

EXECUTIVE SECRETARY
KARL R. HADE

**ASSISTANT EXECUTIVE SECRETARY &
LEGAL COUNSEL**
EDWARD M. MACON

COURT IMPROVEMENT PROGRAM
VACANT

EDUCATIONAL SERVICES
CAROLINE E. KIRKPATRICK, DIRECTOR

FISCAL SERVICES
JOHN B. RICKMAN, DIRECTOR

SUPREME COURT OF VIRGINIA



OFFICE OF THE EXECUTIVE SECRETARY
100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219-2334
(804) 786-6455

HUMAN RESOURCES
RENÉE FLEMING MILLS, DIRECTOR

JUDICIAL INFORMATION TECHNOLOGY
ROBERT L. SMITH, DIRECTOR

JUDICIAL PLANNING
CYRIL W. MILLER, JR., DIRECTOR

JUDICIAL SERVICES
PAUL F. DELOSH, DIRECTOR

LEGAL RESEARCH
STEVEN L. DALLE MURA, DIRECTOR

LEGISLATIVE & PUBLIC RELATIONS
KRISTI S. WRIGHT, DIRECTOR

CALL FOR COMMENT - July 13, 2016

JUDICIAL COUNCIL OF VIRGINIA REQUESTS COMMENTS ON THE RECOMMENDATIONS OF THE STANDING COMMITTEE ON COMMISSIONERS OF ACCOUNTS

RICHMOND: The Judicial Council of Virginia requests comments on the recommendations of the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia regarding changes to the existing Uniform Fee Schedule Guideline for Commissioners of Accounts effective July 1, 2008. In addition, the Report includes recommendations for amendments to the Code of Virginia regarding the fee for a Statement in Lieu of Settlement of Account.

Details of the recommendations are available in the December 9, 2015 Report of the Standing Committee on Commissioners of Accounts' Report to the Judicial Council, which is attached.

Comments on the proposed changes to the Uniform Fee Schedule and the Code of Virginia should be sent by Friday, August 19, 2016 to:

Karl Hade, Secretary of the Judicial Council
Office of the Executive Secretary
Supreme Court of Virginia
100 North Ninth Street
3rd Floor
Richmond, VA 23219

OR via email with the subject line "Comment on Commissioners of Accounts' Recommendations" to:
coacomment@courts.state.va.us

About the Judicial Council:

The Judicial Council is established by statute (Va. Code § 17.1-700) in the Judicial Branch and is composed of 14 members. The Chief Justice chairs the Council, which consists of one judge of the Court of Appeals, six circuit court judges, one general district court judge, one juvenile and domestic relations district court judge, two attorneys qualified to practice in the Supreme Court, and the Chairmen of the Committees for Courts of Justice of the Senate and the House of Delegates or their designees who shall be members of the Courts of Justice committees. The Council is charged with making "a continuous study of the organization and the rules and methods of procedure and practice of the judicial system of the Commonwealth, the work accomplished and the results produced by the system and its various parts; and shall make studies of the need, or lack of need, of additional judges or justices of the Supreme Court of Virginia, the Court of Appeals of Virginia, and the circuit courts." Va. Code § 17.1-703.

Standing Committee on Commissioners of Accounts
For the Virginia Judicial Council

Edwin A. Bischoff, Chair
8500 Mayland Drive
Henrico, Virginia 23294

804-346-4700

December 9, 2015

The Honorable Donald W. Lemons
Chief Justice
Supreme Court of Virginia
P.O. Box 1315
Richmond, VA 23219-1315

Re: Standing Committee on Commissioners of Accounts
Report to the Judicial Council

Dear Chief Justice Lemons and Members of the Judicial Council:

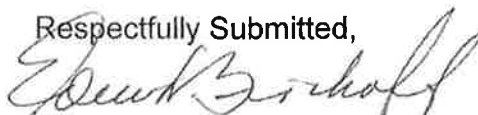
As Chair of the Standing Committee on Commissioners of Accounts this report is presented to you as the Committee recommendation for changes to the *Uniform Fee Schedule Guideline for Commissioners of Accounts* adopted July 1, 2008.

This review has been ongoing since March, 2015 pursuant to our charges to periodically review the Uniform Fee Schedule and the statutes affecting fiduciaries, and to promote uniformity in the practice of filing and auditing of accounts among Commissioners of Accounts.

As Chair of the Subcommittee I would be pleased to meet with the Chief Justice and appear before Council to further support the recommendations, address any concerns and answer any questions related to the report, or otherwise.

We thank you for your consideration of this report.

Respectfully Submitted,



Edwin A. Bischoff, Chair

TABLE OF CONTENTS

Letter to the Chief Justice and Judicial Council Members.....	page 1
Table of Contents.....	page 2
Report of the Standing Committee on the review of the <i>2008 Uniform Fee Schedule Guidelines for</i> <i>Commissioners of Accounts</i> (December 9, 2015).....	pages 3-9
Appendix A: Proposed Modifications to the existing <i>2008 Uniform Fee Schedule Guideline for</i> <i>Commissioners of Accounts.....</i>	pages 10-16
Appendix B: New <i>Uniform Fee Schedule Guideline</i> <i>For Commissioners of Accounts (if adopted).....</i>	pages 17-23
Appendix C: Recommendation of Commission on Virginia Courts in the 21st Century.....	pages 24-25
Appendix D. <i>United States Consumer Law Attorney</i> <i>Fee Survey 2014-2014.....</i>	pages 26-31
Appendix E: <i>Laffey Matrix</i> of Attorney's hourly rates.....	pages 32-35
Appendix F: <i>Vienna Matrix</i> of hourly rates of attorneys in litigation before the U.S. District Court Eastern District of Virginia.....	pages 36-37

**REPORT OF THE
STANDING COMMITTEE ON
COMMISSIONERS OF ACCOUNTS**

**Review of the
*Uniform Fee Schedule Guideline for
Commissioners of Accounts*
dated July 1, 2008**

STANDING COMMITTEE ON COMMISSIONERS OF ACCOUNTS FOR THE JUDICIAL COUNCIL OF VIRGINIA

Report of the Standing Committee on the Uniform Fee Schedule Guideline and Statutory Fees for Commissioners of Accounts

December 9, 2015

The Standing Committee on Commissioners of Accounts was established by the Virginia Supreme Court as a Standing Committee of the Judicial Council to consider issues involving the Commissioner of Accounts system and to recommend procedures to promote statewide uniformity in the supervision of fiduciaries. Specifically included within the charges of the Committee is the responsibility to review and make recommendations to the Chief Justice and Judicial Council regarding the *Uniform Fee Schedule Guideline for Commissioners of Accounts*, last adopted effective July 1, 2008.

In the spring of 2015 a subcommittee of the Standing Committee was established by the Chair to review the commissioners *Uniform Fee Schedule Guideline* and to determine whether any recommendation was appropriate to the full committee for presentation to the Chief Justice and the Judicial Council. This was considered timely in view of the fact that the schedule had not been reviewed since adoption in 2008. The subcommittee met several times after its establishment and reviewed significant amounts of data concerning the fees of commissioners and the costs of maintaining a commissioner's office. The subcommittee's chair, John H. Rust, Jr, Commissioner of Accounts, Fairfax, Virginia, issued a comprehensive and thoroughly researched report which was presented to the Chair on September 24, 2015, and which was immediately circulated to the full Standing Committee for review and consideration. The Standing Committee adopted Mr. Rust's report, with modification, and this report is in major part an adoption of that report.

The subcommittee report was thoroughly discussed by the Committee members during a conference call on November 13, 2015. Ten of the thirteen committee members participated. Two members who could not participate communicated to the Chair their support of the subcommittee's recommendations.

Scope of the Review

Pursuant to its charge, the Standing Committee has undertaken a review of the *Uniform Fee Schedule Guideline for Commissioners of Accounts* (herein *Uniform Fee Schedule*), which schedule is subject to review, approval and adoption by the Supreme Court of Virginia and Judicial Council.

Additionally, we have reviewed a number of commissioners' fees set by statute which would, if approved by the Judicial Council, require the support of and advancement by Council

in the General Assembly. After consideration of the fees governed by statute, the Standing Committee decided to recommend a change in only one statutory fee—the fee associated with the Statement In Lieu of Settlement of Account (§ 64.2-1314, Code of Virginia (1950), as amended).

This dichotomy in the setting of commissioner’s fees is believed unfortunate, as it is the belief of the Standing Committee that all fees of commissioners should be regularly reviewed and approved by the Supreme Court and Council and set as part of the established *Uniform Fee Schedule*. The fees set by statute rarely are reviewed, as demonstrated by the history of the fee for the approval of the Statement In Lieu of Settlement of Account

History and Background Research Regarding the Uniform Fee Schedule

Pursuant to Virginia Code § 64.2-1219, the circuit court appointing a commissioner of accounts shall prescribe the fees of such commissioner of accounts. Nevertheless, at present, most circuit courts and most commissioners appointed in the Commonwealth follow the Supreme Court’s *Uniform Fee Schedule Guideline for Commissioners of Accounts*, approved July 1, 2008. There are strong public policy reasons to seek uniformity in commissioner’s fees; however, there has not always been such uniformity in commissioner’s fees in Virginia. Prior to the adoption of the 2008 schedule, the Supreme Court had last promulgated a uniform fee schedule in 1996. It became increasingly difficult to maintain commissioner’s offices under that schedule and a number of circuits adopted their own fee schedules, including Fairfax County and Prince William County.

The Standing Committee began efforts in 2005 to make changes to the 1996 fee schedule. In the final report of the *Commission on Virginia Courts in the 21st Century: To Benefit All, To Exclude None*, issued in January 2007, the commission stated as its goal that Virginia adopt “a uniform statewide fee schedule for Commissioners of Accounts *which is regularly reviewed.*”¹ Effective July 1, 2008, the Supreme Court approved the *Uniform Fee Schedule Guideline for Commissioners of Accounts*. At the time the Supreme Court promulgated the fee schedule, the Chief Justice, in a meeting with the Standing Committee, expressed his desire to have the fee schedule reviewed by the Standing Committee every two years.

With the assistance of the Virginia Conference of Commissioners of Accounts, the subcommittee was able to gather significant data concerning the offices of individual commissioners. Based upon a review of that data, it appears that filings with commissioners are declining, with total filings declining 3.7% and estate accounts declining 6.6%. Moreover, those fiduciaries filing Statements in Lieu of Settlement of Accounts have become an increasing

¹ *Final Report of the Commission on Virginia Courts in the 21st Century: To Benefit All, To Exclude None* at 26. The Report of the Subcommittee on Probate and Commissioners of Accounts expanded on this recommendation, stating “The fee schedule should be examined regularly in order for the Commissioners’ fees to be high enough to permit them to operate their offices effectively but low enough to be fair to the public and not excessive. It is particularly important that the Commissioners’ fees permit them to hire an adequate number of staff members for prompt service to be assured. Uniformity is also of great importance in order for members of the public to have the sense that they are being treated fairly.” Recommendation 2-1.5.7. Appendix at 42.

percentage of total estate account filings, up more than 17.3% from the average filings over the past 10 years. Secondly, the increasing use of trust waivers, resulting from the statutory amendment in 2010, made trust waivers generally available to all new testamentary trusts,² which has resulted in fewer trust filings with commissioners and substantially fewer new testamentary trusts that are subject to supervised administration. These changes have further reduced revenue for commissioners of account's offices. Thus, the revenue base that sustains commissioners of accounts is diminishing. In the period following the adoption of the Uniform Fee Schedule in 2008, there was a wave of foreclosure filings resulting from the nationwide real estate downturn. These additional fees masked the economic effects of the downturn in the other referenced filings with commissioners. As the foreclosure filings have now returned to a more customary level, the overall revenues that commissioners' offices receive have declined.

Since the adoption of the Uniform Fee Schedule in 2008, inflation has increased 7.6%. The 2014 Annual Review of Employee Salaries determined that salaries for Virginia employees were expected to increase 2.78% in 2015. The Joint Legislative Audit and Review Commission, in its annual report on state spending in 2014, noted that state employee salaries have increased 25% over the past decade. The Virginia Department of Human Resources estimates that it would require an additional 13.37% increase to bring state employee salaries in line with increases in market-based salaries during the same period. Commissioners are responsible for hiring their employees from the private sector. Commissioners pay employee salaries and the costs of maintaining their offices from the fees that they receive, notwithstanding the diminishing revenue base. Most commissioners operate with a very small staff, usually with only one employee in addition to the commissioner. As a result, there is no easy way in which a commissioner may reduce personnel expenses and still provide the basic services that the Courts require and Virginia citizens deserve.

Generally, most commissioners are of the opinion that the range of fees that the Court established in 2008 was reasonable. As noted above, the revenues that commissioners receive are declining as the number of total fiduciary filings decrease and the filing of Statements In Lieu of Settlement of Account increase. The costs of maintaining a commissioner's office continue to increase for all commissioners. The Standing Committee's research and review supports a belief that an across the board fee increase in the *Uniform Fee Schedule* that reflects the diminishing volume of filings and that is commensurate with the inflation since 2008 is justified.

Additionally, the *Uniform Fee Schedule* provides that when a commissioner conducts contested hearings, or confers or corresponds with fiduciaries, beneficiaries, and/or creditors on matters not normally required to be addressed during the audit and approval of fiduciary inventories and accounts, a commissioner may charge a fee based upon hours expended at a rate of \$150.00 per hour. The circuit court has the authority to increase this rate in its discretion. This rate is well below the average hourly rate compensation of lawyers in Virginia. The National Center for State Courts, in its study on Estimating the Cost of Civil Litigation (2013) found billable rates for litigation attorneys to be as follows: "Billable rates ranged from \$200 to \$375 per hour for senior attorneys, \$150 to \$250 per hour for junior attorneys, and \$80 to \$110

² 2010 Acts of the Assembly, chapter 197 [amending Virginia Code § 26-17.7 (now Virginia Code § 64.2-1307)].

per hour for paralegal support.”³ As most commissioners are senior attorneys, it would appear that the hourly rate in the *Uniform Fee Schedule* is substantially below the hourly rate a commissioner could command for legal services.

The Standing Committee believes that the hourly rate established in the *Uniform Fee Schedule* should be increased, with the right granted to each circuit court to have discretion in increasing or decreasing the hourly rate for its commissioner of accounts based on regional differences.

Recommendation of the Standing Committee to the Chief Justice and Judicial Council Regarding the Uniform Fee Schedule

The Standing Committee recommends that an increase in the *Uniform Fee Schedule* of 10% across the board (rounded up to the nearest five dollars) is an appropriate modification to address both inflation and the diminished filings with commissioners occurring since 2008.

The Standing Committee further recommends that the hourly rate established in the *Uniform Fee Schedule* be increased from \$150 per hour to \$250 per hour; however, in light of the regional differences in hourly rates and costs of living, the Committee recommends that the *Uniform Fee Schedule* allow each circuit court to have discretion in increasing or decreasing the hourly rate for its commissioner of accounts.

Attached as appendix A is a matrix showing the recommended increases to the fees set out in the current *Uniform Fee Schedule Guideline* (Except for the Statement In Lieu of Settlement of Account which requires statutory amendment).

Attached as appendix B is a revised Uniform Fee Schedule reflecting the Standing Committee’s recommendations, should they be accepted (except for the Statement In Lieu of Settlement of Account which requires statutory amendment).

History and Background Research Regarding the Statutory Fee for the Statement In Lieu of Settlement of Account

The statutorily mandated commissioners’ fee for a Statement in Lieu of Settlement of Account (herein *Statement*) is and has been an exception to the belief among commissioners that the commissioner’s fees have historically been set in reasonable amounts. This \$75.00 fee has been a consistent source of complaint from commissioners, who believe that the fee does not even cover the cost of opening the file in the commissioner’s office and does not adequately

³ National Center for State Courts, *Estimating the Cost of Civil Litigation* at p. 4 (Vol. 20, Number 1, January 2013). Attached as an appendix are a number of national and local measures of attorney’s hourly rates, all of which are substantially more than the \$150 per hour set forth in the Uniform Fee Schedule.

compensate for the actual time involved in the receipt of a proper *Statement* and the auditing, approval and reporting of same to the court. The fee was first set by the General Assembly at \$50.00 in 1980, and only once increased by the Assembly in 1993 to \$75.00, where it has remained for over 22 years.

In the Report of the Special Probate Committee submitted to the Chief Justice subsequent to the filing of the report from the *Commission on Virginia Courts in the 21st Century: To Benefit All, To Exclude None*, the special probate committee appointed by the Chief Justice recommended in 2006 as follows:

The fee for filing a Statement in Lieu of Account should be raised from \$75.00 to \$150.00. This fee is statutorily mandated (Virginia Code Section 26-20.1) [Now Virginia Code § 64.2-1314] and it has been at \$75.00 since 1993. An increase of this fee will increase the gross revenue of all Commissioners of Accounts, but most importantly those Commissioners of Accounts currently not receiving adequate compensation. The Judicial Council should propose legislation to remove this fee from the Virginia Code so that it may become part of the UFS, or, in the alternative, to revise the section to increase the fee to \$150.00.

Unfortunately no action was taken upon this recommendation. The Standing Committee is of the opinion that after more than 22 years at the current \$75.00 amount, it is appropriate to adjust the fee. Based solely upon the inflation since 1993, it would take a fee in 2015 of at least \$123.86 to equal the purchasing power of \$75 in 1993. The Standing Committee is of the opinion that the recommendation of the Special Probate Committee almost ten years ago was correct, and that the recommendation is no less valid today.

**Recommendation of the Standing Committee
To the Chief Justice and Council
Regarding the Fee for a Statement In Lieu of Settlement of Account**

The Standing Committee recommends as follows:

- a. **That Council propose and support legislation to amend Virginia Code § 64.2-1314 to delete subsection D, (which sets the fee of the commissioner for a Statement In Lieu of Settlement of Account); and thereafter approve as a part of the *Uniform Fee Schedule Guideline For Commissioners of Accounts*, a commissioner's fee for a Statement in Lieu of Settlement of Account of one hundred fifty dollars (\$150.00).**

or alternatively;

- b. **That Council propose and support legislation to amend Virginia Code**

§ 64.2-1314 D. to increase the fee allowed to a commissioner of accounts for a Statement In Lieu of Settlement of Account to one hundred and fifty dollars (\$150.00).

The Standing Committee is of the opinion that the commissioner of accounts system is important and valuable to the citizens of Virginia and the Judiciary in providing a system of supervision for all fiduciaries. If the fee schedule is not sufficient for a commissioner to maintain his office, pay his personnel, and receive reasonable compensation for his own time, ultimately the system will fail. We respectfully suggest that the recommend increases in the fees will help sustain and preserve the health of the commissioner of accounts system in Virginia.

December 9, 2015

Respectfully submitted on behalf of the
Standing Committee on Commissioners of Accounts,


Edwin A. Bischoff, Chairman

APPENDIX A

CURRENT
UNIFORM FEE SCHEDULE
WITH RECOMMENDED
MODIFICATIONS

UNIFORM FEE SCHEDULE GUIDELINE
FOR COMMISSIONERS OF ACCOUNTS
APPROVED BY THE SUPREME COURT OF VIRGINIA
Effective ~~July 1, 2008~~ To be determined

Fees of Commissioners of Accounts

By statute, each Circuit Court sets the fees for its Commissioner(s) of Accounts (including Assistant Commissioners of Accounts and any Deputy Commissioners of Accounts). This Uniform Fee Schedule Guideline is an attempt to provide uniformity among the various Circuit Courts.

The Commissioner of Accounts receives no funds from either the State or local government. His or her revenue is derived entirely from filing fees paid by the users of the system. The Commissioner pays the expenses of operating his or her office out of the filing fees. These filing fees compensate the Commissioner of Accounts for his or her work and the work of his or her staff in auditing accounts, answering questions of fiduciaries, resolving disputes between beneficiaries and fiduciaries, and enforcing the requirement that fiduciaries file timely and proper accounts.

Inventories	<u>Assets</u>	<u>Fee</u>
Guardian for Minor	Any amount	\$ 50.00 55.00
All others	0 - \$ 50,000	100.00 110.00
	50,001 - 200,000	150.00 165.00
	200,001 - 500,000	200.00 220.00
	Above 500,000	250.00 275.00

NOTE: Based upon assets under the control of the fiduciary, including real estate over which the fiduciary has the power of sale, but not including projected income.

First Account of a Decedent's Estate

<u>Assets from Inventory plus Additions</u>	<u>Fee</u>
0 - \$ 50,000	\$ 200.00 220.00
50,001 - 100,000	400.00 440.00
100,001 - 200,000	500.00 550.00
200,001 - 300,000	600.00 660.00
300,001 - 500,000	750.00 825.00
500,001 - 700,000	900.00 990.00
700,001 - 1,000,000	1,200.00 1,320.00
Above 1,000,000	1,200.00 1,320.00 plus .00075 in excess of \$1,000,000, not to exceed a total fee of \$10,000.00 11,000 (except as may be approved by the Court)

NOTE: "Assets from Inventory" for a decedent's estate means the probate assets, including real estate over which the fiduciary has the power of sale (Parts 1 and 3 of the Inventory). "Additions" are receipts, capital gains, and adjustments (Lines 2, 3, and 4 of the Account Summary).

Second and Subsequent Accounts of a Decedent's Estate

The fee shall be determined by applying the fee schedule for a First Account to the assets brought forward (at market value) plus additions during the accounting period.

Statements In Lieu of Account

	<u>Fee</u>
Statement in Lieu	\$ 75.00 requires statutory change
Notice of Intent to File	75.00 requires statutory change

NOTE: These fees are statutory [Va. Code Section 26-20.1 (now Virginia Code § 64.2-1314)].

First Account of a Trust or a Conservatorship

<u>Assets from Inventory plus Additions</u>	<u>Fee</u>
0 - \$ 50,000	\$ 200.00 220.00
50,001 - 100,000	300.00 330.00
100,001 - 200,000	400.00 440.00
200,001 - 300,000	500.00 550.00
300,001 - 500,000	600.00 660.00
500,001 - 700,000	700.00 770.00
700,001 - 1,000,000	800.00 880.00
Above 1,000,000	800.00 880.00 plus .0005 in excess of \$1,000,000, not to exceed a total fee of \$10,000 11,000 (except as may be approved by the Court)

NOTE: "Assets from Inventory" for a Trust means the Trust Assets, including real estate over which the Trustee has the power of sale (Parts 1 and 2 of the Inventory) and "Assets from Inventory" for a Conservatorship means the Conservator Assets, including real estate over which the Conservator has the power of sale and the incapacitated person's interest in any real or personal property that will pass to another at the incapacitated person's death (Parts 1, 2, and 5 of the Inventory). "Additions" are receipts, capital gains, and adjustments (Lines 2, 3, 4, and 5 for the Trust and Lines 2b, 3 and 4 for the Conservatorship).

Second and Subsequent Accounts of a Trust or a Conservatorship

The fee shall be determined by applying the fee schedule for a First Account to the assets brought forward (at market value) plus additions during the accounting period. The maximum fee shall not exceed ~~\$7,500.00~~ 8,250.

NOTE: If the ward is a Medicaid recipient, the maximum account filing fee is \$ 25.00 [Virginia Code Section 26-17.4.C (now Virginia Code § 64.2-1305)]. no change recommended

First Account of a Minor

<u>Assets from Inventory plus Additions</u>	<u>Fee</u>
0 - \$ 50,000	\$ 100.00 110.00
50,001 - 100,000	150.00 165.00
100,001 - 200,000	200.00 220.00
200,001 - 300,000	250.00 275.00
300,001 - 500,000	300.00 330.00
500,001 - 700,000	350.00 385.00
700,001 - 1,000,000	400.00 440.00
Above 1,000,000	400.00 440.00
	plus .0005 in excess of \$1,000,000, not to exceed a total fee of \$5,000 5,500 (except as may be approved by the Court)

NOTE: "Assets from Inventory" means the Guardianship assets, including real estate over which the Guardian has power of sale (Parts 1 and 2 of the Inventory). "Additions" are receipts, capital gains, and adjustments (Lines 2b, 3 and 4).

Second and Subsequent Accounts of a Minor

The fee shall be determined by applying the fee schedule for a First Account to the assets brought forward (at market value) plus additions during the accounting period. The maximum fee shall not exceed ~~\$5,000.00~~ 5,500.00.

Foreclosure Accounts (Interim and Final)

<u>Sale Price</u>	<u>Fee</u>
0 - \$ 100,000	\$ 250.00 275.00
100,001 - 300,000	300.00 330.00
300,001 - 450,000	450.00 495.00
450,001 - 600,000	600.00 660.00
600,001 - 750,000	750.00 825.00
750,001 - 900,000	900.00 990.00
Above 900,000	1,000.00 1,100.00

Note: The Commissioner may charge an additional fee of ~~\$150.00~~ 165.00 when the Trustee is unable to produce the original note, which fee shall be shown on the Account as a charge to

the noteholder.

Taking and Reporting of Debts and Demands

A fee of ~~\$250.00~~ 275.00 plus costs of advertisement, subject to the provisions below regarding fees for contested hearings.

Claim Against Estate After Qualification

A fee of ~~\$50.00~~ 55.00 for each creditor's claim filed with the Commissioner after qualification other than claims filed in response to a notice of Debts and Demands hearing. This fee shall be charged to the creditor.

Delinquency Fees (To be collected against the fiduciary personally)

1. Failure to file Inventory in a timely manner resulting in a letter from the Commissioner: ~~\$25.00~~ 30.00
2. Failure to file settlement of accounts in a timely manner resulting in a letter from the Commissioner: ~~\$25.00~~ 30.00
3. Issuance of a summons by Commissioner: ~~\$75.00~~ 85.00
4. Commissioner's report to the Court on failure of fiduciary to comply with summons: ~~\$150.00~~ 165.00
5. Commissioner's report to Court of delinquent accounts and unsettled accounts as required by Virginia Code Section 26-18 (now Virginia Code § 64.2-1216): ~~\$50.00~~ 55.00
6. Appearance in Court to prosecute Show Cause Order issued against fiduciary: ~~\$200.00~~ 220.00

Increased Fees for Review of Accounts

When a Commissioner's review of an account requires exceptional time, the Commissioner may seek Court approval to increase his or her fees. The Commissioner's request for approval of an increased fee must be made in writing, and include his or her justification for requesting the increased fee. The Commissioner shall give notice of his request for Court approval to the fiduciary so that the fiduciary has an opportunity to be heard. When formulating a request for an increase of the fee, the Commissioner may take into consideration the following factors:

1. The amount of time spent by the Commissioner and his or her staff in reviewing the account and the vouchers, as affected by the number of vouchers and the quality, completeness and accuracy of preparation of the account.

2. The dollar value, number and nature of the assets in the estate, and the assets outside of the estate which impact on the distribution of the probate estate.
3. The amount of time spent by the Commissioner and his or her staff on research and rendering decisions on questions of law.
4. The complexity of the estate distribution scheme, including apportionment of taxes, funding bypass trusts and marital shares or trusts and computations of beneficiary shares, including elective shares, allowances and exemptions.
5. The necessity for the Commissioner to review tax returns or other documents.
6. The amount of time spent by the Commissioner and his or her staff addressing complaints of beneficiaries concerning the account.
7. Any other matters deemed relevant by the Commissioner.

Fees for Services Other Than Inventory/Account Reviews and Uncontested Debts and Demands Hearing

When the Commissioner of Accounts conducts contested hearings; or confers or corresponds with fiduciaries, beneficiaries, and/or creditors on matters not normally required to be addressed during the audit and approval of fiduciary inventories and accounts, the Commissioner may charge a fee based upon hours expended at a rate of ~~\$150.00~~ 250.00 per hour or such ~~greater~~ other hourly rate set by the Circuit Court for the Commissioner of Accounts.

When the Commissioner of Accounts conducts a hearing to authorize a disbursement by the Guardian of a minor, the Commissioner shall not charge a fee in excess of \$100.00. [Virginia Code Section 31-8.2 (Now Virginia Code § 64.2-1802)] **no change recommended**

For receiving and filing a written consent to the waiver of filing a Trust Inventory and/or Trust Account, the fee of the Commissioner of Accounts shall not exceed \$ 25.00 [Virginia Code Section 26-17.7.D (Now Virginia Code § 64.2-1307)]. **no change recommended**

Reduction of Fees

In exceptional circumstances, the Commissioner may reduce any of the foregoing fees.

Clerk's Recordation Fee (to be sent to the Commissioner)

- | | |
|--------------|--|
| Inventories: | As set by the local Clerk pursuant to statute. |
| Accounts: | As set by the local Clerk pursuant to statute. |

APPENDIX B

PROPOSED NEW
UNIFORM FEE SCHEDULE

UNIFORM FEE SCHEDULE GUIDELINE
FOR COMMISSIONERS OF ACCOUNTS
APPROVED BY THE SUPREME COURT OF VIRGINIA
Effective _____

Fees of Commissioners of Accounts

By statute, each Circuit Court sets the fees for its Commissioner(s) of Accounts (including Assistant Commissioners of Accounts and any Deputy Commissioners of Accounts). This Uniform Fee Schedule Guideline is an attempt to provide uniformity among the various Circuit Courts.

The Commissioner of Accounts receives no funds from either the State or local government. His or her revenue is derived entirely from filing fees paid by the users of the system. The Commissioner pays the expenses of operating his or her office out of the filing fees. These filing fees compensate the Commissioner of Accounts for his or her work and the work of his or her staff in auditing accounts, answering questions of fiduciaries, resolving disputes between beneficiaries and fiduciaries, and enforcing the requirement that fiduciaries file timely and proper accounts.

Inventories

	<u>Assets</u>	<u>Fee</u>
Guardian for Minor	any amount	\$ 55.00
All others	0 - \$50,000	110.00
	50,001 - 200,000	165.00
	200,001 - 500,000	220.00
	Above - 500,000	275.00

NOTE: Based upon assets under the control of the fiduciary, including real estate over which the fiduciary has the power of sale, but not including projected income.

First Account of a Decedent's Estate

Assets from Inventory plus Additions

	<u>Fee</u>
0 - \$ 50,000	\$ 220.00
50,001 - 100,000	440.00
100,001 - 200,000	550.00
200,001 - 300,000	660.00
300,001 - 500,000	825.00
500,001 - 700,000	990.00
700,001 - 1,000,000	1,320.00
Above - 1,000,000	1,320.00
	plus .00075 in excess of \$1,000,000, not to exceed a total fee of \$ 11,000.00 (except as may be approved by the Court)

NOTE: "Assets from Inventory" for a decedent's estate means the probate assets, including real estate over which the fiduciary has the power of sale (Parts 1 and 3 of the Inventory). "Additions" are receipts, capital gains, and adjustments (Lines 2, 3, and 4 of the Account Summary).

Second and Subsequent Accounts of a Decedent's Estate

The fee shall be determined by applying the fee schedule for a First Account to the assets brought forward (at market value) plus additions during the accounting period.

Statements In Lieu of Account

	<u>Fee</u>
Statement in Lieu	\$ 75.00
Notice of Intent to File	75.00

NOTE: These fees are statutory (Va. Code Section § 64.2-1314).

First Account of a Minor

<u>Assets from Inventory plus Additions</u>	<u>Fee</u>
0 - \$ 50,000	\$ 110.00
50,001 - 100,000	165.00
100,001 - 200,000	220.00
200,001 - 300,000	275.00
300,001 - 500,000	330.00
500,001 - 700,000	385.00
700,001 - 1,000,000	440.00
Above - 1,000,000	440.00
	plus .0005 in excess of \$1,000,000, not to exceed a total fee of \$5,500.00 (except as may be approved by the Court)

NOTE: "Assets from Inventory" means the Guardianship assets, including real estate over which the Guardian has power of sale (Parts 1 and 2 of the Inventory). "Additions" are receipts, capital gains, and adjustments (Lines 2b, 3 and 4).

Second and Subsequent Accounts of a Minor

The fee shall be determined by applying the fee schedule for a First Account to the assets brought forward (at market value) plus additions during the accounting period. The maximum fee shall not exceed \$ 5,500.00.

Foreclosure Accounts (Interim and Final)

<u>Sale Price</u>	<u>Fee</u>
0 - \$ 100,000	\$ 275.00
100,001 - 300,000	330.00
300,001 - 450,000	495.00
450,001 - 600,000	660.00
600,001 - 750,000	825.00
750,001 - 900,000	990.00
Above - 900,000	1,100.00

Note: The Commissioner may charge an additional fee of \$165.00 when the Trustee is unable to produce the original note, which fee shall be shown on the Account as a charge to the noteholder.

Taking and Reporting of Debts and Demands

A fee of \$ 275.00 plus the costs of advertisement, subject to the provisions below regarding fees for contested hearings.

Receiving Claims Against the Estate After Qualification

A fee of \$ 55.00 for each creditor's claim filed with the Commissioner after qualification, other than claims filed in response to a notice of Debts and Demands hearing. This fee shall be charged to the creditor.

Delinquency Fees (To be collected against the fiduciary personally)

1. Failure to file an inventory in a timely manner resulting in a letter from the Commissioner: \$ 30.00.
2. Failure to file settlement of accounts in a timely manner resulting in a letter from the Commissioner: \$ 30.00.
3. Issuance of a summons by Commissioner: \$ 85.00.
4. Commissioner's report to the Court on failure of a fiduciary to comply with a summons: \$ 165.00.
5. Commissioner's report to the Court of delinquent accounts and unsettled accounts as required by Virginia Code § 64.2-1216: \$ 55.00.
6. Appearance in Court to prosecute a Show Cause Order issued against a fiduciary: \$ 220.00.

Increased Fees for Review of Accounts

When a Commissioner's review of an account requires exceptional time, the Commissioner may seek Court approval to increase his or her fees. The Commissioner's request for approval of an increased fee must be made in writing, and include his or her justification for requesting the increased fee. The Commissioner shall give notice of his request for Court approval to the fiduciary so that the fiduciary has an opportunity to be heard. When formulating a request for an increase of the fee, the Commissioner may take into consideration the following factors:

1. The amount of time spent by the Commissioner and his or her staff in reviewing the account and the vouchers, as affected by the number of vouchers and the quality, completeness and accuracy of preparation of the account.
2. The dollar value, number and nature of the assets in the estate, and the assets outside of the estate which impact on the distribution of the probate estate.
3. The amount of time spent by the Commissioner and his or her staff on research and rendering decisions on questions of law.

4. The complexity of the estate distribution scheme, including apportionment of taxes, funding bypass trusts and marital shares or trusts and computations of beneficiary shares, including elective shares, allowances and exemptions.

5. The necessity for the Commissioner to review tax returns or other documents.

6. The amount of time spent by the Commissioner and his or her staff addressing complaints of beneficiaries concerning the account.

7. Any other matters deemed relevant by the Commissioner.

Fees for Services Other Than Inventory/Account Reviews and Uncontested Debts and Demands Hearing

When the Commissioner of Accounts conducts contested hearings; or confers or corresponds with fiduciaries, beneficiaries, and/or creditors on matters not normally required to be addressed during the audit and approval of fiduciary inventories and accounts, the Commissioner may charge a fee based upon hours expended at a rate of \$ 250.00 per hour or such other hourly rate set by the Circuit Court for the Commissioner of Accounts.

When the Commissioner of Accounts conducts a hearing to authorize a disbursement by the Guardian of a minor, the fee of the Commissioner by statute shall not be in excess of \$ 100.00. **(Virginia Code § 64.2-1802).**

For receiving and filing a written consent to the waiver of filing a Trust Inventory and/or Trust Account, the fee of the Commissioner of Accounts is set by statute and shall not exceed \$ 25.00. **(Virginia Code § 64.2-1307).**

Reduction of Fees

In exceptional circumstances, the Commissioner may reduce any of the forgoing fees.

Clerk's Recordation Fee (to be sent to the Commissioner)

Inventories: As set by the local Clerk pursuant to statute.

Accounts: As set by the local Clerk pursuant to statute.

APPENDIX C

RECOMMENDATION 2-5.7.
REPORT OF THE
COMMISSION ON VIRGINIA
COURTS IN THE 21ST CENTURY

Recommendation 2-1.5.7. The fee schedule used by Commissioners of Accounts should be examined regularly and uniformity is important.

Comment

The fee schedule should be examined regularly in order for the Commissioners' fees to be high enough to permit them to operate their offices effectively but low enough to be fair to the public and not excessive. It is particularly important that the Commissioners' fees permit them to hire an adequate number of staff members for prompt service to be assured. Uniformity is also of great importance in order for members of the public to have the sense that they are being treated fairly.

Appendix at 42, Report of Subcommittee on Probate and Commissioners of Accounts

When the Commissioner of Accounts conducts contested hearings; or confers or corresponds with fiduciaries, beneficiaries, and/or creditors on matters not normally required to be addressed during the audit and approval of fiduciary inventories and accounts, the Commissioner may charge a fee based upon hours expended at a rate of \$150.00 per hour or such greater hourly rate set by the Circuit Court for the Commissioner of Accounts

APPENDIX D

**UNITED STATES CONSUMER LAW
ATTORNEY FEE SURVEY REPORT
2013-2014
(Atlantic Region-including Virginia)**

Ronald L. Burdge, Esq.

**UNITED STATES CONSUMER LAW
ATTORNEY FEE SURVEY REPORT
2013-2014**



Ronald L. Burdge, Esq.

3. Region Summary Profiles

The reports which follow are highlights of the separately published data in the Region Reports, which contain further explanatory data, analyses and information particular to each regional area.

Each analysis below contains a summary profile of the typical Consumer Law attorney practice in each region with some comparisons with prior survey data where possible along with statistical and relevant observations.

Summary Profile of Atlantic Region

This section summarizes key statistics derived from the survey when viewed for the Atlantic Region. This region includes the District of Columbia, Delaware, North Carolina, New Jersey, Pennsylvania, Virginia, and West Virginia. Emphasis here is on the average Consumer Law attorney in this region without regard for any specific survey factor.

The typical Atlantic Region Consumer Law attorney is in a small office of 4 or fewer practitioners with a firm size of 2.82 attorneys and has been practicing law for 20 years, slightly longer than the last survey reported.

Although 58.6% of survey participants reported that 90% or more of their practice was devoted to Consumer Law, it was a only a slight increase from last year's figure but still a substantial decrease from the pre-2010 recession figure. The numbers indicate a stabilizing but reduced quantity of attorneys devoting substantially all their time to the Consumer Law practice area.

67.81% reported that Consumer Law represented the largest area of their practice time although that is the second time in a row that the figure has been a significant decrease from the prior Report's figure. The average Consumer Law attorney in the Atlantic Region continues the trend from last year of supplementing their Consumer Law practice primarily with Bankruptcy work.

The average Atlantic Consumer Law firm employs 1.7 paralegals whose median billable hourly rate is \$125, down slightly from the last report but still above the national average. 36.7% of all Atlantic paralegals have a billable hourly rate between \$100 and \$174. In this region, 24% of Consumer Law firms report they employ no paralegal support at all, the same as the last Report.

46.8% of all Atlantic Consumer Law attorneys (regardless of all other factors) have a billable hourly rate above \$325 and the average rate was \$358, up slightly from last year's average rate.

The median Atlantic Attorney hourly rate is \$325, a decrease from last

year's \$350. The median 25% Atlantic Attorney hourly rate (the point at which 25% of all Atlantic survey participants reported an hourly rate lower than this number) is \$262. The median 75% Atlantic Attorney hourly rate is \$400. 10.3% of Atlantic survey participants reported an hourly rate higher than \$600.

13.8% of Atlantic survey participants reported an hourly rate higher than \$500.

UNITED STATES CONSUMER LAW ATTORNEY FEE SURVEY REPORT

2010-2011

Ronald L. Burdge, Esq.

Atlantic Region Firms

Years Practicing

Consumer Law

Average Attorney

Hourly Rate

1 - 3 229

3 - 5 234

6 - 10 338

11 - 15 329

16 - 20 373

21 - 25 390

26 - 30 389

>31 421

APPENDIX E

LAFFEY MATRIX

**(Hourly rates of attorneys in
Washington and Northern Virginia)**

Laffey Matrix

Perhaps the most widely followed set of rates are what is called the Laffey Matrix available from the United States Attorney's Office for the District of Columbia. These have been available since 1982 and are updated annually. Hourly rates are shown by years of experience. The rates reflect lawyers in the Washington region, including northern Virginia. The current Laffey Matrix provides market rates for litigation counsel as follows:

Experience	
20+ years	\$520
11-19 years	\$460
8-10 years	\$370
4-7 years	\$300
1-3 years	\$255
Paralegals &	
Law Clerks	\$150

LAFHEY MATRIX – 2014-2015

Years (Rate for June 1 – May 31, based on prior year's CPI-U)

Experience	14-15
20+ years	520
11-19 years	460
8-10 years	370
4-7 years	300
1-3 years	255
Paralegals & Law Clerks	150

Explanatory Notes:

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia. The matrix is intended to be used in cases in which a "fee-shifting" statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix does not apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. This matrix is based on the hourly rates allowed in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is commonly referred to by attorneys and federal judges in the District of Columbia as the "Laffey Matrix" or the "United States Attorney's Office Matrix." The various "brackets" in the column headed "Experience" refer to the years following the attorney's graduation from law school, and are intended to correspond to "junior associates" (1-3 years after law school graduation), "senior associates" (4-7 years), "experienced federal court litigators" (8-10 and 11-19 years), and "very experienced federal court litigators" (20 years or more). Thus, the "1-3 years" bracket is generally applicable to attorneys in their first, second, and third years after graduation from law school, and the "4-7 years" bracket generally becomes applicable on the third anniversary of the attorney's graduation (*i.e.*, at the beginning of the fourth year following law school). *See Laffey*, 572 F. Supp. at 371; *but cf. EPIC v. Dep't of Homeland Sec.*, No. 11-2261, ___ F. Supp. 2d ___, 2013 WL 6047561, *6 -*7 (D.D.C. Nov. 15, 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp.2d 56, 60-61 (D.D.C. 2013) (same).
3. The hourly rates approved in *Laffey* were for work done principally in 1981-82. The matrix begins with those rates. *See Laffey*, 572 F. Supp. at 371 (attorney rates) & 386 n.74 (paralegal and law clerk rate). The rates for subsequent yearly periods were determined by adding the change in the cost of living for the Washington, D.C. area to the applicable rate for the prior year, and then rounding to the nearest multiple of \$5 (up if within \$3 of the next multiple of \$5). The result is subject to adjustment if appropriate to ensure that the relationship between the highest rate and the lower rates remains reasonably constant. Changes in the cost of living are measured by the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.
4. Use of an updated Laffey Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the United States Attorney's Office as evidence of

prevailing market rates for litigation counsel in the Washington, D.C. area. *See Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n.14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996). Most lower federal courts in the District of Columbia have relied on the United States Attorney's Office Matrix, rather than the so-called "Updated Laffey Matrix," as the "benchmark for reasonable fees" in this jurisdiction. *Miller v. Holzmann*, 575 F. Supp. 2d 2, 18 n.29 (D.D.C. 2008) (quoting *Pleasants v. Ridge*, 424 F. Supp. 2d 67, 71 n.2 (D.D.C. 2006)); *see, e.g., Berke v. Bureau of Prisons*, 942 F. Supp. 2d 71, 77 (D.D.C. 2013); *Heller v. District of Columbia*, 832 F. Supp. 2d 32, 40-49 (D.D.C. 2011); *American Lands Alliance v. Norton*, 525 F. Supp. 2d 135, 150 (D.D.C. 2007). *But see Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 14-15 (D.D.C. 2000). The United States Attorney's Office does not use the "Updated Laffey Matrix" to determine whether fee awards under fee shifting statutes are reasonable.

APPENDIX F

VIENNA MATRIX

**(Hourly rates of northern Virginia
attorneys in litigation before the
U.S. District Court for the Eastern
District of Virginia)**

2011

In litigation before the United States District Court for the Eastern District of Virginia, the Court has adopted in several cases⁴ a table of rates for attorneys in northern Virginia developed by a prominent local attorney. That table provided the following hourly rates:

Table 2: *Vienna Metro* Matrix

2011 Range of Hourly Rates in Northern Virginia

Paralegal	Years of Experience	1-3	4-7	8-10	11-19	20+
\$130-350	Hourly Rate	\$250-435	\$350-600	\$465-640	\$520-770	\$505-820

⁴ See, e.g., *Taylor v. Republic Services, Inc.*, No. 1:12-cv-00523, *Vienna Metro v. Pulte Home Corp.*, Case No. 1:10-cv-00502, and *Tech Systems, Inc. v. Pyles*, Case No. 1:12-cv-0034. But see, *Route Triple Seven LP v. Total Hockey Inc.* (VLW 015-3-448).