

extra hours. It is as necessary an ingredient to the proper completion of the guardian's or conservator's work as it is for the congressman to know what the opinion of his constituents is on an important piece of legislation.

Although the conversations, conferences, and discussions of this nature are not generally reduced to writing or formal memos, they are most important in the management of property. Therefore a dialogue between the beneficiary or the minor's guardian of the person is most important to the management of the assets and is time-consuming.

The fees generally allowed and considered reasonable for the management and responsibility of these assets and the production of income are $\frac{3}{4}$ of 1% of the reasonable market value of the assets.

The Probate Rules of one county read in part as follows:

"The rate of $\frac{3}{4}$ of 1% per annum of the reasonable value of the corpus of the trust estate at the time such compensation is taken shall ordinarily be deemed reasonable compensation; subject, however, to the court's discretion either to increase or reduce such compensation, depending upon the work performed, the responsibility assumed, the results accomplished, and other factors. . . ."

It occurs to me that there is a question regarding the reasonableness of the basis for determining fees at the rate of $\frac{3}{4}$ of 1% per annum of the market value.

Let me cite a few examples of fees paid and accepted by the public as reasonable.

A real estate broker receives in this community, like most other communities, a 10% commission on the sale of unimproved real property, and a 6% commission on the sale of a residence, both based on the market value of the property sold. These transactions many times are completed within a 30-day period.

A conservator or guardian, on the other hand, is paid only a fractional percentage of 1% for an entire year's management of a variety of assets.

This appears realistic when related to that of a broker's commission, and based on the work performed, responsibility assumed, and results accomplished.

Let me cite another example—that of the fees charged for the management of mutual funds, which are well-known to all of us.

Based on statistics taken from the annual issue of *Forbes Magazine*, which rates these investment funds generally in August of each year, I computed the average cost for management, custodial, and operating expenses of 223 funds to be approximately $\frac{4}{5}$ of 1% of the asset value. The management costs varied from less than $\frac{1}{4}$ of 1% of the asset value to more than 3%. The average of the 223 funds, however, is approximately $\frac{4}{5}$ of 1% of the asset value.

Now, a guardian's duties encompass a great deal more than just the management of security investments. For example, we are responsible for determining, usually after many hours of consultation the advisability of discretionary payments, the adequacy of insurance, the payment of monthly bills, and, in summary, the management of the ward's everyday affairs, for which the reasonable compensation is $\frac{3}{4}$ of 1%. You will note that this is less than the average cost of the charges for the management, custodial, and operating expenses of mutual funds.

Now let me refer to that section of the U.S. Department of the Interior's Report on the Administration of Guardianships and Conservatorships for the Members of the Agua Caliente Band of Mission Indians Dated March 1968, regarding fees.

You will note on page 9 that the audit information relates fees paid to total receipts, rather than fees paid as a percentage of the reasonable market value of the assets which the guardian or conservator is responsible for.

Although this is a departure from the norm, it is interesting to note that the Task Force Report dated March 1968, indicates that fees paid as a percentage of total receipts vary from 10 to 12% of these receipts. I would like to call your attention to the fact that the Treasury Department's Report to Congress regarding private foundations, dated February 2, 1965, indicates that expenses incident to the production of income amounted to 9.67% of income receipts. This report covers the investigation of 14,865 foundations. In view of this, it does not appear that the averages as noted in the Cox Report dated March 1968, are excessive.

In reviewing the American College of Probate Counsel's "Fees of Executors, Administrators, and Testamentary Trustees", I note that in almost all instances, the fees to be paid to a trustee are left to the discretion of the court, and are not set forth in detail under any state statutes, as is the case with executors' commissions.