10/86	.5	Conference re: scheduling conference and expected trial testimony re: damages.
06/13/86	.5	Conference with George Speciale re: Bruce Street home loan.
06/16/86	1.5	Attend scheduling conference; attorney conference re: liability.
06/16/86	1.5	Appear at trial scheduling conference.
07/08/86	.6	Letter to George Speciale re: house loan status and check file re: notice dates.
07/22/86	1.0	Conferences with Robert Felton and Fenton Quinn re: sale of Bruce Street home.
07/29/86	.3	Conference with Felton re: Bruce Street closing.
08/05/86	1.0	Brief review of Kip Quinn's expense accounting re: Bruce Street home and conference with Fenton.
08/06/86	3.7	Conference with Fenton, analyze Kip's accounting re: reimbursement of expenses, conferences with realtor, Tony Eyre and Robert Felton.
08/07/86	.3	Conference with Robert Felton re: accounting questions.
08/08/86	1.5	Conferences with George Speciale, Kip Quinn, Fenton and Weismann re: accounting and sale closing.
08/21/86	1.0	Prepare Indemnity Agreement and prepare for house closing.
08/21/86	3.0	Attend at closing and obtain execution of Indemnity Agreement.
09/03/86	.5	Conference re: Bank claims and credit report problems and review files.
09/04/86	1.5	Straighten out estate accounts with Banks and Credit Union.
10/20/86	1.0	Conference re: trial preparation; witnesses and areas to cover in trial.
10/22/86	1.0	Review Motion for Partial Summary Judgment re: damages and memo re: same.
10/22/86	.3	Attorney conference re: upcoming trial.
10/23/86	.5	Review of Plaintiffs' Motion for Summary Judgment.
10/24/86	8.2	Review of Plaintiffs' Motion for Summary Judgment on the issue of damages; legal research re: the appropriate measure of damages in a wrongful death case.
10/25/86	3.5	Legal research re: the economic loss under a wrongful death action.
10/27/86	2.0	Conference re: Motion Response, facts, Witnesses and Trial Strategy; review case cited by opposing counsel and discuss relevance and nature of claim filed.
10/27/86	6.7	Research re: appropriate standards for summary judgment; research re: economic loss in a wrongful death action; work on draft of memorandum in opposition to motion for summary judgment and in support of defendants' motion for summary judgment.

10/28/86	4.0	Research re: damages in a wrongful death case; review of answers to interrogatories and depositions; attorney conference re: witnesses at trial; work on and finalize memorandum in opposition to Plaintiff's motion for summary judgment on the issue of economic damages.
10/29/86	.3	Reviewing file documents prior to review of Dawna Quinn probate file.
10/29/86	.8	Reviewing probate records of Dawna Quinn and talking to county clerk employees about Dawna Quinn.
11/04/86	1.7	Conference with Fenton Quinn to prepare for testimony at trial.
11/04/86	1.8	Conference with Fenton Quinn re: trial preparation and evidence and witnesses for trial.
11/04/86	.8	Legal research regarding motion to exclude economist's report.
11/05/86	.7	Attorney conference re: loss of inheritance claim; conference with paralegal re: subpoenaing records.
11/05/86	3.2	Legal research regarding admissibility of economist's report.
11/06/86	2.0	Conference re: investigation needed; conference re: preparation for trial; conference re: loss of inheritance claim.
11/06/86	1.0	Conference re: settlement offer and appeal re: claim.
11/06/86	2.9	Research on economist report and review of D.O.L. Survey.
11/06/86	.6	Preparation of Subpoena Duces Tecum of bank records from Utah State Credit Union.
11/07/86	1.3	Preparation of Subpoena Duces Tecum to be served on Rocky Mountain State Bank, Salt Lake County Credit Union, Valley Bank & Trust Co., and Salt Lake County Clerk.
11/07/86	5.1	Prepare Motion in Limine and Memorandum in Support.
11/10/86	2.0	Preparation of Notices of Deposition for Rocky Mountain State Bank, Salt Lake County Credit Union, Valley Bank & Trust Co., Utah State Credit Union and the Salt Lake County Clerk and having subpoenas issued.
11/10/86	1.0	Medical research re: damages under wrongful death.
11/11/86	1.4	Reviewing files to locate telephone number for Connie Christensen; telephone call to Connie regarding Dawna Quinn's children.
11/12/86	4.0	Review evidence in case and legal research re: damages under wrongful death; general trial preparation.
11/13/86	3.7	Investigating records at S.L. County Clerk's office of employee file and payroll records of Dawna W. Quinn.
11/13/86	1.7	Attorney conference re: witnesses needed at trial; interviewing witnesses.
11/13/86	3.5	Second draft of Memorandum in Limine; review of documents at court clerk, personnel, auditor.

11/14/86	2.3	Inspection of documents in Dawna Quinn checking and savings account files at Utah State Employees Credit Union.
11/14/86	4.5	Legal research re: damages under wrongful death case, permissible defenses, and evidence.
11/14/86	.8	Plan trial preparation; set hearing on Motion in Limine.
11/15/86	2.7	Legal research re: damages under wrongful death action.
11/17/86	1.2	Analyzing savings account records of Dawna Quinn received from the Utah State Credit Union.
11/17/86	7.5	Review of depositions of all witnesses; legal research re: injuries for wrongful death action, defenses in wrongful death action; work on jury instructions.
11/17/86	2.8	Legal research regarding damages under survivor statute.
11/18/86	2.1	Legal research re: damages in wrongful death action; work on motion in limine; interview witnesses; attorney conference re: witnesses; work on trial memorandum and jury instructions.
11/18/86	5.5	Prepare and serve Motion in Limine and Memo, Notice of Hearing and Ex Parte Order.
11/19/86	.4	Telephone conference with Connie Christensen regarding health and spending habits of Dawna Quinn.
11/19/86	6.5	Legal research re: damages in wrongful death action; work on jury instructions; work on trial memorandum.
11/20/86	6.5	Meetings with witnesses to prepare testimony for trial; legal research; work on jury instructions and trial memorandum.
11/21/86	6.0	Legal research re: damages under wrongful death; work on jury instructions and trial memorandum.
11/22/86	7.7	Legal research re: damages under wrongful death action; draft trial memorandum; work on jury instructions.
11/24/86	4.0	Work on witness preparation; work on jury instructions.
11/24/86	1.2	Preparation of subpoenas for Connie Christensen and to the Records Custodian of Utah State Credit Union.
11/24/86	.5	Conference re: Economist.
11/25/86	9.0	Work on jury instructions and trial memorandum interview of witnesses in preparation for trial.
11/25/86	2.4	Reviewing documents and files at Salt Lake County Employees Credit Union and Valley Bank and Trust Company.
11/25/86	1.5	Research on per diem expenses for loss services.
11/26/86	8.0	Final preparation of trial memorandum and jury instructions; preparation of witnesses for trial; legal research re: evidence issue for trial.
11/26/86	.4	Review Felton's Jury Instructions and conference re: same.

11/26/86	1.9	Reviewing, correcting and shepardizing trial memorandum.
11/26/86	1.6	Preparation of Subpoena for Linda Aldridge and serving same; obtaining certified copy of Inventory of Dawna Quinn's estate.
11/26/86	5.5	Prepare witnesses, exhibits and summaries for trial.
11/28/86	8.2	Meeting with witnesses to prepare for trial; preparation of arguments for trial; general trial preparation; final draft of jury instructions and trial memorandum.
11/29/86	8.0	General trial preparation; conference with witnesses to prepare for trial; legal research re: evidence issues for trial; preparation of arguments for motion in limine.
12/01/86	4.5	Prepare for trial; telephone conference with Jane Scott at Utah State Credit Union; office conference with Merrill Norman at Main Hurdman; office conference with clients.
12/01/86	7.2	Preparation and research re: loss of support claim; conference with economist to prepare for loss of support claim and loss of inheritance claim; legal research re: economic loss; general trial preparation.
12/01/86	.4	Preparation of subpoena for Dr. Behrens.
12/02/86	.4	Telephone call to witnesses to advise of trial date change.
12/04/86	.3	Conference re: necessary items to prepare for trial.
12/04/86	1.2	Preparation of notices of deposition and subpoena duces tecum for Dr. Bigelow, Dr. Behrens, Dr. McQuarrie, and Dr. Ennis.
12/05/86	.7	Getting subpoenas issued and served on Dr. Ennis, Dr. Behrens, Dr. Bigelow and Dr. McQuarrie; also delivering trial subpoenas to Constable Sindt to be served.
12/09/86	1.0	Review of economic analysis study for loss of support of Dawna Quinn.
12/10/86	7.5	General trial preparation; interview of witnesses to prepare for trial; economic research to prepare for economic testimony at trial.
12/11/86	2.0	Preparation of economist on loss of support claim.
12/11/86	1.3	Review medical records; trial preparation.
12/12/86	3.0	Meeting with accountant to prepare for economic testimony; general trial preparation; preparation of witnesses for trial.
12/12/86	1.5	Trial preparation.
12/13/86	1.5	Conference with Merrill Norman re: economic analysis of financial loss claim.
12/13/86	2.0	Trial preparation.
12/15/86	5.2	Trial preparation.
12/15/86	9.0	Preparation of cross-examination and direct examination of witnesses; preparation of opening argument;; meeting with accountant to prepare for trial; economic research to prepare for trial.

11/16/86	3.0	Pre-Trial Settlement conferences.
11/16/86	25.0	Attendance at trial; meeting with economist to prepare for his testimony; meeting with witnesses to prepare for testimony; preparation of closing argument.
12/17/86	22.0	Attendance at Trial. General trial preparation; preparation of closing argument; preparation of witnesses for trial.
12/18/86	8.5	Attendance at trial; attendance at jury verdict.
12/18/86	2.0	Conference re verdict and basis for appeal re failure to file claim for wrongful death.
12/24/86	.5	Telephone conference with court clerk; prepare Notice of Appeal.
12/26/86	.9	Review of documents and correspondence regarding Sojourner Club.
12/29/86	3.9	Review all documents in file regarding Club Sojourner; review Home Insurance court file; legal research.
12/30/86	2.1	Legal research; telephone conference with Secretary of State's Office; telephone conference with Robert Felton's office.
01/06/87	2.9	Review Valley Bank records; legal research regarding partnership; telephone conference with attorney Robert Felton.
01/09/87	1.2	Legal research regarding sufficiency of Kip Quinn's claim.
02/06/87	.7	Telephone conference with attorney Howard Landa; prepare for settlement negotiations.
02/27/87	.3	Review letter from Felton re: accounting.
03/06/87	1.9	Conference regarding appeal; prepare bond and docketing statement; telephone conference with Fenton Quinn.
03/09/87	1.0	Conference with Fenton Quinn.
03/10/87	.6	Legal research regarding sufficiency of claim against estate.
03/11/87	.4	Prepare final draft and file Notice of Appeal, Cash Bond and accompanying checks.
03/18/87	.9	Prepare correspondence to attorney Howard Landa; begin organizing new file for all documents and materials regarding Penny McGrath and Club Sojourner.
03/27/87	.4	Telephone call/Fenton Quinn.
03/30/87	.5	Prepare draft of Docketing Statement.
03/31/87	.3	Prepare final form of Docketing Statement.
04/10/87	.2	Review Plaintiffs' Motion for Summary Disposition of Appeal.
04/16/87	.2	Prepare Amended Docketing Statement.
04/18/87	1.4	Review Plaintiff's Motion for Summary Disposition; legal research regarding wrongful death and survival statutes.
04/20/87	4.1	Prepare, file and serve Response to Motion for Summary Disposition.

04/27/87	.2	Review Order Denying Motion for Summary Disposition; Review appeal timetable.
05/09/87	.5	Prepare first draft of Complaint.
05/11/87	2.9	Prepare first draft of Complaint, Interrogatories, Requests for Admissions and Requests for documents.
05/22/87	3.2	Prepare and file complaint; prepare first draft of Motion for Temporary Restraining Order, Affidavit of Fenton Glade Quinn, Jr., Affidavit of Chris L. Schmutz, Order to Show Cause and Temporary Restraining Order.
05/28/87	1.5	Finish second draft of all pleadings for Temporary Restraining Order and Order to Show Cause; telephone conference with Joyce Quinn; legal research regarding admissibility of Fenton's affidavit with letters attached.
05/29/87	.2	Conference with Fenton Quinn.
06/01/87	.9	Office conference with Fenton Quinn; telephone conference with Judge Uno's clerk; finalize all pleadings for TRO and OSC.
06/02/87	1.7	Prepare for and attend office conference with Judge Uno regarding TRO and OSC; finalize, file and prepare all TRO pleadings for service.
06/04/87	.2	Conference with process server; telephone conference with Secretary of State's office.
06/08/87	.5	Telephone conference with attorney Ellen Maycock; office conference with Fenton Quinn.
06/04/87	.2	Conference with Supreme Court clerk's office regarding procedure on transcript and on Statement of Issues.
06/18/87	.8	Telephone Fenton Quinn regarding settlement proposal from Kip, Kory and Kelly.
06/22/87	.5	Conference re: settlement offer and procedure.
06/25/87	.5	Conference with Fenton re: procedure to protect him from claims of breach of fiduciary duty re: settlement.
07/10/87	.5	Conference with attorney Robert Felton; prepare and serve Stipulation for Extension of Time.
07/27/87	.3	Conference with Fenton Quinn.
08/12/87	.2	Conference with Fenton Quinn.
08/17/87	1.3	Prepare, file and serve Motion for Enlargement of Time, Stipulation for Extension of Time, Affidavit of Fenton Glade Quinn, Jr., Notice of Hearing, and correspondence to attorney Robert Felton.
08/17/87	2.4	Research for Supreme Court Brief.
08/18/87	.5	Conference regarding Appellant's Brief.
08/18/87	5.7	Research; conferences; preparation of Utah Supreme Court Brief.
08/19/87	2.6	Prepare for and attend hearing on Motion for Enlargement of Time; prepare second draft of Appellant's brief.
08/19/87	2.3	Further research on Brief; final review and modifications of Brief.

10/16/87	.3	Conference regarding preparation of Appellant's brief.
10/27/87	4.8	Additional research for Brief at Supreme Court; conference on findings; additional modifications and corrections; shepardization of cases cited.
10/27/87	.8	Work on Appellant's brief.
10/27/87	1.9	Obtaining record cites from court; further modifications of Brief; preparation of exhibits for Addendum.
10/28/87	4.1	Work on Appellant's brief.
10/29/87	2.3	Work on Appellant's brief.
10/31/87	14.2	Prepare first draft of Appellant's brief.
10/01/87	8.8	Prepare final draft of Appellant's brief.
10/02/87	2.9	Obtaining record citations and copy of jury instructions at Courthouse; review and modifications of brief.
10/11/87	2.5	Conference with Fenton Quinn regarding settlement of appeal; prepare Stipulation, Motion and Order for Dismissal; conference with Fenton regarding settlement of appeal; telephone conference with Robert Felton; prepare Consent to Dismiss Appeal.
10/11/87	1.5	Conferences re: disclosure by Personal Representative of terms of settlement and approval by creditors re: settling appeal.
10/15/87	.5	Prepare final draft of Consents to Dismiss Appeal.
10/15/87	.3	Review consents.
10/23/87	.3	Conference with Fenton Quinn regarding consents to dismiss appeal.
10/16/87	3.0	Review Club Sojourner records.
10/21/87	.1	Conference with attorney Tony Eyre.
11/02/87	1.7	Conferences with Dick Reimensberger; Mike Allen; Ned Christian - secretary at Merrill Norman's office; Club Sojourner; and attorney Robert Felton.
11/06/87	.3	Conference with Merrill Norman regarding bill for services in trial.
11/23/87	.5	Conference re: offer from Dawna's heirs and need for accounting.
11/23/87	.7	Conference with Fenton Quinn; conference with attorney Robert Felton.
11/24/87	1.5	Conference with Fenton Quinn re: settlement position and conference with Robert Felton and Kory Quinn re: settlement negotiations.
11/24/87	1.7	Conference with Fenton Quinn regarding settlement negotiations.
10/22/87	3.7	Prepare for and attend hearing on Order to Show Cause and Temporary Restraining Order; conference with attorney Ellen Maycock; conference with Fenton Quinn.
10/23/87	2.9	Preparation of Motion for Preliminary Injunction; legal research re preliminary injunction; constructive trust, and fiduciary duty of partner; review Ellen Maycock's proposed order.

06/24/87	6.9	Legal research re: fiduciary duty of partners, constructive trust, injunctive relief, Dead Man's statute, joint tenancy, and oral modification of Partnership Agreement.
06/25/87	2.8	Conference regarding amending Complaint and seeking injunction against McGrath; conference with Fenton and Joyce Quinn.
06/26/87	.5	Conference with attorney Robert Felton; correspondence to same.
06/29/87	2.0	Prepare First Amended Complaint, Motion for Leave to Amend Complaint, Motion for Preliminary Injunction prepare first draft of Memorandum in Support.
06/30/87	2.8	Prepare final draft of First Amended Complaint and all pleadings for preliminary injunction.
07/01/87	.2	Finalize, file and serve pleadings for Preliminary Injunction.
07/08/87	3.0	Prepare for hearing on Motion for Preliminary Injunction.
07/09/87	2.2	Prepare for and attend hearing on Motion for Preliminary Injunction; prepare Preliminary Injunction.
07/13/87	.3	Prepare and serve Preliminary Injunction on Ellen Maycock.
08/17/87	3.5	Prepare and serve Response to Defendant McGrath's Request for Production of Documents.
08/19/87	1.6	Prepare Interrogatories and Requests for Production and Admissions to McGrath and to Club Sojourner.
08/21/87	.2	Finalize and serve discovery requests to McGrath and Club Sojourner.
08/25/87	1.7	Conference with Fenton Quinn; prepare correspondence to Capital City Bank; prepare for and attend hearing on Club's Motion for attorney fees; send copies of Preliminary Injunction executed by Judge Uno to both parties.
08/29/87	.1	Finalize correspondence to Capital City Bank.
09/09/87	3.5	Conference regarding evidence, discovery and preparation for depositions; review unsigned agreements relied on by McGrath.
09/09/87	1.2	Contacting Department of Alcoholic Beverage Control, Attorney General's Office, and Secretary of State regarding Club Sojourner.
09/10/87	.3	Legal research regarding proof needed for oral agreement with decedent.
09/11/87	.3	Finalize and send correspondence to Capital City Bank.
09/11/87	1.4	Reviewing and copying pertinent documents concerning Club Sojourner at the State Department of Business Regulations; attorney conference.
09/15/87	1.4	Conference with Capital City Bank; conference with Tony Eyre, attorney for Capital City Bank.
09/16/87	.5	Prepare correspondence to K & K Insurance; conference with K&K Insurance; conference with Carl Riemensburger regarding accounting for Club.

09/21/87	.2	Review McGrath's discovery responses.
09/22/87	.5	Conference with James Kastanis regarding ora modification of partnership agreement.
09/23/87	.2	Review loan materials from Capital City Bank conference with Fenton Quinn.
09/24/87	.1	Conference with attorney Mike Park's office.
09/28/87	.1	Conference with attorney Mike Park.
10/02/87	.1	Conference with Marty Muhar at Club Sojourner.
10/20/87	.4	Conference with Fenton Quinn.
11/09/87	.3	Review materials from Capital City Bank and Clu Sojourner.
11/12/87	3.0	Preparation of correspondence to Fenton Quinn; preparation of Supplemental Response to McGrath' Request for Documents; conference with Fenton Quinn conference with Ned Christiansen at Peat Marwick.

TOTAL	\$63,986.48
TOTAL DISBURSEMENTS	\$ 1,118.52
EXPERT WITNESS FEE	<u>\$ 3,604.00</u>
TOTAL AMOUNT DUE	\$68,709.00

NIELSEN & SENIOR
1100 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111

Client No. QU365

Fenton Quinn
2601 Rustic Roads Drive
South Jordan, Utah 84065

11/23/87 Quinn/Probate: Conference regarding offer from Dawna's heirs and need for accounting.
11/23/87 Telephone conference with Fenton Quinn; telephone conference with attorney Robert Felton; attorney conference with Kent Lundlow.
11/24/87 Quinn/Probate: Conference with Fenton Quinn regarding settlement position and conferences with Robert Felton and Kory Quinn regarding settlement negotiations.
11/24/87 Office conference with Fenton Quinn regarding settlement negotiations.
12/15/87 Quinn/Probate: Prepare copy of work done for Robert Felton.
12/22/87 Quinn/Probate: Finalize billing for Felton.
01/27/88 Quinn/Probate: Conference and prepare attorney fee statement.
01/27/88 Attorney conference with Kent Ludlow; review Club Sojourner's discovery responses.
02/02/88 Telephone conference with Fenton Quinn.
02/03/88 Review itemized billing statement to be sent to Robert Felton.
02/05/88 Quinn/Probate: Conference regarding information requested by Felton.
02/08/88 Finalize billing statement; preparation of correspondence to attorney Robert Felton.
03/11/88 Review McGrath pleadings regarding status of Case; review attorney's fees charged by Nielsen & Senior; telephone conference with Bob Felton's office.
03/15/88 Quinn/Probate: Review documents from Robert Felton.
03/17/88 Review motion to supplement file; review Utah Supreme Court rules regarding supplementing record on appeal.
03/22/88 Review appellee's brief and motion to supplement record.
03/22/88 Prepare settlement letter to Ellen Maycock.
03/23/88 Review probate court file regarding documents included in Motion to Supplement Record on Appeal.
03/24/88 Quinn/Probate: Conference regarding claims and appeal position.
03/24/88 Attorney conference with Kent Ludlow regarding both claims not relied on by appellees and regarding preparation of Reply Brief.
03/29/88 Telephone conference with Robert Felton, attorney for appellees.

04/07/88 Preparation of stipulation, motion and order to extend time for filing reply brief.
 04/15/88 Prepare for hearing on motion to supplement record.
 04/18/88 Prepare for and attend hearing on motion to supplement record.
 05/09/88 Telephone conference with Joyce Quinn; left message for Robert Felton; attempt contact with Fenton.
 05/12/88 Preparation of stipulation to extend time for filing reply brief.
 05/13/88 Finalize stipulation and order and obtain signatures of George Speciale and Justice Hal, extending time to file reply brief.
 05/13/88 Take Motion and Order to opposing counsel for signature of Justice and filing.
 05/19/88 Telephone conference with Fenton regarding settlement with McGrath, evidence and attorney fees.
 06/08/88 Telephone conference with Robert Felton regarding settlement meeting and appeal deadlines; telephone conference with Fenton Quinn regarding same; prepare Motion, Stipulation and Order Extending Time on Reply Brief; prepare correspondence to Mr. Felton.
 06/10/88 Telephone conference with court clerk at Supreme Court; prepare affidavit for extension of time to file reply brief; telephone conference with Robert Felton's office regarding same.
 06/14/88 Quinn/Probate: Conference regarding Interim account and petition.
 06/14/88 Office conference with Fenton, Kip and Robert Felton regarding settlement.
 07/05/88 Prepare correspondence to Ellen Maycock, attorney for McGrath, and Mike Park, attorney for Club Sojourner, regarding settlement.
 07/12/88 Prepare reply brief.
 07/13/88 Finalize and file reply brief.
 07/21/88 Quinn/Probate: Conference regarding Settlement status.
 07/22/88 Telephone conference with Ellen Maycock, attorney for McGrath, regarding loan and set-off issues.
 07/26/88 Review letter from Ellen Maycock, attorney for McGrath, and research legal issues raised in letter, such as enforceability of obligation from defendants for \$50,000.00 loan, admissibility of hearsay statements of decedent, and offset for excessive withdrawals by Glade Quinn; prepare correspondence to Fenton Quinn.
 08/02/88 Telephone conference with Robert Felton, attorney for brothers; prepare correspondence to Mr. Felton; review letter and documents from Ellen Maycock, attorney for McGrath.
 08/10/88 Return call from Mike Park, attorney for Club Sojourner.
 08/15/88 Review letter from Robert Felton; telephone conference with Fenton Quinn regarding letter from Ellen Maycock and claims of Penny McGrath.
 09/12/88 Quinn/Probate: Letter from Appeals Court regarding assignment of case.

09/22/88 prepare correspondence to Robert Felton, attorney for Kip Quinn.
 10/11/88 Telephone conference with Robert Felton.
 11/02/88 Telephone conference with Janice Ray, clerk at the Court of Appeals regarding compilation of record on appeal and oral argument.
 11/07/88 Telephone conference with Fenton Quinn regarding motion to substitute personal representative and regarding status of McGrath case.
 11/10/88 Review Kip Quinn's petition to remove; prepare objection.,
 11/11/88 Conference with Chris regarding research at probate court.
 11/14/88 Telephone conference with Fenton Quinn regarding objection to Kip's Petition to Remove; telephone conferences with Robert Felton regarding hearing on petition.
 11/18/88 Went to Sale Lake County courthouse to review file and prepare index of pleadings filed with the court to assist in preparation for hearing.
 11/23/88 Attend hearing on Kip Quinn's Petition to Remove.
 11/28/88 Review Notice or Oral Argument on appeal; telephone conference with probate clerk regarding status of Petition to Remove; telephone conference with Judge Daniels' scheduling clerk to arrange telephonic scheduling conference.
 11/29/88 Telephone conference with Judge Daniels and Robert Felton regarding hearing on Petition to Remove.
 12/01/88 Office conference with Fenton regarding inventory and hearing on Petition to Remove.
 12/08/88 Review proposed order from Robert Felton.
 12/13/88 Prepare Objection to Proposed Order.
 12/15/88 Telephone conference with Fenton Quinn regarding inventory of estate.
 12/22/88 Telephone conference with Hal Ruecker, court clerk, regarding hearing date on Objection to Proposed Order; telephone conference with Fenton Quinn regarding inventory.
 12/28/88 Office conference with Fenton Quinn; prepare inventory; prepare for hearing scheduled for January 10, 1989.
 12/29/88 Prepare for hearing scheduled for January 10, 1989.
 01/03/89 Prepare supplemental billing statement for Mr. Felton.

FEES INCURRED PRIOR TO 11/23/87	\$65,414.48
FEES INCURRED SINCE 11/23/87	\$3,452.00
TOTAL DISBURSEMENTS	\$1,207.00
EXPERT WITNESS FEE	<u>\$3,604.00</u>
TOTAL AMOUNT DUE	\$73,767.48

1212z



PARTIAL INVENTORY
THE ESTATE OF FENTON GLADE QUINN

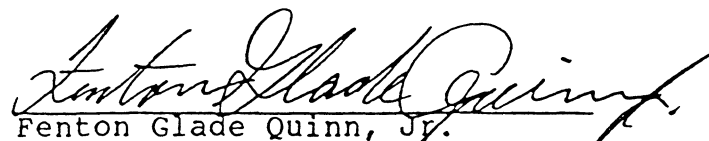
TO WHOM IT MAY CONCERN: The following constitutes a partial inventory of the estate of Fenton Glade Quinn, prepared by Fenton Glade Quinn, Jr., the personal representative of the estate.

This partial inventory represents the best efforts of the personal representative to list all the assets of the estate, and their values as of the date of the decedent's death. However, substantial amounts of personal property and valuables belonging to the decedent were removed from the decedent's residence prior to the time that the personal representative had an opportunity to inventory them.

1. Home located at 3396 Bruce Street, Salt Lake City. Subject to first mortgage in favor of Western Realty Service, with a balance of \$18,300.00; second mortgage in favor of Capital City Bank with a balance of approximately \$50,000.00, plus interest. Market value of home estimated at \$120,000.00.
2. Unimproved real property situated in Utah County, approximately 23 acres, subject to first mortgage in favor of Mooney Real Estate in an approximate amount of \$17,000.00; fair market value estimated approximately \$12,000.00.
3. Claim against Penny McGrath and Club Sojourner for Decedent's interest in Club and for loans made to Club estimated value of \$75,000.00.
4. Miscellaneous clothing, consisting primarily of shirts and suits, estimated value of \$50.00.
5. Checking account at Rocky Mountain State Bank, balance at time of death approximately \$950.00.
6. 1981 Cadillac, subject to security interest in favor of Capital City Bank, in an approximate amount of \$7,500.00; estimated market value of \$12,500.00.
7. 1979 Cheverolet Blazer, estimated value \$4,000.00.

EXHIBIT 7

8. Miscellaneous coins estimated value of \$300.00.
9. Miscellaneous records in metal file cabinet, no estimated value.


Fenton Glade Quinn, Jr.
Personal Representative of the
Estate of Fenton Glade Quinn

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ADDENDUM 8

- A.** § 75-3-703 U.C.A. (1953 as amended 1975)
- B.** § 75-3-705 U.C.A. (1953 as amended 1977)
- C.** § 75-3-708 U.C.A. (1953 as amended 1975)
- D.** § 75-3-711 U.C.A. (1953 as amended 1975)
- E.** § 75-3-712 U.C.A. (1953 as amended 1977)
- F.** § 75-3-718 U.C.A. (1953 as amended 1977)
- G.** § 75-3-719 U.C.A. (1953 as amended 1975)
- H.** § 75-3-611(2)(a) U.C.A. (1953 as amended 1975)
- I.** § 75-7-301 U.C.A. (1953 as amended 1975)
- J.** § 78-2-3(2)(j) U.C.A. (1953)

33 C.J.S. Executors and Administrators § 144.

31 Am. Jur. 2d 94, Executors and Administrators §§ 160-162.

Also see Am. Jur. 2d, New Topic Service, Uniform Probate Code.

Amount of funeral expenses allowable against decedent's estate, 4 A. L. R. 2d 995.

Running of statute of limitations as affected by doctrine of relation back of appointment of administrator, 3 A. L. R. 3d 1234.

Validating prior sales of decedent's property, relation back of letters testamentary or of administration as, 2 A. L. R. 3d 1105.

DECISIONS UNDER FORMER LAW

Contract prior to letters.

Decedent's husband who had neither been qualified as an executor nor been issued letters testamentary lacked authority to enter into contract to sell decedent's real estate; contract entered

into prior to issuance of letters testamentary was void and real estate agent had no cause of action for claim for commissions based on the contract. Estate Realty, Inc. v. Kershaw, 29 U. (2d) 92, 505 P. 2d 777.

75-3-702. Priority among different letters.—A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

History: C. 1953, 75-3-702, enacted by L. 1975, ch. 150, § 4.

Editorial Board Comment.

The qualification relating to "modification" of an appointment is intended to refer to the change that may occur in respect to the exclusive authority of one with letters upon later appointment of a co-representative or of a special administrator. The sentence concerning erroneous dual appointment is derived from recent New York legislation. See Section 704, Surrogate's Court Procedure Act [McKinney's SCPA 704].

Erroneous appointment of a second personal representative is possible if formal proceedings after notice are em-

ployed. It might be desirable for a state to promulgate a system whereby a notation of letters issued by each county probate office would be relayed to a central record keeping office which, in turn, could indicate to any other office whether letters for a particular decedent, perhaps identified by social security number, had been issued previously. The problem can arise even though notice to known interested persons and by publication is involved.

Collateral References.

Executors and Administrators²³.

33 C.J.S. Executors and Administrators § 48.

75-3-703. General duties—Relation and liability to persons interested in estate—Standing to sue.—(1) A personal representative is a fiduciary who shall observe the standard of care applicable to trustees as described by section 75-7-302. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

(2) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized

at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code.

(3) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and courts of any other jurisdiction as his decedent had immediately prior to death.

History: C. 1953, 75-3-703, enacted by L. 1975, ch. 150, § 4.

Editorial Board Comment.

This and the next section are especially important sections for they state the basic theory underlying the duties and powers of personal representatives. Whether or not a personal representative is supervised, this section applies to describe the relationship he bears to interested parties. If a supervised representative is appointed, or if supervision of a previously appointed personal representative is ordered, an additional obligation to the court is created. See section 75-3-501.

The fundamental responsibility is that of a trustee. Unlike many trustees, a personal representative's authority is derived from appointment by the public agency known as the court. But, the Code also makes it clear that the personal representative, in spite of the source of his authority, is to proceed with the administration, settlement and distribution of the estate by use of statutory powers and in accordance with statutory directions. See sections 75-3-106 and 75-3-704. Subsection (2) is particularly important, for it ties the question of personal liability for administrative or distributive acts to the question of whether the act was "authorized at the time." Thus, a personal representative may rely upon and be protected by a will which has been probated without adjudication or an order appointing him to administer which is issued in no-notice proceedings even though proceedings

occurring later may change the assumption as to whether the decedent died testate or intestate. See section 75-3-302 concerning the status of a will probated without notice and section 75-3-102 concerning the ineffectiveness of an unprobated will. However, it does not follow from the fact that the personal representative distributed under authority that the distributees may not be liable to restore the property or values received if the assumption concerning testacy is later changed. See sections 75-3-909 and 75-3-1004. Thus, a distribution may be "authorized at the time" within the meaning of this section, but be "improper" under the latter section.

Subsection (3) is designed to reduce or eliminate differences in the amenability to suit of personal representatives appointed under this Code and under traditional assumptions. Also, the subsection states that so far as the law of the appointing forum is concerned, personal representatives are subject to suit in other jurisdictions. It, together with various provisions of Chapter 4, is designed to eliminate many of the present reasons for ancillary administrations.

Collateral References.

Executors and Administrators \S 288 et seq., 420-422.

33 C.J.S. Executors and Administrators \S 144; 34 C.J.S. Executors and Administrators \S 482 et seq., 688 et seq.

31 Am. Jur. 2d 102, Executors and Administrators \S 179 et seq.

Appeal from order granting or deny-

ing distribution, right of executor or administrator to, 16 A. L. R. 3d 1274.

Appellate review proceedings, necessity that person acting in fiduciary or representative capacity give bond to maintain, 41 A. L. R. 2d 1324.

Compromise claim against estate, power and responsibility of executor or administrator to, 72 A. L. R. 2d 243.

Election by spouse to take under or against will as exercisable by agent or personal representative, 83 A. L. R. 2d 1077.

Implied power of executor to sell real estate, 23 A. L. R. 2d 1000.

Locating and noticing legatees, devisees or heirs, duty and liability of

executor with respect to, 10 A. L. R. 3d 547.

Option to purchase, power of executor with power to sell or to lease real property, or to do both, to give an, 83 A. L. R. 2d 1310.

Power of sale conferred by will, right of administrator with will annexed to execute, 9 A. L. R. 2d 1324.

Power of sale conferred on executor by testator as authorizing private sale, 11 A. L. R. 2d 955.

Refund of legacy or distribution, time within which personal representative must commence action for, 29 A. L. R. 2d 1248.

DECISIONS UNDER FORMER LAW

Actions against administrator.

Personal representative of a deceased could sue or be sued, or could be a party to an action or proceeding in his official capacity as representative, only in the state in which he was appointed; his role

as extended personality of the deceased did not exist extraterritorially but only within the four corners of the state of his appointment. *Wilcox v. District Court*, 2 U. (2d) 227, 272 P. 2d 157.

75-3-704. Personal representative to proceed without court order—Exception.—A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative or in regard to a restriction placed on the disposition of real property under subsection 75-3-710 (2), do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court in proceedings authorized by this code, to resolve questions concerning the estate or its administration.

History: C. 1953, 75-3-704, enacted by L. 1975, ch. 150, § 4; L. 1977, ch. 194, § 33.

Compiler's Notes.

The 1977 amendment substituted "a restriction placed on the disposition of real property under subsection 75-3-710 (2)" for "the disposition of real property."

Editorial Board Comment.

This section is intended to confer authority on the personal representative to initiate a proceeding at any time when it is necessary to resolve a question

relating to administration. Section 75-3-105 grants broad subject matter jurisdiction to the probate court which covers a proceeding initiated for any purpose other than those covered by more explicit provisions dealing with testacy proceedings, proceedings for supervised administration, proceedings concerning disputed claims and proceedings to close estates.

[The Utah version omits section 3-705 of the official text pertaining to the duty of a personal representative to give information of his appointment to heirs and devisees.]

75-3-705. Duty of personal representative—Inventory and appraisal.—Within three months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's

death, and the type and amount of any encumbrance that may exist with reference to any item. The personal representative shall send a copy of the inventory to interested persons who request it. He may also file the original of the inventory with the court.

History: C. 1953, 75-3-705, enacted by L. 1975, ch. 150, § 4; L. 1977, ch. 194, § 34.

Compiler's Notes.

The 1977 amendment deleted "and file or mail" before "an inventory of property"; and rewrote the concluding portion of the section which formerly read: "to interested persons who request it, or he may file the original of the inventory with the court."

The corresponding section in the official text of the Code is numbered 3-706.

Editorial Board Comment.

This and the following sections eliminate the practice now required by many probate statutes under which the judge is involved in the selection of appraisers. If the personal representative breaches his duty concerning the inventory, he may be removed. Section 75-3-611. Or, an interested person seeking to surcharge a personal representative for losses incurred as a result of his administration might be able to take advantage of any breach of duty concerning inventory. The section provides two ways in which a personal representative may handle an inventory. If the personal representative elects to send copies to all interested persons who request it, information con-

cerning the assets of the estate need not become a part of the records of the probate court. The alternative procedure is to file the inventory with the court. This procedure would be indicated in estates with large numbers of interested persons, where the burden of sending copies to all would be substantial. The court's role in respect to the second alternative is simply to receive and file the inventory with the file relating to the estate. See section 75-3-204, which permits any interested person to demand notice of any document relating to an estate which may be filed with the court.

Collateral References.

Executors and Administrators ⇨ 62-73.
33 C.J.S. Executors and Administrators §§ 129-140.

31 Am. Jur. 2d 114, Executors and Administrators § 209.

Dilatoriness of executor or administrator in filing inventory, or making reports, as ground for removal, 72 A. L. R. 956.

Surchargeability of trustee, executor, administrator or guardian in respect of mortgage investment, as affected by matters relating to value of property, 117 A. L. R. 871.

DECISIONS UNDER FORMER LAW

Effect of failure to comply with law.

Letters of administration could be revoked for failure to inventory certain

property belonging to estate. In re Robison's Estate, 59 U. 431, 204 P. 321.

75-3-706. Employment of appraisers.—The personal representative may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

History: C. 1953, 75-3-706, enacted by L. 1975, ch. 150, § 4.

Compiler's Notes.

The corresponding section in the official text of the Code is numbered 3-707.

Collateral References.

Executors and Administrators ⇨ 67.
33 C.J.S. Executors and Administrators § 135.

31 Am. Jur. 2d 116, Executors and Administrators § 215.

75-3-707. Duty of personal representative—Supplementary inventory.—If any property not included in the original inventory comes

to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

History: C. 1953, 75-3-707, enacted **Compiler's Notes.**
by L. 1975, ch. 150, § 4.

The corresponding section in the official text of the Code is numbered 3-708.

75-3-708. Duty of personal representative—Possession of estate.—Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

History: C. 1953, 75-3-708, enacted
by L. 1975, ch. 150, § 4.

Compiler's Notes.

The corresponding section in the official text of the Code is numbered 3-709.

Editorial Board Comment.

Section 75-3-101 provides for the devolution of title on death. Section 75-3-711 defines the status of the personal representative with reference to "title" and "power" in a way that should make it unnecessary to discuss the "title" to decedent's assets which his personal representative acquires. This section deals with the personal representative's duty and right to possess assets. It proceeds from the assumption that it is desirable whenever possible to avoid disruption of possession of the decedent's assets by his devisees or heirs. But, if the personal representative decides that possession of an asset is necessary or desirable for purposes of administration, his judgment is made conclusive in any action for possession that he may need to institute

against an heir or devisee. It may be possible for an heir or devisee to question the judgment of the personal representative in later action for surcharge for breach of fiduciary duty, but this possibility should not interfere with the personal representative's administrative authority as it relates to possession of the estate.

This Code follows the Model Probate Code in regard to partnership interests. In the introduction to the Model Probate Code, the following appears at p. 22:

"No provisions for the administration of partnership estates when a partner dies have been included. Several states have statutes providing that unless the surviving partner files a bond with the probate court, the personal representative of the deceased partner may administer the partnership estate upon giving an additional bond. Kan. Gen. Stat. (Supp. 1943) §§ 59-1001 to 59-1005; Mo. Rev. Stat. Ann. (1942) §§ 81 to 93 [V.A. M.S. §§ 473.220 to 473.230]. In these states the administration of partnership estates upon the death of a partner is

filing of a demand under subsection 75-3-710 (2) sells or otherwise affects this property without prior court approval and in violation of the restriction, his action is a breach of his duty to the person making the demand; but a person who in good faith without actual knowledge of the restriction either assists the personal representative or deals with him for value is protected as if the personal representative properly exercised his power. For the purpose of this subsection (4) a person will be deemed to have actual knowledge of the restriction if the letters of the personal representative bearing the restriction are recorded in the real property records of the county in which the real property is situated.

History: C. 1953, 75-3-710, enacted by L. 1975, ch. 150, § 4; L. 1977, ch. 194, § 35.

Compiler's Notes.

The 1977 amendment corrected an error in subsec. (3) by substituting "affecting any property" for "effecting any property"; and added subsec. (4).

The corresponding section in the official text of the Code is numbered 3-711.

Subsections (2), (3) and (4) of this section are not part of the official text of the Code.

Editorial Board Comment.

The personal representative is given the broadest possible "power over title." He receives a "power," rather than title, because the power concept eases the succession of assets which are not possessed by the personal representative. Thus, if the power is unexercised prior to its

termination, its lapse clears the title of devisees and heirs. Purchasers from devisees or heirs who are "distributees" may be protected also by section 75-3-910. The power over title of an absolute owner is conceived to embrace all possible transactions which might result in a conveyance or encumbrance of assets, or in a change of rights of possession. The relationship of the personal representative to the estate is that of a trustee. Hence, personal creditors or successors of a personal representative cannot avail themselves of his title to any greater extent than is true generally of creditors and successors of trustees. Interested persons who are apprehensive of possible misuse of power by a personal representative may secure themselves by use of the devices implicit in the several sections of Parts 1 and 3 of this chapter. See especially sections 75-3-501, 75-3-605, 75-3-607 and 75-3-611.

75-3-711. Improper exercise of power—Breach of fiduciary duty.—If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in section 75-3-712 and 75-3-713.

History: C. 1953, 75-3-711, enacted by L. 1975, ch. 150, § 4.

Compiler's Notes.

The corresponding section in the official text of the Code is numbered 3-712.

Editorial Board Comment.

An interested person has two principal remedies to forestall a personal representative from committing a breach of fiduciary duty. (1) Under section 75-3-607 he may apply to the court for an order restraining the personal representative from performing any specified act or from exercising any power in the course of administration. (2) Under

section 75-3-611 he may petition the court for an order removing the personal representative.

Evidence of a proceeding, or order, restraining a personal representative from selling, leasing, encumbering or otherwise affecting title to real property subject to administration, if properly recorded under the laws of this state, would be effective to prevent a purchaser from acquiring a marketable title under the usual rules relating to recordation of real property titles.

In addition, sections 75-1-302 and 75-3-105 authorize joinder of third persons who may be involved in contemplated transactions with a personal representa-

tive in proceedings to restrain a personal representative under section 75-3-607.

Collateral References.

Executors and Administrators—91, 103, 104, 116-120.

33 C.J.S. Executors and Administrators §§ 184, 207, 210-213, 215, 219, 220, 242-251, 272, 322.

31 Am. Jur. 2d 117, Executors and Administrators § 218.

Agent or attorney, liability of executor or administrator, or his bond, for loss caused to estate by act or default of his, 28 A. L. R. 3d 1191.

Business losses: liability of personal representative for losses incurred in carrying on, without testamentary authorization, decedent's nonpartnership mercantile or manufacturing business, 58 A. L. R. 2d 365.

Coexecutor's or coadministrator's liability for defaults or wrongful acts of fiduciary in handling estate, 65 A. L. R. 2d 1019.

Defense of action: liability of executor or administrator for negligence or default in defending action against estate, 14 A. L. R. 3d 1036.

Garnishment against executor or administrator by creditor of estate, 60 A. L. R. 3d 1301.

Improvements, liability of personal representative with respect to completion of, 5 A. L. R. 2d 1250.

Interest on legacies or distributive shares where payment is delayed, personal liability of executor or administrator for, 18 A. L. R. 2d 1384.

Overpaying or unnecessarily paying tax, liability of executor or administrator to estate because of, 55 A. L. R. 3d 785.

Replevin or similar possessory action, availability to one not claiming as heir, legatee, or creditor of decedent's estate, against personal representative, 42 A. L. R. 2d 418.

Taxes: liability of executor, administrator, trustee, or his counsel for interest, penalty, or extra taxes assessed against estate because of tax law violations, 47 A. L. R. 3d 507.

United States: construction and effect of 31 USC § 192 imposing personal liability on fiduciary for paying debts due by person or estate for whom he acts before paying debts due United States, 41 A. L. R. 2d 446.

Use of decedent's real estate, accountability of personal representative for his, 31 A. L. R. 2d 243.

Venue: place of personal representative's appointment as venue of action against him in his official capacity, 93 A. L. R. 2d 1199.

75-3-712. Sale, encumbrance or transaction involving conflict of interest—Voidable—Exceptions.—(1) Any sale or encumbrance to the personal representative, his spouse, agent, or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate, except one who has consented after fair disclosure, unless:

(a) The will or a contract entered into by the decedent expressly authorized the transaction; or

(b) The transaction is approved by the court after notice to interested persons.

History: C. 1953, 75-3-712, enacted by L. 1975, ch. 150, § 4; L. 1977, ch. 194, § 36.

Compiler's Notes.

The 1977 amendment deleted a former item (c) which read: "The transaction was approved by all interested persons."

The corresponding section in the official text of the Code is numbered 3-713.

Editorial Board Comment.

If a personal representative violates the duty against self-dealing described

by this section, a voidable title to assets sold results. Other breaches of duty relating to sales of assets will not cloud titles except as to purchasers with actual knowledge of the breach. See section 75-3-713. The principles of bona fide purchase would protect a purchaser for value without notice of defect in the seller's title arising from conflict of interest.

Collateral References.

Executors and Administrators—115, 144, 152, 163, 172, 365.

consider the powers of his fiduciaries to be personal, or to be suspended if one or more could not function. In regard to co-administrators in intestacy, it is based on the idea that the reason for appointing more than one ceases on the death or disability of either of them.

Collateral References.

Executors and Administrators \Rightarrow 127.
 34 C.J.S. Executors and Administrators § 1047.
 31 Am. Jur. 2d 269, Executors and Administrators § 628.

75-3-718. Compensation of personal representative and attorney.—When no compensation is provided by the will, or the personal representative renounces all claim thereto, he shall be entitled to reasonable compensation for his services; provided, however, the compensation for a normal probate proceeding shall not exceed the sum of the following amounts of the probate estate:

5% of the first \$1,000;
 4% of the next \$4,000;
 3% of the next \$5,000;
 2% of the next \$40,000;
 1½% of the next \$50,000; and
 1% of the amount over \$100,000.

When no compensation is provided by will, or the attorney renounces all claim thereto, the attorney for the personal representative shall be entitled to reasonable compensation for his services; provided, however, the compensation for a normal probate proceeding shall not exceed the sum of the following amounts of the probate estate:

5% of the first \$20,000;
 4% of the next \$40,000;
 3% of the next \$140,000;
 2½% of the next \$550,000;
 2% of the next \$750,000; and
 1½% of the balance.

Such additional compensation may be allowed to the personal representative and/or the attorney as the court may deem just and reasonable for any extraordinary services, including the filing of Federal estate tax return.

History: C. 1953, 75-3-718, enacted by L. 1977, ch. 194, § 37.

Compiler's Notes.

Laws 1977, ch. 194, § 37 repealed old section 75-3-718 (L. 1975, ch. 150, § 4), relating to compensation of personal representative and attorney, and enacted a new section 75-3-718.

The corresponding section in the official text of the Code is numbered 3-719.

Editorial Board Comment.

This section has no bearing on the question of whether a personal representative who also serves as attorney for the estate may receive compensation

in both capacities. If a will provision concerning a fee is framed as a condition on the nomination as personal representative, it could not be renounced.

Cross-References.

Expenses of bond allowed, 31-24-7.

Collateral References.

Executors and Administrators \Rightarrow 488-501.
 34 C.J.S. Executors and Administrators §§ 852-881.
 31 Am. Jur. 2d 220, Executors and Administrators § 486.

Advances to distributee before obtaining order of distribution, right of

75-3-710. Powers of personal representatives — In general.

Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust, however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court, unless otherwise specifically provided by this code.

History: C. 1953, 75-3-710, enacted by L. 1975, ch. 150, § 4; 1977, ch. 194, § 35; 1983, ch. 226, § 9.

Amendment Notes. — The 1983 amendment deleted former Subsections (2) through (4). For prior version, see bound volume.

75-3-718. Compensation of personal representative and attorney.

(1) A personal representative and an attorney are entitled to reasonable compensation for their services.

(2) If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

History: C. 1953, 75-3-718, enacted by L. 1987, ch. 32, § 1.

Repeals and Reenactments. — Laws 1987, ch. 32, § 1 repeals former § 75-3-718, as en-

acted by Laws 1977, ch. 194, § 37, setting out a schedule of limitations on the compensation of personal representatives and attorneys, and enacts the present section.

COLLATERAL REFERENCES

Utah Law Review. — Attorney's Fees in Utah, 1984 Utah L. Rev. 553.

PART 8 CREDITORS' CLAIMS

75-3-801. Notice to creditors.

Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the county announcing the personal representative's appointment and address and notifying creditors of the estate to present their claims within three months after the date of the first publication of the notice or be forever barred. The personal representative shall, after making reasonable efforts to ascertain creditors of the estate, also mail such notice on or before 14 days after the date of first publication to all then known creditors of the estate.

75-3-610. Termination of appointment—Voluntary.—(1) An appointment of a personal representative terminates as provided in section 75-3-1003, one year after the filing of a closing statement.

(2) An order closing an estate as provided in sections 75-3-1001 or 75-3-1002 terminates an appointment of a personal representative.

(3) A personal representative may resign his position by filing a written statement of resignation with the registrar after he has given at least 15 days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

History: C. 1953, 75-3-610, enacted by L. 1975, ch. 150, § 4.

33 C.J.S. Executors and Administrators §§ 78, 79, 82.

Collateral References.

31 Am. Jur. 2d 78, Executors and Administrators § 119 et seq.

Executors and Administrators 31, 33.

Right of executor or administrator to resign, 91 A. L. R. 712.

75-3-611. Termination of appointment by removal—Cause—Procedure.—(1) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative and to other persons as the court may order. Except as otherwise ordered as provided in section 75-3-607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, correct maladministration, or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(2) Cause for removal exists:

(a) When removal would be in the best interest of the estate.

(b) If it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment.

(c) If it is shown that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, has mismanaged the estate, or failed to perform any duty pertaining to the office.

(3) Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

decree is valid as to all who are given notice of the proceeding though fewer than all interested parties are notified.

History: C. 1953, 75-7-207, enacted by Compiler's Notes.
L. 1975, ch. 150, § 8.

The corresponding section in the official text of the Code is numbered 7-206.

Part 3

Duties and Liabilities of Trustees

75-7-301. General duties not limited.—Except as specifically provided, the general duty of the trustee to administer a trust expeditiously for the benefit of the beneficiaries is not altered by this code.

History: C. 1953, 75-7-301, enacted by Collateral References.
L. 1975, ch. 150, § 8.

Cross-References.

Uniform trustees' powers provisions,
75-7-401 et seq.

Trusts—171 et seq.
90 C.J.S. Trusts § 246 et seq.
76 Am. Jur. 2d 498, Trusts § 277 et seq.
Also see Am. Jur. 2d, New Topic Service, Uniform Probate Code.

75-7-302. Trustee's standard of care and performance.—Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.

History: C. 1953, 75-7-302, enacted by
L. 1975, ch. 150, § 8.

Editorial Board Comment.

This is a new general provision designed to make clear the standard of skill expected from trustees both individual and corporate, nonprofessional and professional. It differs somewhat from the standard stated in §174 of the Restatement of Trusts, Second, which is as follows:

"The trustee is under a duty to the beneficiary in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property; and if the trustee has or procures his appointment as trustee by representing that he has greater skill than that of a reasonable man of ordinary prudence, he is under a duty to exercise such skill."

By making the basic standard align to that observed by a prudent man in dealing with the property of another, the section accepts a standard as it has been articulated in some decisions regarding the duty of a trustee concerning investments. See *Estate of Cook*, (Del. Chanc. 1934) 20 Del. Ch. 123, 171 A. 730. Also, the duty as described by the above sec-

tion more clearly conveys the idea that a trustee must comply with an external, rather than with a personal, standard of care.

Analogous provisions are found in section 3-705 [omitted in Utah].

This provision does not require regular accounting to the court nor are copies of statements furnished beneficiaries required to be filed with the court. The parties are expected to assume the usual ownership responsibility for their interests including their own record keeping. Under section 75-1-108, the holder of a general power of appointment or of revocation can negate the trustee's duties to any other person.

This section requires that a reasonable selection of beneficiaries is entitled to information so that the interests of the future beneficiaries may adequately be protected. After mandatory notification of registration by the trustee to the beneficiaries, further information may be obtained by the beneficiary upon request. This is to avoid extensive mandatory formal accounts and yet provide the beneficiary with adequate protection and sources of information. In most instances, the trustee will provide beneficiaries with copies of annual tax returns

like award to his attorneys, on basis that duties were 50% completed, was erroneous. In *re Yonk's Estate*, 113 U. 367, 195 P. 2d 255, 4 A. L. R. 2d 150.

Amount expended for publication of notice to creditors was not allowable to administrator who was erroneously appointed in that one designated by next of kin should have been preferred, and who subsequently was removed pursuant to decision on appeal, where he obtained order to publish such notice at same time that letters of administration were issued to him, since expenditure was unnecessary inasmuch as he was "special administrator," and publication could not have been prevented by contestants. In *re Yonk's Estate*, 113 U. 367, 195 P. 2d 255, 4 A. L. R. 2d 150.

Personal expenses.

Administrator of deceased wife's estate was not entitled to credit for amount paid in satisfaction of notes given for money borrowed by administrator for his own use, and which his wife signed merely as surety, since administrator in paying notes was paying his own debt. In *re Hansen's Estate*, 55 U. 23, 184 P. 197.

Reasonableness of attorneys' fees.

Trial court was not required to follow uncontradicted evidence that attorney's services rendered to executor were reasonably worth \$750, and allowance of \$500 was not abuse of its discretion. In

re Smith's Estate, 108 U. 537, 162 P. 2d 105.

Temporary improvements.

Administrator of deceased wife's estate was not entitled to credit for cost of erection of windmill placed on premises, this being an improvement of temporary character and necessitated mainly for convenience of administrator while occupying premises. In *re Hansen's Estate*, 55 U. 23, 184 P. 197.

Traveling expenses.

Items of traveling expenses incurred by executor in attending hearings at the county seat 165 miles distant were properly disallowed in toto, where it was found that these hearings were made necessary solely because of his slipshod method of administration. In *re Smith's Estate*, 108 U. 537, 162 P. 2d 105.

Necessary traveling expenses of both the executor and his attorney were allowable; an executor living at some distance from the county seat could properly claim expenses incurred in living away from home in attending to estate business. In *re Smith's Estate*, 108 U. 537, 162 P. 2d 105.

Claim for traveling expenses of both executor and his attorney for twenty cents per mile (one way) was allowable where executor lived some distance from county seat and hearings were held over several days. In *re Smith's Estate*, 108 U. 537, 162 P. 2d 105.

75-3-719. Expenses in estate litigation.—If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements, including reasonable attorneys' fees incurred.

History: C. 1953, 75-3-719, enacted by L. 1975, ch. 150, § 4.

Compiler's Notes.

The corresponding section in the official text of the Code is numbered 3-720.

Editorial Board Comment.

Litigation prosecuted by a personal representative for the primary purpose of enhancing his prospects for compensation would not be in good faith.

A personal representative is a fiduciary for successors of the estate (section 75-3-703). Though the will naming him may not yet be probated, the priority for appointment conferred by section 75-3-203 on one named executor in a probated will means that the person

named has an interest, as a fiduciary, in seeking the probate of the will. Hence, he is an interested person within the meaning of sections 75-3-301 and 75-3-401. Section 75-3-912 gives the successors of an estate control over the executor, provided all are competent adults. So, if all persons possibly interested in the probate of a will, including trustees of any trusts created thereby, concur in directing the named executor to refrain from efforts to probate the instrument, he would lose standing to proceed. All of these observations apply with equal force to the case where the named executor of one instrument seeks to contest the probate of another instrument. Thus, the Code changes the idea followed in some jurisdictions that an executor lacks