

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|-----------------------|-------|-------|
| ADOPTED | _____ | (Y/N) |
| ADOPTED AS AMENDED | _____ | (Y/N) |
| ADOPTED W/O OBJECTION | _____ | (Y/N) |
| FAILED TO ADOPT | _____ | (Y/N) |
| WITHDRAWN | _____ | (Y/N) |
| OTHER | | |

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Yarborough offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 733.6171, Florida Statutes, is amended
7 to read:

8 733.6171 Compensation of attorney for the personal
9 representative.—

10 (1) Attorneys for personal representatives ~~shall be~~ are
11 entitled to reasonable compensation payable from the estate
12 assets without court order, except as provided in paragraph
13 (2) (d).

14 (2) (a) The attorney, the personal representative, and
15 persons bearing the impact of the compensation may agree to
16 compensation determined in a different manner than provided in

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17 this section. Compensation may also be determined in a different
18 manner than provided in this section if the manner is disclosed
19 to the parties bearing the impact of the compensation and if no
20 objection is made as provided for in the Florida Probate Rules.

21 (b) An attorney representing a personal representative in
22 an estate administration who intends to charge a fee based upon
23 the schedule set forth in subsection (3) shall make the
24 following disclosures in writing to the personal representative:

25 1. There is not a mandatory statutory attorney fee for
26 estate administration.

27 2. The attorney fee is not required to be based on the size
28 of the estate, and the presumed reasonable fee provided in
29 subsection (3) may not be appropriate in all estate
30 administrations.

31 3. The fee is subject to negotiation between the personal
32 representative and the attorney.

33 4. The selection of the attorney is made at the discretion
34 of the personal representative, who is not required to select
35 the attorney who prepared the will.

36 (c) The attorney shall obtain the personal representative's
37 timely signature acknowledging the disclosures.

38 (d) If the attorney does not make the disclosures required
39 by this section, the attorney may not be paid for legal services
40 without prior court approval of the fees or the written consent
41 of all interested parties.

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42 (3) Subject to subsection (2), ~~€~~compensation for ordinary
43 services of attorneys in a formal estate administration is
44 presumed to be reasonable if based on the compensable value of
45 the estate, which is the inventory value of the probate estate
46 assets and the income earned by the estate during the
47 administration as provided in the following schedule:

48 (a) One thousand five hundred dollars for estates having a
49 value of \$40,000 or less.

50 (b) An additional \$750 for estates having a value of more
51 than \$40,000 and not exceeding \$70,000.

52 (c) An additional \$750 for estates having a value of more
53 than \$70,000 and not exceeding \$100,000.

54 (d) For estates having a value in excess of \$100,000, at
55 the rate of 3 percent on the next \$900,000.

56 (e) At the rate of 2.5 percent for all above \$1 million
57 and not exceeding \$3 million.

58 (f) At the rate of 2 percent for all above \$3 million and
59 not exceeding \$5 million.

60 (g) At the rate of 1.5 percent for all above \$5 million
61 and not exceeding \$10 million.

62 (h) At the rate of 1 percent for all above \$10 million.

63 (4) Subject to subsection (2), ~~±~~in addition to fees for
64 ordinary services, the attorney for the personal representative
65 shall be allowed further reasonable compensation for any
66 extraordinary service. What is an extraordinary service may vary

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67 | depending on many factors, including the size and complexity of
68 | the estate. Extraordinary services may include, but are not
69 | limited to:

70 | (a) Involvement in a will contest, will construction, a
71 | proceeding for determination of beneficiaries, a contested
72 | claim, elective share proceeding, apportionment of estate taxes,
73 | or any adversarial proceeding or litigation by or against the
74 | estate.

75 | (b) Representation of the personal representative in audit
76 | or any proceeding for adjustment, determination, or collection
77 | of any taxes.

78 | (c) Tax advice on postmortem tax planning, including, but
79 | not limited to, disclaimer, renunciation of fiduciary
80 | commission, alternate valuation date, allocation of
81 | administrative expenses between tax returns, the QTIP or reverse
82 | QTIP election, allocation of GST exemption, qualification for
83 | Internal Revenue Code ss. 6166 and 303 privileges, deduction of
84 | last illness expenses, fiscal year planning, distribution
85 | planning, asset basis considerations, handling income or
86 | deductions in respect of a decedent, valuation discounts,
87 | special use and other valuation, handling employee benefit or
88 | retirement proceeds, prompt assessment request, or request for
89 | release of personal liability for payment of tax.

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90 (d) Review of estate tax return and preparation or review
91 of other tax returns required to be filed by the personal
92 representative.

93 (e) Preparation of the estate's federal estate tax return.
94 If this return is prepared by the attorney, a fee of one-half of
95 1 percent up to a value of \$10 million and one-fourth of 1
96 percent on the value in excess of \$10 million of the gross
97 estate as finally determined for federal estate tax purposes, is
98 presumed to be reasonable compensation for the attorney for this
99 service. These fees shall include services for routine audit of
100 the return, not beyond the examining agent level, if required.

101 (f) Purchase, sale, lease, or encumbrance of real property
102 by the personal representative or involvement in zoning, land
103 use, environmental, or other similar matters.

104 (g) Legal advice regarding carrying on of the decedent's
105 business or conducting other commercial activity by the personal
106 representative.

107 (h) Legal advice regarding claims for damage to the
108 environment or related procedures.

109 (i) Legal advice regarding homestead status of real
110 property or proceedings involving that status and services
111 related to protected homestead.

112 (j) Involvement in fiduciary, employee, or attorney
113 compensation disputes.

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114 (k) Proceedings involving ancillary administration of
115 assets not subject to administration in this state.

116 (5) Upon petition of any interested person, the court may
117 increase or decrease the compensation for ordinary services of
118 the attorney or award compensation for extraordinary services if
119 the facts and circumstances of the particular administration
120 warrant. In determining reasonable compensation, the court shall
121 consider all of the following factors, giving weight to each as
122 it determines to be appropriate:

123 (a) The promptness, efficiency, and skill with which the
124 administration was handled by the attorney.

125 (b) The responsibilities assumed by and the potential
126 liabilities of the attorney.

127 (c) The nature and value of the assets that are affected
128 by the decedent's death.

129 (d) The benefits or detriments resulting to the estate or
130 interested persons from the attorney's services.

131 (e) The complexity or simplicity of the administration and
132 the novelty of issues presented.

133 (f) The attorney's participation in tax planning for the
134 estate and the estate's beneficiaries and tax return
135 preparation, review, or approval.

136 (g) The nature of the probate, nonprobate, and exempt
137 assets, the expenses of administration, the liabilities of the

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138 decedent, and the compensation paid to other professionals and
139 fiduciaries.

140 (h) Any delay in payment of the compensation after the
141 services were furnished.

142 (i) Any agreement relating to the attorney's compensation
143 and whether written disclosures were made to the personal
144 representative in a timely manner under the circumstances
145 pursuant to subsection (2).

146 (j) Any other relevant factors.

147 (6) If a separate written agreement regarding compensation
148 exists between the attorney and the decedent, the attorney shall
149 furnish a copy to the personal representative prior to
150 commencement of employment, and, if employed, shall promptly
151 file and serve a copy on all interested persons. ~~Neither~~ A
152 separate agreement ~~nor~~ or a provision in the will suggesting or
153 directing that the personal representative retain a specific
154 attorney does not ~~will~~ obligate the personal representative to
155 employ the attorney or obligate the attorney to accept the
156 representation, but if the attorney who is a party to the
157 agreement or who drafted the will is employed, the compensation
158 paid shall not exceed the compensation provided in the agreement
159 or in the will.

160 Section 2. Section 736.1007, Florida Statutes, is amended
161 to read:

162 736.1007 Trustee's attorney fees.—

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163 (1) (a) Except as provided in paragraph (d), if the trustee
164 of a revocable trust retains an attorney to render legal
165 services in connection with the initial administration of the
166 trust, the attorney is entitled to reasonable compensation for
167 those legal services, payable from the assets of the trust,
168 subject to s. 736.0802(10), without court order. The trustee and
169 the attorney may agree to compensation that is determined in a
170 manner or amount other than the manner or amount provided in
171 this section. The agreement is not binding on a person who bears
172 the impact of the compensation unless that person is a party to
173 or otherwise consents to be bound by the agreement. The
174 agreement may provide that the trustee is not individually
175 liable for the attorney fees and costs.

176 (b) An attorney representing a trustee in the initial
177 administration of the trust who intends to charge a fee based
178 upon the schedule set forth in subsection (2) shall make the
179 following disclosures in writing to the trustee:

180 1. There is not a mandatory statutory attorney fee for
181 trust administration.

182 2. The attorney fee is not required to be based on the size
183 of trust, and the presumed reasonable fee provided in subsection
184 (2) may not be appropriate in all trust administrations.

185 3. The fee is subject to negotiation between the trustee
186 and the attorney.

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187 4. The selection of the attorney is made at the discretion
188 of the trustee, who is not required to select the attorney who
189 prepared the trust.

190 (c) The attorney shall obtain the trustee's timely
191 signature acknowledging the disclosures.

192 (d) If the attorney does not make the disclosures required
193 by this section, then the attorney may not be paid for legal
194 services without prior court approval of the fees or the written
195 consent of the trustee and all qualified beneficiaries.

196 (2) Unless otherwise agreed and subject to subsection (1),
197 compensation based on the value of the trust assets immediately
198 following the settlor's death and the income earned by the trust
199 during initial administration at the rate of 75 percent of the
200 schedule provided in s. 733.6171(3)(a)-(h) is presumed to be
201 reasonable total compensation for ordinary services of all
202 attorneys employed generally to advise a trustee concerning the
203 trustee's duties in the initial trust administration.

204 (3) Subject to subsection (1), ~~A~~n attorney who is retained
205 to render only limited and specifically defined legal services
206 shall be compensated as provided in the retaining agreement. If
207 the amount or method of determining compensation is not provided
208 in the agreement, the attorney is entitled to a reasonable fee,
209 taking into account the factors set forth in subsection (6).

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210 (4) Ordinary services of the attorney in an initial trust
211 administration include legal advice and representation
212 concerning the trustee's duties relating to:

213 (a) Review of the trust instrument and each amendment for
214 legal sufficiency and interpretation.

215 (b) Implementation of substitution of the successor
216 trustee.

217 (c) Persons who must or should be served with required
218 notices and the method and timing of such service.

219 (d) The obligation of a successor to require a former
220 trustee to provide an accounting.

221 (e) The trustee's duty to protect, insure, and manage
222 trust assets and the trustee's liability relating to these
223 duties.

224 (f) The trustee's duty regarding investments imposed by
225 the prudent investor rule.

226 (g) The trustee's obligation to inform and account to
227 beneficiaries and the method of satisfaction of such
228 obligations, the liability of the trust and trustee to the
229 settlor's creditors, and the advisability or necessity for
230 probate proceedings to bar creditors.

231 (h) Contributions due to the personal representative of
232 the settlor's estate for payment of expenses of administration
233 and obligations of the settlor's estate.

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234 (i) Identifying tax returns required to be filed by the
235 trustee, the trustee's liability for payment of taxes, and the
236 due date of returns.

237 (j) Filing a nontaxable affidavit, if not filed by a
238 personal representative.

239 (k) Order of payment of expenses of administration of the
240 trust and order and priority of abatement of trust
241 distributions.

242 (l) Distribution of income or principal to beneficiaries
243 or funding of further trusts provided in the governing
244 instrument.

245 (m) Preparation of any legal documents required to effect
246 distribution.

247 (n) Fiduciary duties, avoidance of self-dealing, conflicts
248 of interest, duty of impartiality, and obligations to
249 beneficiaries.

250 (o) If there is a conflict of interest between a trustee
251 who is a beneficiary and other beneficiaries of the trust,
252 advice to the trustee on limitations of certain authority of the
253 trustee regarding discretionary distributions or exercise of
254 certain powers and alternatives for appointment of an
255 independent trustee and appropriate procedures.

256 (p) Procedures for the trustee's discharge from liability
257 for administration of the trust on termination or resignation.

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258 (5) Subject to subsection (1), in ~~In~~ addition to the
259 attorney's fees for ordinary services, the attorney for the
260 trustee shall be allowed further reasonable compensation for any
261 extraordinary service. What constitutes an extraordinary service
262 may vary depending on many factors, including the size and
263 complexity of the trust. Extraordinary services may include, but
264 are not limited to:

265 (a) Involvement in a trust contest, trust construction, a
266 proceeding for determination of beneficiaries, a contested
267 claim, elective share proceedings, apportionment of estate
268 taxes, or other adversary proceedings or litigation by or
269 against the trust.

270 (b) Representation of the trustee in an audit or any
271 proceeding for adjustment, determination, or collection of any
272 taxes.

273 (c) Tax advice on postmortem tax planning, including, but
274 not limited to, disclaimer, renunciation of fiduciary
275 commission, alternate valuation date, allocation of
276 administrative expenses between tax returns, the QTIP or reverse
277 QTIP election, allocation of GST exemption, qualification for
278 Internal Revenue Code ss. 303 and 6166 privileges, deduction of
279 last illness expenses, distribution planning, asset basis
280 considerations, throwback rules, handling income or deductions
281 in respect of a decedent, valuation discounts, special use and
282 other valuation, handling employee benefit or retirement

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283 | proceeds, prompt assessment request, or request for release from
284 | personal liability for payment of tax.

285 | (d) Review of an estate tax return and preparation or
286 | review of other tax returns required to be filed by the trustee.

287 | (e) Preparation of decedent's federal estate tax return.
288 | If this return is prepared by the attorney, a fee of one-half of
289 | 1 percent up to a value of \$10 million and one-fourth of 1
290 | percent on the value in excess of \$10 million, of the gross
291 | estate as finally determined for federal estate tax purposes, is
292 | presumed to be reasonable compensation for the attorney for this
293 | service. These fees shall include services for routine audit of
294 | the return, not beyond the examining agent level, if required.

295 | (f) Purchase, sale, lease, or encumbrance of real property
296 | by the trustee or involvement in zoning, land use,
297 | environmental, or other similar matters.

298 | (g) Legal advice regarding carrying on of decedent's
299 | business or conducting other commercial activity by the trustee.

300 | (h) Legal advice regarding claims for damage to the
301 | environment or related procedures.

302 | (i) Legal advice regarding homestead status of trust real
303 | property or proceedings involving the status.

304 | (j) Involvement in fiduciary, employee, or attorney
305 | compensation disputes.

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306 (k) Considerations of special valuation of trust assets,
307 including discounts for blockage, minority interests, lack of
308 marketability, and environmental liability.

309 (6) Upon petition of any interested person in a proceeding
310 to review the compensation paid or to be paid to the attorney
311 for the trustee, the court may increase or decrease the
312 compensation for ordinary services of the attorney for the
313 trustee or award compensation for extraordinary services if the
314 facts and circumstances of the particular administration
315 warrant. In determining reasonable compensation, the court shall
316 consider all of the following factors giving such weight to each
317 as the court may determine to be appropriate:

318 (a) The promptness, efficiency, and skill with which the
319 initial administration was handled by the attorney.

320 (b) The responsibilities assumed by, and potential
321 liabilities of, the attorney.

322 (c) The nature and value of the assets that are affected
323 by the decedent's death.

324 (d) The benefits or detriments resulting to the trust or
325 the trust's beneficiaries from the attorney's services.

326 (e) The complexity or simplicity of the administration and
327 the novelty of issues presented.

328 (f) The attorney's participation in tax planning for the
329 estate, the trust, and the trust's beneficiaries and tax return
330 preparation or review and approval.

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331 (g) The nature of the trust assets, the expenses of
332 administration, and the claims payable by the trust and the
333 compensation paid to other professionals and fiduciaries.

334 (h) Any delay in payment of the compensation after the
335 services were furnished.

336 (i) Any agreement relating to the attorney's compensation
337 and whether written disclosures were made to the trustee in a
338 timely manner under the circumstances pursuant to paragraph
339 (1) (b) .

340 (j) Any other relevant factors.

341 (7) If a separate written agreement regarding compensation
342 exists between the attorney and the settlor, the attorney shall
343 furnish a copy to the trustee prior to commencement of
344 employment and, if employed, shall promptly file and serve a
345 copy on all interested persons. A separate agreement or a
346 provision in the trust suggesting or directing the trustee to
347 retain a specific attorney does not obligate the trustee to
348 employ the attorney or obligate the attorney to accept the
349 representation but, if the attorney who is a party to the
350 agreement or who drafted the trust is employed, the compensation
351 paid shall not exceed the compensation provided in the
352 agreement.

353 (8) As used in this section, the term "initial trust
354 administration" means administration of a revocable trust during
355 the period that begins with the death of the settlor and ends on

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356 the final distribution of trust assets outright or to continuing
357 trusts created under the trust agreement but, if an estate tax
358 return is required, not until after issuance of an estate tax
359 closing letter or other evidence of termination of the estate
360 tax proceeding. This initial period is not intended to include
361 continued regular administration of the trust.

362 Section 3. This act shall apply to estate and initial trust
363 administrations commenced on or after October 1, 2021.

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T I T L E A M E N D M E N T

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Remove everything before the enacting clause and insert:

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An act relating to attorney compensation; amending s.

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733.6171, F.S.; amending s. 736.1007, F.S.; specifying that an

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attorney representing the person responsible for administering

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an estate or trust is entitled to reasonable compensation;

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specifying that an attorney and the person responsible for

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administering an estate or trust may enter into an agreement

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regarding the attorney's compensation; requiring an attorney who

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accepts certain engagements to make certain disclosures to the

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person responsible for administering an estate or trust;

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requiring the attorney to provide the person responsible for

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administering an estate or trust with certain information

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regarding the manner of determination of the attorney's

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compensation; providing that the fee of an attorney who does not

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381 | make the required disclosures shall be subject to judicial
382 | review and approval; providing an effective date.