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## National Fiduciary Accounting Study

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# NATIONAL FIDUCIARY ACCOUNTING STUDY

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[*Editor's Note:* Professor Whitman was commissioned by the Section of Real Property, Probate and Trust Law to make a national study of fiduciary accounting practices on behalf of the Section's Committee on Trust Administration and Accounting. He conducted interviews or corresponded with attorneys, judges of probate and trust officers in all 50 states, on the basis of which he prepared an extensive report as a resource paper to enable the Committee to react to the information, ideas and suggestions presented therein. What is published here is Professor Whitman's condensation of his report under the supervision of Committee Chairman Charles G. Dalton of Chicago. Section 5 of the report, discussing accounting form and content, is not reflected in the summary. It should be emphasized that the conclusions set forth, particularly those suggesting changes in the Uniform Probate Code's philosophy on accounting, do not necessarily represent the views of the Committee, the Section or the American Bar Association.]

## I. INTRODUCTION

Our report searches for a reasonable and balanced fiduciary accounting system. It seeks to provide insight into the shortcomings of present fiduciary accounting systems, indicating areas of uncertainty.

The report is concerned with the theory of fiduciary accounting practice. It does not advance only one suggestion for change nor serve as a brief advocating only one such change. It is more concerned with discussing the theory of fiduciary accounting, current practices and various possible changes.

There is no attempt to consider the likelihood that any suggestion offered will be implemented. Opposition from groups whose interests might be affected by the implementation of any suggestions is not evaluated.

The study was not conceived of as a vehicle for exposing incompetence, corruption and patronage in connection with probate practice. Reference to such conditions is made only if directly relevant to the discussion.

## II. SUMMARY OF FINDINGS

A. The major conclusion of the report is that the present rules and procedures controlling fiduciary accounting practices in the United States are not in good order. Because answers to the most basic of questions are not clear, there is great diversity and inconsistency in practice.

B. The reason for this state of affairs is that the statutes controlling fiduciary accounting are outmoded and there is a vacuum in the leadership necessary to bring about change. There is doubt as to who has the authority and responsibility to resolve basic policy questions, and put forward and implement suggestions for change.

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C. The report suggests that protection of the public interest must be the primary goal in establishing fiduciary accounting practices and that a national study panel should be organized and made responsible for exercising leadership in modifying and unifying fiduciary accounting practices throughout the United States to conform to this goal.

D. Some system of critical scrutiny of fiduciary accountings is essential. Some supervision over the form and substance of the accounting is also required.

E. A basically new, flexible approach to fiduciary accounting should be established, under which a fiduciary would incur his accounting responsibility from the time he accepts his office. Necessary modifications to the Uniform Probate Code and other state statutes are recommended.

F. A fiduciary office should see to it that the persons to whom the fiduciary is responsible understand their position, are kept well informed and are reasonably well protected. To enforce these duties, the possibility of imposing fiduciary liability for inadequate performance, apart from proof of actual loss, is considered.

G. The major contribution that could be made by the American Bar Association would be to work towards the establishment of the national study panel, which would accept ongoing responsibility for overseeing the fiduciary accounting process. This group could be assisted by such organizations as the National Council on State Courts, American Bar Foundation, the National Conference of Commissioners on Uniform State Laws, the American Judicature Society and the National College of Probate Judges.

### III. PRESENT GOALS OF FIDUCIARY ACCOUNTING

By definition, a "fiduciary" is one who is responsible to persons. Fiduciary responsibility is one of the basic tenets of the law, universally recognized and applied in court decisions and statutes in a wide variety of situations.

In courts of probate in the United States, the method by which persons to whom a fiduciary is responsible are kept informed is the fiduciary's account. Generally, questions concerning fiduciary conduct are raised by making a demand for an accounting or by raising objections to an accounting.

Accordingly, in courts of probate, the concept of fiduciary accounting is central to the existence of the fiduciary relationship. The degree to which a fiduciary is actually held responsible for his actions depends, in large part, upon the integrity of the system under which he accounts. Thus, to the extent that the account of a fiduciary is not actually critically examined and appraised, the fiduciary is not, in fact, responsible for his actions to the persons to whom he is responsible.

For some persons there are other reasons why it is desirable that fiduciaries account. To a fiduciary the most important aspect of fiduciary accounting procedures may be that they serve as a vehicle for his obtaining a discharge from his responsibility. In this study, practices were discovered that tend to nullify the use of the accounting as a device that imposes actual responsibility on the fiduciary. These practices make the fiduciary accounting primarily a vehicle for obtaining fiduciary protection.

Courts of probate seek to continue to exercise control by requiring accountings. From the point of view of a court of probate, fiduciary accounting procedures may be important because they allow the court to control the fiduciary by requiring him to submit his accounting for review and approval. Historically, the fiduciary has accounted to the court of probate, rather than directly to the persons to whom he is responsible.

#### IV. DESIRED GOALS OF FIDUCIARY ACCOUNTING

The really important product of fiduciary accounting is neither the protection afforded to the fiduciary nor the power lodged in courts of probate. Fiduciary accounting procedures, like other procedures created by the law, must be designed to protect the public interest. In the context of fiduciary accounting, the public interest is protected only if fiduciary accounting procedures actually protect the persons to whom the fiduciary is responsible, and the public is confident that the procedures are reasonable and proper.

What components should be built into a fiduciary accounting system designed to protect the public interest and foster public confidence? Consideration might be given to provisions designed—

(A) to allow the persons to whom the fiduciary is responsible to understand what is required under the system and the reasons for the requirements;

(B) to foster the use of accounting to keep persons to whom the fiduciary is responsible well informed about the activities of the fiduciary, of their rights and the duties owed to them by the fiduciary;

(C) to encourage careful scrutiny of accountings, so that a fiduciary will feel that he is under compulsion to account in a meaningful way, and that questionable conduct on his part will be reviewed;

(D) to provide for proper supervision of the accounting process;

(E) to provide for court participation in the accounting process in a practical, meaningful way;

(F) to build machinery to properly evaluate the accounting system and change it when necessary; and

(G) to educate persons involved with the accounting system so they can perform in a competent fashion.

However, the indicated task will not be easy of accomplishment. The following observations must be considered in this regard.

1. It may be that some of the provisions called for in the report will not be implemented in the near future, or, indeed, ever. Nonetheless, we should not tolerate the appearance that proper procedures exist if, in fact, that is not true. In some cases, deliberate steps are taken to hide existing inadequacies.

2. There is a price to be paid for any procedure that involves more than total inaction. If, on balance, we want no system of supervision of fiduciary accounts and no system of review, this fact should be brought clearly to the attention of the public, and particularly the persons to whom the fiduciary is responsible.

3. Even if we do establish new procedures for reviewing fiduciary accounts, the procedures will not be infallible and will not insure the protection of all parties in every matter.

4. For there to be actual scrutiny of the accounts, critical evaluation must be encouraged. This need to build in a critical look at fiduciary accounts is not always understood or appreciated.

If the public interest is to be protected, it should be made clear to all that a fiduciary is, by the nature of his office, a potential adversary to the persons to whom he is responsible. It is critically important that these persons should be aware of the actual conflict in their relationship with the fiduciary, so that they will be concerned for their own interests and act to assure themselves that the administration by the fiduciary has been proper in all respects.

## V. CONSIDERATION OF CURRENT PRACTICES

As surveyed by the study, the concept of fiduciary accounting exists in some form in each of the 50 states. The fiduciary accounting systems in use in each state and within each district within a state are quite diverse. For instance, whether a fiduciary will informally account out of court, or will submit a formal accounting to the court of probate, depends upon such factors as the practices of the fiduciary, the state, the court district within the state, the type of proceeding, whether parties are competent, whether there is an agreement to waive an accounting, etc.

What appear as highly diverse systems on one level of examination have, however, several common threads. Actually, from the standpoint of their failure to achieve some of the goals of fiduciary accounting expressed in this study, existing accounting systems that appear quite different are actually quite similar. For purposes of analysis, in very general terms, two patterns, identified here as System 1 and System 2, can be identified.

A. *System 1.* This System, accepted by the Uniform Probate Code, relieves the court of probate of the power to review a fiduciary accounting, unless a fiduciary or a person to whom he is responsible requires the court to do so. Decisions as to whether any accounting takes place, and, if so, in what form it takes place, rest with the fiduciary, subject to the right of a person to whom the fiduciary is responsible to complain if he is dissatisfied with the accounting he receives or with the activities of the fiduciary.

B. *System 2.* Under System 2, fiduciary accountings are tendered to the court of probate for "review" and parties to whom the fiduciary is responsible are given "notice" of the accounting.

Without attempting a state by state or district by district count, it can be said, in general terms, that System 1 is in force in all states in connection with accounting by a trustee for an *inter vivos* trust. Undoubtedly, the popularity of the *inter vivos* trust device and the pour-over will is due in large part to a preference for System 1 accounting procedures.

There is, of course, no logical reason why jurisdictions that treat other fiduciaries under System 2 should use System 1 accounting procedures for *inter vivos* trusts. Historically, however, courts of probate do not appoint, and thereafter control, trustees of *inter vivos* trusts as they do trustees of testamentary trusts. The Uniform Probate Code discontinues this illogical distinction, treating all fiduciary accounting under System 1.

With regard to all other accountings by fiduciaries in courts of probate,

in general terms, a majority of jurisdictions in the United States employ System 2; a minority of jurisdictions, growing as the Uniform Probate Code gains acceptance, employ System 1.

## VI. EVALUATION OF THE SYSTEMS

Viewed against the standard that fiduciary accounting should be carried on in the public interest to protect the persons to whom the fiduciary is responsible, both Systems have serious shortcomings that could be overcome without adding burdensome costs in time and expense.

### A. System 1

The major shortcomings of the System 1 fiduciary accounting procedures are:

1. *Failure to provide information.* There is a failure to require that adequate information be given to the persons to whom the fiduciary is responsible, so that they may understand their situation and take steps to protect their own interests. There is no enforceable requirement that the fiduciary educate the persons to whom he is responsible of the need to protect their own interests.

The combination of a lack of provision for alerting persons to whom a fiduciary is responsible concerning the need to protect their interests, and the withdrawal of the court of probate from its historical role as protector of the persons to whom the fiduciary is responsible creates an atmosphere in System 1 jurisdictions where there is little scrutiny of fiduciary accounts. It is not surprising, therefore, to find few questions being put to fiduciaries in a pure System 1 jurisdiction. Regardless of how outrageous the fees, how poor the quality of the accounting or how disastrous the management by the fiduciary, the persons to whom he is responsible gain no assistance or encouragement to question or challenge.

2. *Failure to have court supervision.* There is a failure to require the probate court to supervise procedures for fiduciary accounting and to establish standards for the account. The fiduciary is free to account in whatever form he chooses. Commenting on the acceptance of this pattern by the drafters of the Uniform Probate Code, Professor Richard Wellman said:

We . . . leaned away from any effort to prescribe standards for accounts by statute. Our thinking was that fiduciaries are under several pressures. These include (a) the need to standardize procedures for their own convenience, (b) the necessity of dealing with a few well advised beneficiaries, and (c) concern for their exposure over long periods of time in regard to inadequately revealed transactions. We felt that these would tend more surely than statutory or court rule pressure to produce good results. In view of the political power of corporate fiduciaries, we believed that routine court proceedings or routinely administered provisions of state law inevitably would be used more to serve the convenience of fiduciaries than to inform beneficiaries.

The results of this study do not support the assumptions made by the drafters of the Uniform Probate Code. Indeed, they clearly contradict the stated assumptions.

As found by the study, fiduciaries, left with no standards for accountings, do not produce accountings that are easily understood by the persons to whom they are responsible. Without proper standards and supervision, even the best motivated fiduciary cannot reasonably be expected to do so. For, unless told to do otherwise, he will continue to use the accepted accounting forms, no matter how outdated they have become.

It is possible that, upon recommendation, the drafters of the Uniform Probate Code will distinguish between the undesirable System 2 role of the court of probate as reviewer of each fiduciary accounting, and the general supervisory role that the court of probate can play in establishing general guidelines to be followed by the fiduciary in carrying out his obligation to account.

The obligation to account meaningfully is now recognized by the Uniform Probate Code. Ideally, a proper change in the Code could be recommended to provide that the court of probate shall play a supervisory role in establishing accounting guidelines. Practically, even within the present framework of the Code, nationally uniform rules could be promulgated and put into effect.

It is suggested that the task of promulgating general guidelines should not be left to each individual court of probate. Rather, a central body should be created and made responsible for creating and updating guidelines which, when placed in effect by each state probate court system, would bring about national uniformity. As later discussed in the study, some national organization is required to formulate necessary reforms. Without such a national program, each state and, indeed, each court will continue to do things as it deems best.

The study disclosed that although there is opposition to System 2 review of court accountings by courts of probate, virtually no opposition was found to the creation of workable standardized guidelines for fiduciary accounting and the exercise of supervisory control by the court of probate. Because there now is an absence of official guidelines, there are no standardized accounting procedures in use in System 1 jurisdictions. In one instance surveyed by the study, branches of the same corporate fiduciary employed different accounting procedures. Each trust officer was left to devise an accounting system he thought best.

The study also found that often fiduciaries are under no pressure from "well advised beneficiaries" to upgrade the accountings issued. Quite the contrary, in order to keep expenses at a minimum, fiduciaries employing the computer are under pressure to produce accountings at the lowest possible cost, although the accounting may be less revealing and less understandable. For example, one of the least understandable types of accounting is a straight chronological listing of transactions. It is, however, the easiest and least costly account that can be produced by computer. The popularity of this type of account is clearly on the increase. No power now exists in the courts of probate to ban this form of account in System 1 jurisdictions. Only in System 2 jurisdictions, where the court can exercise supervisory control over the form of the account, have a select group of probate judges exercised their power to ban the use of this type of account.

Because in System 1 jurisdictions the court of probate does not review fiduciary accounts unless asked to do so by a person to whom the fiduciary is responsible, there is, as compared to System 2 jurisdictions, a larger abdication of responsibility by the courts of probate for review of fiduciary and attorney fees, even though the existence of abuses in this area is recognized by the judges of probate.

## B. System 2

The major shortcomings of the System 2 fiduciary accounting procedures are:

1. *Lack of capability to review accounts adequately.* This study has found that there exists a general attitude nationally that under System 2 the courts of probate do not effectively review fiduciary accounts. To the extent that it is true, there are a number of factors which contribute to the ineffectiveness of the courts of probate as reviewers of fiduciary accountings. Just as it is important to recognize that fiduciaries acting in good faith in System 1 jurisdictions may not be capable of producing proper fiduciary accountings because of lack of court leadership and supervision, so it is important to understand that court personnel, acting in good faith in System 2 jurisdictions, may not be able to review fiduciary accountings adequately.

2. *Quality of review is doubtful.* Where the court does audit fiduciary accountings, what actually is done? Often review procedures will stem from the controlling state statutes concerning fiduciary accountings, most of which have not undergone change for decades. Thus, where the statutes call for the submission of vouchers by the fiduciary, the judge of probate or his clerk will check vouchers.

There are several other factors contributing to the court's inability to carry out a proper review, such as:

i. *Lack of leadership.* No one has told the judge of probate what should be done by way of reviewing fiduciary accountings and the judge is incapable or unwilling to formulate an effective program for review. Review of court accountings is a tedious and time-consuming job. Judges of probate, particularly in larger courts, do not themselves review accounts. More importantly, when passing the task to another, a judge does not necessarily indicate exactly what is to be done. As found by the study, the persons who actually perform the review by and large set their own standards of review and exercise their own judgment as to what to do.

ii. *Lack of experience.* Probate court personnel may not possess any general accounting experience or any familiarity with fiduciary accounting principles. It must be remembered that in many courts of probate across the nation, even judges of probate need not be and are not lawyers.

iii. *Lack of facilities.* In high volume courts, there may simply be too many accountings to allow for adequate review. This was found to be the case in several courts of probate visited during the course of the study.

3. *Scope of review.* In some courts of probate there is nothing more than a checking of accountings for internal consistency. The court's audit of an accounting consists solely of checking the original inventory of assets and making sure that each of the assets has been shown in the account to

have been sold or distributed, or on hand at the end of the accounting period.

In some courts, although much time and effort are devoted to this type of audit, little attention is paid to such important matters as the type of investments made, the propriety of the distribution or investment performance. Use of accounting forms deemed proper by the particular court of probate may be of uppermost importance in order to pass the audit.

In some courts, and in some jurisdictions, the attempt has been made to require the mandatory use of particular schedules to evidence particular transactions. Because the persons to whom the fiduciary is responsible receive no instruction on how to read the mandatory form, in practice such stereotyped accounts may not be intelligible to persons who are not experts in the field.

Furthermore, the court review of the accounting may degenerate into a disagreement as to which schedule a particular entry would be more properly shown under. Invariably, the mandatory inflexible form does not cover a particular transaction, and then much time is spent guessing which treatment is most likely to satisfy the clerk of probate. Whether the accounting is understandable by the persons to whom the fiduciary is responsible becomes a secondary matter.

4. *Sophisticated legal issues generally are not considered.* In conducting the study, an attempt was made to seek information concerning to what extent, if any, a court of probate, in reviewing accounts, considers sophisticated legal questions such as apportionment of stock splits and tax proration. Responses indicated that, generally, a sophisticated court review is not made, unless a specific problem has been raised by a party to whom the fiduciary is responsible.

In at least one court of probate visited during the course of the study, it did appear that selected accountings are subjected to intensive court review by qualified independent practitioners. Unlike the practice in other jurisdictions, it is said that this system is not used primarily for the purpose of providing patronage.

5. *Lack of adequate notice to persons to whom fiduciary is responsible.* The fiduciary accounting statutes in force in System 2 jurisdictions generally require only that "notice" of the accounting proceeding be sent to persons to whom the fiduciary is responsible. From correspondence received and interviews held, it is clearly recognized that the standard notice forms in use are totally inadequate and do, in fact, mislead persons to whom fiduciaries are responsible. Often, the standard of practice set by a fiduciary with regard to notice is higher than that required, since the fiduciary will furnish a copy of the account to persons to whom he is responsible, although he is not required to do so by the statutes.

Failure to make provision for adequate notice to the persons to whom the fiduciary is responsible takes on crucial significance when it is realized that, by and large, the court of probate does not actually review accounts unless a complaint is lodged by a person to whom the fiduciary is responsible. A person to whom the fiduciary is responsible does not review the accounting because (1) he is not told he must do so to protect his in-

terests, (2) he is not given a copy of the accounting and (3) he is made to believe that the account is being audited for him by the court of probate.

6. *Fiduciary accounting is controlled by inflexible statutes.* Under System 2, the fiduciary accounts to the court of probate because state statutes require him to do so. The statutes are quite diverse with regard to which fiduciaries are to account and the frequency with which they are to account. The common statutory pattern with regard to executors and administrators is to require the filing of an inventory within a set time after qualification, followed by the filing of periodic interim accountings and then a final account.

One finding of the study is that this type of statutory mandate is not always followed in practice. Undoubtedly the rigid patterns are ignored largely because in practice there is no underlying reason for the statutory requirements. As already noted, the accountings are not actually reviewed unless a complaint is made by persons to whom the fiduciary is responsible, and those persons whose interests are affected are not given a copy of the account or made aware of the need to protect their own rights.

System 2 patterns of accounting are not working because the persons to whom the fiduciary is responsible are being ignored. As a result, in those jurisdictions the accounting requirement is considered a meaningless burden imposed upon innocent people by unfeeling courts and legislators.

Logically, a rigid set of rules as to when to file an accounting is not desirable because varying circumstances, such as the size of the fund being accounted for, the persons involved and the conditions under which the funds are held, affect the need for an accounting and the time at which and the form in which it is made.

Clearly, the present statutory pattern should be replaced by a more flexible system. One way of creating flexibility would be to charge the fiduciary, as a part of fulfilling his fiduciary duty, to determine when it is best to account to the persons to whom he is responsible. The imposition of this duty, coupled with provisions for making the persons to whom the fiduciary is responsible aware of the extent to which it is necessary for them to protect their interests, should create an atmosphere in which accountings are waived, when appropriate, or requested and subjected to intensive review, when appropriate.

### *C. Shortcomings Common to Both Systems*

There are several shortcomings common to both Systems of accounting procedures.

1. *Failure to curb improper use of waivers.* In both System 1 and System 2 jurisdictions, a waiver of the accounting can be exacted from a competent beneficiary. In System 1 jurisdictions, the waiver may relieve the fiduciary of liability. In System 2 jurisdictions, it may also cause the court not to review the account.

2. *Failure responsibly to review fees for fiduciaries and counsel.* In System 2 accounting jurisdictions, fiduciary and counsel fees are the items most closely watched by the courts of probate in reviewing fiduciary accounts. The propriety of these fees is also considered in System 1 accounting juris-

dictions if a question is raised by a person to whom the fiduciary is responsible. It is appropriate for courts of probate to have guidelines for judging the propriety of fees where they are not controlled by statute.

Almost universally, the minimum schedule of fees set by the local bar association is used as a guide for measuring the propriety of fees. Apart from such schedules, there is no available guideline to assist courts of probate in reviewing fees. Even when clearly improper fees are being charged, the judge may allow them unless a question is raised by a person to whom the fiduciary is responsible even though that person may not be actually informed of the fee being charged or given any indication as to how he should judge the propriety of the fee.

Cases involving fees for multiple fiduciaries and fiduciaries who are also counsel are handled diversely without any coherent pattern. In these cases, it is not uncommon for a judge to accept a fee structure that the attorneys think is best.

The problem of relying on judges of probate to control fees is accentuated in jurisdictions in which they need not be attorneys, are elected to office or serve in a part time capacity. There is a clear need to develop nationally uniform procedures for judges to follow in reviewing fees.

#### *D. Role of Attorney*

What makes the problem of determining appropriate counsel fees even more vexing for the judge of probate is that there is no certainty in any jurisdiction in the United States as to the role that counsel is to play in connection with fiduciary accountings.

At the outset of this study, the author believed that uncertainty existed throughout the country with regard to the question: Whom does the attorney represent in connection with fiduciary accountings? Presumably, the underlying logic of bank-bar decisions requiring an independent attorney to appear in proceedings held in courts of probate is that he is needed to protect the interests of persons to whom the fiduciary is responsible. Do the cases that require the appearance of independent counsel when an accounting is submitted to a court of probate for review simply reflect a judicial attitude that independent attorneys should be employed, whether or not they are actually needed or have any work to do? Or should it be counsel's task (where the fiduciary is competent and wishes himself to prepare the accounting without the aid of counsel) to represent the interests of the beneficiaries?

The role of counsel, as a representative of persons to whom a fiduciary is responsible, is particularly appropriate where, as is so often the case, counsel hired by the fiduciary is the attorney who drafted the governing instrument and, at that time, represented the interests of the maker of the instrument who was primarily concerned with protecting the interests of the persons to whom the fiduciary is responsible.

One finding of the study is that the law lacks clarity with regard to whom the attorney represents in connection with the fiduciary's administration and accounting. This, in turn, leads to uncertainty with regard to the action that an attorney should take where he believes that conduct of

the fiduciary is subject to question. There is also a lack of clarity with regard to whether the fiduciary can dictate whom the attorney is responsible to. Given bank-bar case law, requiring the retention of independent counsel, greater flexibility in the use of such counsel would be advantageous. With the law so unclear, attorneys are at a loss as to how to proceed.

## VII. PROPOSALS FOR IMPROVING ACCOUNTING PRACTICES

One fact that the study seems to have demonstrated is that, in both System 1 and System 2 jurisdictions, there is little organized thought being given to what, if anything, should happen with regard to revision of procedures for fiduciary accounting. It is clear that there is now no group that feels a responsibility for seeing to it that fiduciary accounting procedures work well. The legislatures, which originally accepted the responsibility to fashion fiduciary accounting systems, have left a legacy of rigid, outmoded statutes. The courts of probate, empowered to review fiduciary accounts, represent the logical group to accept leadership responsibility. To date, however, they have not done so.

Individual judges of probate have little capacity to solve the problems that are discussed in the report. In courts of general jurisdiction, judges may have little expertise in probate. They are generally accustomed to spending only a small amount of their time in the area, leaving all noncontested matters and all questions of proper forms and procedures to clerks.

Accordingly, it is recommended that:

1. The American Bar Association should work toward the creation of a national study panel. This panel should be charged with the responsibility of coordinating the study and resolution of the problems raised in the report. The panel could draw upon the experience and financial support of such organizations as the National Council on State Courts, the American Bar Foundation, the National Conference of Commissioners on Uniform State Laws, the American Judicature Society and the National College of Probate Judges.

2. The panel should prepare amendments to outdated statutes and to the Uniform Probate Code, and promulgate modifications in existing procedures. If guidelines were also promulgated, these could be put into use by local courts of probate, thereby effecting a nationally uniform set of procedures.

3. The panel should consider recommending the adoption of more flexible statutes. A suggested statute might read:

Fiduciaries shall keep persons to whom they are responsible reasonably informed and shall account, at such time and in such manner, as determined by the court of probate.

4. Consideration should be given to improving notice requirements. The draft of the Connecticut Probate Practice Book, for example, requires the following legend to appear on the first page of each fiduciary accounting, a copy of which must be given to specified persons to whom the fiduciary is responsible:

Notice to beneficiaries: The purpose of this account is to inform inter-

ested parties of the manner in which the fiduciary has handled the estate during the accounting period. It is your responsibility to carefully inspect the account to determine if you have any objections to anything in the account. Where any doubt exists in your mind as to the accuracy or the propriety of anything in the account, or if you do not feel that you are capable of properly reviewing the account yourself, you should consult an attorney to insure the protection of your rights. If you have any objections, you must express them to the court of probate at the hearing on the account. If you do not express objections to the account, the court of probate may approve the account as submitted.

5. The concept of fiduciary responsibility should be enlarged to include a duty of reasonably informing, accounting to and protecting persons to whom the fiduciary is responsible. The draft of the Connecticut Probate Practice Book embraces this concept which, it is thought, will meaningfully improve fiduciary accounting by instituting a duty of disclosure by the fiduciary to the persons to whom he is responsible from the point the fiduciary takes office, rather than after action has been taken.

6. Work should be done to create proper guidelines for judges of probate in considering the propriety of fees. Something other than minimum bar fee schedules should be consulted. Some national uniformity should also be attempted in practice with regard to treating fees for multiple fiduciaries and for a fiduciary who also acts as counsel.

7. So that any new rules do not in turn become outdated, provision should be made for a continuing study of procedures and periodic recommendations for improvement.