HENNEPIN

PROBATE COURT
C-400 Government Center
Minneapolis, Minnesota 55487

Melvin J. Peterson
Probate Court Judge

October 3, 1979

The Honorable Robert J. Sheran
Chief Justice, State Supreme Court
Room 230 State Capitol
St. Paul, MN 55155

Dear Justice:

In view of the widespread interest and concern for the mentally ill and disabled persons, which includes guardianships and conservatorships in Hennepin County, I prepared a report dated September 13, 1979 for the County Board of Commissioners of Hennepin County.

This report involves primarily judicial administration in the probate area in Hennepin County, and therefore, I feel that it is appropriate that the report be submitted to you as Chief Justice of the Supreme Court. At the time I gave the report to the County Board, I also submitted certain exhibits, copies of which are also enclosed.

The enclosed report includes:

1. A transcript of the proceedings recently held in the matter of guardianship of Maude A. Trask.

2. Steps In Commitment and Rights of the Patient.

3. Conferences held by the court in regard to guardianship fees, dated April 20, 1979.

Due to the publicity received in the newspaper recently concerning guardianships, and also due to the publicity given mental proceedings, I feel that the Court should be apprised of the activities of this court in the matters referred to. This report summarized current administrative problems and what this court has done to meet the problems and what it proposes to do in the future. This includes a need for statutory legislation in certain areas as well as additional financial support from the county and state. Considering that Hennepin County contains approximately one-third of the state's population, this subject is of great importance to a very substantial population of the state. The procedures that are adopted can be very costly to the taxpayers of this county, and it is important that whatever is done deals with the problem in a realistic and practical fashion so as not to squander public funds.

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Accordingly, I look to the leadership of the Court for support to the trial court in this important judicial administrative effort in whatever way the Court deems appropriate.

Sincerely yours,

Melvin J. Peterson
Probate Court Judge

STATE OF MINNESOTA — IN PROBATE COURT

COUNTY OF HENNEPIN — File No. 70896

In the Matter of the Guardianship of Maude A. Trask

TRANSCRIPT OF PROCEEDINGS

This matter came before the Honorable Melvin J. Peterson, Judge in Hennepin County Probate Court, on the 5th day of September, 1979, at 4-C Government Center, Minneapolis, Minnesota.

A P P E A R A N C E S :

David E. Kirkman, special guardian of Maude A. Trask, appeared in person and was represented by Glenn R. Ayres, Esq., Stacker & Ravich.

John D. Brown, Esq., apppeared on behalf of the ward, Maude A. Trask.

(Whereupon, the following proceeding was held:)

DAVID E. KIRKMAN, called as a witness, after being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. AYRES:

Q Mr. Kirkman, would you state your address and capacity in this matter for the Court.

A I live at 1148 14th Avenue Southeast, Minneapolis, and I am the special guardian.

BY THE COURT: Give your name for the record.

MR. KIRKMAN: David E. Kirkman.

BY MR. AYRES:

Q And you are currently employed at the present time--

A By Stacker & Ravich as a law clerk.

Q Have you filed with this Court an accounting of your activities as a special guardian of the person and estate of Maude A. Trask?

A Yes, I have.

Q Is that guardianship to the best of your knowledge and information true and accurate?

A The accounting?

Q The accounting.

A Yes.

Q And is it complete?

A Yes.

Q It's my understanding there has been advanced costs to the guardianship estate that do not otherwise appear on that accounting. Those total $94; is that correct?

A Yes.

Q Those include certified copies, bond premiums and sheriffs' services.

A Yes.

Q Have you also attached to that accounting a schedule of time placed on this matter by various members of the firm and yourself in the process of administering the guardianship estate?

A Yes.

Q Does the sum of that time relate to the commitment that was commenced with Mrs. Trask prior to your appointment as the guardian?

A Yes, it does.

Q Your Honor, nothing further at this time, except to point out as we have indicated in the petition, we recognize the difficulty of this situation and leave to the Court's jurisdiction what is appropriate both in the matter of attorneys' fees and or guardian's commission.

BY THE COURT: Did you have any questions in this matter, Mr. Brown. You are appearing here for whom?

MR. BROWN: Maude Trask.

BY THE COURT: Are you going to be her attorney?

MR. BROWN: Well, I have been her attorney officially and unofficially for about twenty years and I might bring you up to date a little bit on the situation. She is now

in the hospital, Fairview Hospital.

BY THE COURT: Speak a little louder so the reporter gets your statement.

MR. BROWN: Maude Trask is in the Fairview Hospital now. If you remember, the case was before you a month ago when she was released from her status as a ward. She is going to be there a little while; she's both physically--has both physical as well as mental problems, from a layman's evaluation of it. I talked to her last week at her home, told her we had this meeting this morning and she should come down with me and explained to her the bill that was put in here and the size of it and, of course, she took a very dim view of this thing from a financial standpoint. So, really, my main purpose in being here this morning is have the record show at least that I appeared and that it's her view for whatever it's worth that she is not--that the representation that she had is not properly rewarded--has been properly rewarded and this bill should not be paid. I am not personally objecting to it at all, from one attorney to the next, but the record should show she does.

BY THE COURT: How does she claim counsel has been otherwise rewarded? Does she claim she paid something herself?

MR. BROWN: Now I don't have any documentation of that, but that is her view. I know they have paid $200 to me and she, of course, is not in a position to make any

decisions. In fact, she came up to my office about two weeks ago and said, "I really didn't need you down there a month ago, Mr. Brown. Would you give me the $200 that they paid you." In passing I tell you that. My view is, of course, this bill they put in here is very professionally documented. In fact, I'm going to keep a copy of it for my future practice. I am not ridiculing it at all because she is a tremendous problem. She calls the bank all the time and they have routinely decided to just hang up on her. I don't do that very often because I am sympathetic for her. I can't in any way take issue with the detailedness of this very superb bill and it's office management accounting appearance.

BY THE COURT: What kind of care is she going to need in the future?

MR. BROWN: That is a good question. What should we do next? They are calling me from various sources and no one seems to be able to handle her except myself. In other words, she wanted to go yesterday or friday so I told her at least stay there over the weekend. Dr. Koontz, who testified there before you a month ago said she should be restored, now says she shouldn't have been and she should be--somebody should be put over her. That is Dr. Koontz, so it's a quandary that is hard to say. I am busy and don't like to take on any more burdens but I wouldn't--I don't turn her away from the office. She's able to come downtown and do shopping and eat at the

restaurant below me, but she calls and five minutes later the phone will ring again and she will say the same thing, "Well, you just called me." "No, I didn't. I called Mr. Kirkman." And then she will call Mr. Kirkman and then call him again. It's got an amusing feature too because she is a very nice lady. Everybody just loves her, you know, but even if I get paid a dime I will look after her to the extent that I can, but I am going to keep the $200.

BY THE COURT: Who is the lady appearing?

MR. AYRES: She's our law clerk, Your Honor, Mary Stumo.

BY THE COURT: She's not from the family.

MR. AYRES: She lived with this experience all summer as part of her internship.

MR. BROWN: The Ebenezer society called me, the Welfare Department, the Senior Citizens League. I don't think I will be able to keep her in the hospital much longer because her physical condition is not that critical but she does need help.

BY THE COURT: Can't the Senior Citizens League help her in any way?

MR. BROWN: Well, she doesn't need financial help. She's got money.

BY THE COURT: I understand that. We have to be concerned how we take care of her.

MR. BROWN: You are absolutely right. I would think that--I think you suggested some professional guardianship, a company like First Fiduciary maybe. I don't know if they knew the background. I am sure they won't accept her because she's very hard to handle.

MR. AYRES: Your Honor, if I might interject real quickly, Mr. Brown having gone through this experience and having known Mrs. Trask for a long time, I guess it's our collective decision that as long as she is capable of saying I don't want the nursing care and she has some appreciation for what that involves and I know of no agency or group of individuals short of family and that is the problem here. There is no family who will be able to make the situation work. Some limited success has been enjoyed with the Minneapolis Age and Opportunity.

BY THE COURT: I was going to ask have they done anything here.

MR. AYERS: What has happened in the last 30 days, I dont know, and her church has been very helpful. The difficulty arises in the situation that when she is successful in cutting all the strings loose then the dietary maintenance essential to her health begins to spiral down and then, again, she no longer cooperates. She is going to be coming out of the hospital, as Mr. Brown points out, back again, at probably a pretty good plateau to where we found ourselves four or five

months ago and if some coordination could be made with those people to try and make sort of human contact that is necessary with Mrs. Trask while her health is still strong, I think they have a run. She needs Meals on Wheels desperately to maintain the caloric intake and yet left unattended for a period of time she'll drop it. They have to catch her while she's strong.

BY THE COURT: I can visualize the situation from my experience with thise kind of persons. If you have these incidents where we go through this temporary basis of trying to get her into a hospital and get her some care while you build her up and then release her again, each time she's going to have attorney feels of six or seven thousand dollars. We are going to use up the estate for attorney fees just keeping her out of the hospital and getting her out.

MR. AYRES: As we tried to point out to her when she was strong, it's not lawyers she needs, it's the trust in some people who are willing to help her.

BY THE COURT: Where do you find those?

MR. AYRES: What I am saying is there have been people who have extended the hand, the Minneapolis Age and Opportunity people and the church, the Covenant Church listed there. The problem is she's fighting it--

BY THE COURT: That's the problem in all these cases.

MR. AYRES: --and thoroughly antagonized

the neighborhood and her neighbors. It may be one of those situations where she must be allowed to go about her business.

BY THE COURT: Well, what if her mental status as the result of not eating a proper diet results in her deterioration so that she can't care for herself and we go through this once again, which probably will happen in a few months, under the circumstances. Somebody is going to be out there and commit her involuntarily to get her back into the hospital to get help and are you going to call the Court and tell the Court you better stop these proceedings and go through this again and we get another bill for $7,000. What do you think? This is a policy question the Court has to wrestle with.

MR. AYRES: It's an extremely difficult question the Court is wrestling with.

BY THE COURT: It's a problem to wrestle with a lot of cases.

MR. AYRES: I don't have any apologies to anyone for the actions that we took in this matter because I think if we had not, today she would be hospitalized.

BY THE COURT: That is not certain because the hospitalizations are temporary in nature. That is a value judgment that we have made, watching the matter progress.

MR. AYRES: The point I was trying to make was at the time we petitioned in the alternative for her restoration or in the alternative a permanent guardianship. I

think it was the collective impression of her treating physician and certainly those of us involved on a day-to-day basis that we were doing more harm by imposing the guardianship on an ongoing manner.

BY THE COURT: We are going to get this again, you know that, and we'll get another bill for $7,000. How many times are we going to do that?

MR. AYRES: Your Honor, I don't know the answer to that. I don't see Mrs. Trask--I see three alternatives in her future. Either she functions on her own and be left alone to function or she will be able to establish the kind of personal relationship with these institutions, Minneapolis Age and Opportunity or her church, so that she can informally give to some other human being the discretion to see that she takes her medication and has a proper diet, or she will be institutionalized the rest of her life.

BY THE COURT: She--these people don't have the awareness as to their needs. The question is do we let them go downhill and running through the hearings and using up the estate on attorneys' fees with the recognition of the right to liberty? Do you see the dilemma?

MR. AYRES: Absolutely.

BY THE COURT: I am not criticizing you, but I am trying to point out the problem we have in these cases that we are dealing with and I am getting the writeups

and I am getting very sensitive. We have a reporter writing this up that knows nothing about the problems in these cases and I have got them--about once a week I get something like this and I have got to deal with the problem and can't shed it and say, "Somebody else take care of it." It's before the Court and I have to make the decision.

MR. AYRES: When we pointed out even just the monetary expenses we freely admitted a tremendous percentage is the constant contact. There is not a law firm geared to do this. It will wipe her out. We indicated that in the first petition to the Court. If she's back before the Court, it's got to be a question of can she function on her own because if she can't, I don't see any alternative to institutionalizing Mrs. Trask.

BY THE COURT: I can see that she can function on her own provided there is intervention and in order to get intervention you have these costs. Then after you get her ability up and she's feeling pretty good then we are back in restoration and releasing her again and pay the costs of doing the legal aspects and we are going in a cycle until the estate will be largely used up and I am not saying it's your fault or anybody else's but what I am getting at is how do you stabilize the situation and what is the solution to this problem?

MR. AYRES: This problem did not exist

when there was some quasi-family to lean on.

BY THE COURT: These are the cases. You have no family. That is where you get the problem. There is no daughter or son to intervene or help or anybody else. The sons and daughters get criticized too, you know, for intervening with their liberties when they are in need.

BY THE COURT: Do you have anything, Mr. Brown? Any wisdom to offer?

MR. BROWN: I have, but before that, I would like to ask the witness a question.

BY THE COURT: Proceed, by all means.

EXAMINATION BY MR. BROWN:

Q As to the size of the bank balance that you have--you have given her back, can you tell me what the size is as to her assets?

A We have. I never took possession of her personal checking account. That has been in her own hands.

Q At the First Bank.

A Whatever the balance is, she knows that. Her savings account--she has two at Minnehaha. She had two; there is one at Minnehaha and one at F & M. Both of those pass-books have been returned to her. The only assets I am now holding are contained in the guardianship checking account. I think it's approximately $8,000 remaining in

that account. Everything else has been returned to her.

Q If the account is allowed then you would deduct that and send the balance to her.

A Exactly.

Q Do you know how much is in the Farmers & Mechanics in the account she now has?

A Not precisely. I could look in here.

Q Would you tell me?

A The one at Minnehaha is $44,260. She has a certificate of deposit at Minnehaha for $10,000 and the savings account at F & M is $20,400.

Q And so her assets now are the three items that you mentioned plus the balance of the $8,000 account that you have.

A The homstead and other items.

MR. BROWN: Well, I would say, Your Honor, in mind with what we were talking about and what counsel mentioned, you are fearful of the next go around costing another $6,000. We are in the middle of one now and it isn't costing anything. Some institution got her in the hospital. She is going to get out. They are trying to push her out. I have insisted that they keep her. I have to come down and sign her out or something like that. She's still there. I checked it out an hour or so ago. Probably before the week is out she will have to come out. She's been through one of these episodes. She's restored again. Her blood is up and ulcer stopped

bleeding. At this point it hasn't cost too much.

BY THE COURT: At the preliminaries, what happens when she gets out and doesn't eat and the diet is bad and she deteriorates mentally and physically and the neighbors get concerned and she says, "I don't want to go to the hospital"? You are involved in an involuntary movement when you get her in on the involuntary movement. She is going to call counsel and say, "I am ready to get out. I want to stop the intervention by public officials through an involuntary procedure," then we go the rounds again.

MR. BROWN: And how much does it cost, nothing, maybe $200 for me.

BY THE COURT: You are going to do the same work he did for $200.

MR. BROWN: We won't do that because we wouldn't need to do it. All that is is telephone calls. She will be back in her home and eating. This will go on a few months and she will go down to the neighbor; Ebenezer will say, "Get her back in the hospital."

BY THE COURT: You won't get her in the hospital. We had telephone calls from her down at the office here in which she objected to going into the hospital.

MR. BROWN: She went in last week.

BY THE COURT: She went in now.

MR. BROWN: She's in there now.

BY THE COURT: Do you think she's going to cooperate in the future?

MR. BROWN: On the level of her cooperation.

BY THE COURT: And you will do this for $200 each time.

MR. BROWN: No, no, no.

BY THE COURT: I would like to have a commitment.

MR. BROWN: I'm not doing it on an official basis at all. No, I didn't want to imply that. I have seen this too much. I am without choice. I am doing these things, you see--they call me up, "Brown, why don't you get down there and tell her to stay." I go down and she stays. So far, I haven't gotten anything in the way of fees but I am saying that I think this can go around on an informal basis. We don't need that much monitoring of a person to the extent of what my diet is. I have poor diet and nobody is monitoring that. She will get sick again or she will be bleeding and she will go in.

BY THE COURT: You know it was the doctor that wanted her in the hospital involuntarily last time.

MR. BROWN: And he is the one that said let her out and restore her, too.

BY THE COURT: Right.

MR. BROWN: So, maybe all the past advice hasn't been so good. It hasn't helped her, so I am suggesting

more informal handling of it; forget about it temporarily. I mean, before the Court this morning there is no issue; this is the issue of the bill anyway.

BY THE COURT: There is always an issue of the bill; this is the responsibility of the Court.

MR. BROWN: There is no issue to put her under guardianship.

BY THE COURT: I am anticipating, while everyone is here, that we have a plan.

MR. BROWN: If you would like to talk to her I will bring her down.

BY THE COURT: Well, that doesn't help any cause. Her mind changes. She will say one thing now and a week later it's something else. This is not an easy decision. The mental state of her mind changes and fluctuates from time to time.

MR. BROWN: Her mind isn't quite that bad. She is forgetful with the typical symptoms of aging. Physically--she comes down to the restaurant there.

BY THE COURT: You are representing to me you think you have some personal control that will work.

MR. BROWN: I don't want to say it so strongly that I will be held responsible for it. I am remarking--she called me up, "They want to take me to the hospital. What should I do?" That is what she does. I say, "If the doctor

says so, you better go." So, she went and she's there now. I think this is one of those go-arounds that you're talking about. She got down and went to the hospital. She's up now and she will be out and that go-around didn't cost anything.

BY THE COURT: And you didn't get paid anything and you're not going to ask for anything.

MR. BROWN: Well, I haven't put in my bill.

BY THE COURT: You haven't put in your bill yet but you're thinking about it.

MR. BROWN: I haven't given it any thought. She won't let me. She says she will handle it herself.

BY THE COURT: That is good, Mr. Brown. I hope you will succeed and we will try it that way because we have no other alternatives. I wanted to air the matter at this time so I have some understanding of where we are going with this and when it comes in again and she has deterioration and we have to deal with the problem, I will look to you, Mr. Brown, to give us some assistance.

MR. BROWN: I don't think there is anything critical about the decisions now. It would be nice if she had a daughter she could move in with. That is true.

BY THE COURT: Yes. Any comment, counsel.

MR. AYRES: We went to some of the lengths that we went to not only because I think it was the right way to take some pressure off the Court and not to put any on

the Court. I hope the Court understands that we freely extend the Court the license to use its discretion in determining what it would take to defend this lady and commence a guardianship and run it six weeks and close it down. We recognize the numbers of hours are not normal. They are, in fact, what took place. What the Court chooses to do with that in its discretion will be most satisfactory.

BY THE COURT: Will you summarize the billing, not going into detail, just how you did this.

MR. AYRES: Basically, Your Honor, there were four people involved in this file with the firm of Stacker & Ravich; myself, I am a partner with the firm; and my billing rate an hour committed to the file are set forth in the petition. David Kirkman is one of our law clerks who has worked with us on a fulltime basis.

BY THE COURT: Excuse me. Could you tell us your hours and how you billed it, to get it on the record.

MR. AYRES: We billed the same way.

BY THE COURT: Summarize that.

MR. AYRES: We have a system of logging our time against this file as the time is expended. If a telephone call is received from Mrs. Traske we make a notation on the file as to the amount of time that phonecall took and follow-up work. At the end of each working day the secretary will collect the time sheets from all of the people in the office

and they will be keypunched onto a computer. The printout attached to the petition is merely a computer reproduction of the individual time entries made by myself, Mr. Kirkman, Mary Stumo, Lyman Johnson and Jim Bates. All in our office at one time or another, had involvement in the guardiship matter.

BY THE COURT: Summarize for each one.

MR. AYRES: For myself the billing rate is $80 an hour and I put in 65.1 hours. Our billing breakdown--that comes to 5,208. Mr. Bates works with me. His billing rate is $55 an hour. He put in an hour-and-a-half, 82.50. David Kirkman who is the special guardian and we billed his time at $40 an hour as we would normally bill his time. He put in 39.6 hours for $1, 584 and Mary Stumo who is also a law clerk but a first year law clerk with us; she is a senior in law school; $25 an hour and she put in 25.9 hours for $647.50. Basically, there were three principle functions that took place. The appointment of the special guardian, the administration of the guardianship estate and the closing down of the guardianship with the final account and the documents before the Court. The tremendous numbers and the length of the billing comes about by way of extreme repetition in phonecalls and personal contacts and visits that were instituted in large measure by the ward herself and there is no way to avoid that short of hanging up and three minutes later she will call again. We found it difficult to just shut her off. We did the best we could to

attempt to communicate with her to make her understand what it was we were trying to do but that reduces itself to time and that time is reflected in the bills.

BY THE COURT: Does the guardian have anything he wishes to add?

MR. KIRKMAN: No, Your Honor.

BY THE COURT: Okay. That is all. I will take it under advisement and make an order.

* * * * * * * *

I, Susan E. Swanke, Court Reporter in Hennepin County Probate Court, did, on the 5th day of September, 1979, stenographically report the matter in re the Guardianship of Maude A. Trask;

That I did on this date transcribe my original stenographic notes into a typewritten transcript;

That this transcript, consisting of twenty pages, is a true, accurate, and complete copy of my stenographic notes so taken, to the best of my ability.

Dated: September 10th, 1979

Susan E. Swanke
Reporter

Melvin J. Peterson,
Judge of Probate Court,
Hennepin County, Minn.

STEPS IN COMMITMENT AND RIGHTS OF THE PATIENT

Step Number One:

Pre-Petition Phase - Screening

At this point the contacts of the public from the mental health delivery system and the criminal justice system contact the mental health examiner's office in the form of requests for assistance. In this pre-petition phase, the objective is to screen out those persons for whom alternatives to commitment can be found. The rights of the patient are recognized in different ways. The determination is made through finding alternatives to commitment, that commitment is inappropriate, or that the person is not mentally ill or inebriate. If the contact problem is not resolved in those dispositive categories, then we go on to the petition phase, the other problems being now screened out of the commitment process. The four senior social workers of Hennepin County Welfare Department who conduct intake and pre-petition screening process utilize not only their own skills, but those of social workers in other specialized units within the county welfare system. The mental health social worker at the pre-petition screening conference discusses with the family and/or friends of the proposed patient other alterna-

tives to petition for commitment. To assist in this determination, the social worker refers the case to a specialist for intervention in assessment. The primary resources within the system are the assessment, intervention and referral unit (AID) of the chemical dependency division, the Adult Protection Unit, and Child Protection Unit of the Hennepin County Community Services Department. These specialists, at the direction of the mental health social worker, contact the proposed patient, family and/or friends and make arrangements for other alternatives to petitioning when indicated and report the results of their evaluation to the mental health unit.

Step Number Two:

Petition Phase

The Petition phase requires a showing of probable cause for commitment, which is verified by the screening procedure stated above, and in addition, the petition must be accompanied by a medical statement of the recent attending physician unless that is excused for valid reasons. At the same time, the petitioner is required to sign a statement called "Acknowledgment of Petition Concerning Implications of a Judicial Commitment Proceeding". This describes the nature of the proceeding and the consequences of commitment in the form of ten statements which the petitioner must read and sign and also must be given a copy in writing. The purpose of this statement is to make certain that the petitioner understands the serious implications of judicial commitment proceedings

and its consequences to further protect the patient's rights. M.S. 253A.21 provides, "Any person who willfully makes, joins in, or advises the making of any false petition or report, or knowingly or willfully makes any false representation for the purpose of causing such petition or report to be made or for the purpose of causing an individual to be improperly hospitalized under sections 253A.01 to 253A.21, is guilty of a gross misdemeanor and may be punished by imprisonment in the state prison for not more than one year or by a fine of not more than $500." This is also designed to protect the patient.

Step Number Three:

Order to Apprehend Phase

Assuming that probable cause for commitment is indicated, the Order for apprehension and further study is made. A copy of the Order is served upon the patient and in addition thereto a deputy sheriff reads the entire Order to Apprehend and Confine for Examination, Hearing and Appointment of Attorney and Notice. This emphasizes the patient's rights further in that the attorney is appointed by the court in the same Order, and the attorney's address and phone numbers are contained in that Order. The patient retains a copy of the Order and is therefore in a position to immediately call the attorney to protect his rights further.

At about this same time the patient is also served with a Notice to Patient of Rights Under Judicial Commitment. A

copy of this Notice is left with the patient and in addition someone of the hospital staff will read it to the patient and make a note in the hospital chart that this has been done. This procedure also emphasizes the rights of the patient and advises the patient of the right to communicate by all reasonable means at reasonable hours day or night and that consultations may be had with an attorney, personal physician and at least one member of the family. In addition, the Notice states that a time for hearing will be fixed within fourteen days of the filing of the Petition for a hearing and that he will have a hearing on the matter and that the patient has a right to demand in writing at any time that the hearing be held immediately.

The patient's rights are thus protected further in that he gets a copy of this Notice of rights and it is even read to him to amplify the fact that the patient has such rights.

Step Number Four:

Examination and Study Phase

At this point the patient is held for study in a hospital setting under professional observation and care, the duration of which is approximately seven days. This study is in a neutral, disinterested setting with persons who are not associated with the petitioner and is designed to protect the rights of the patient by having a workup by persons who are professional in a proper environment where the patient can

rest comfortably and be observed by persons who have no connection with the petitioner or that family. During this time, the patient has a right to refuse medication. This medical workup protects the rights of the patient in that neutral and disinterested observation is recorded in the form of entries in the hospital records, which will be available for the hearing procedure to assure that the patient is not held for judicial commitment without proper and reasonable grounds. The hospital notes are then available for the hearing for the two-fold purpose of giving the trier of fact and the medical examiners a basis for reaching conclusions based upon professional study. This procedure further protects the rights of the patient in that many times it occurs that by taking the patient out of the crisis environment and putting him in the hospital, this in and of itself may result in eliminating the need for continued hospitalization and has a marked tendency to point out possible alternatives to commitment. The Court-appointed examiners rely substantially on these records in arriving at their opinions as the records include continuous observation and the results of any other studies or testing that may have been made. These records are available for inspection to the patient's attorney in advance of the hearing.

Step Number Five:

Hearing Phase

At this point the Court has appointed examiners to assist the Court in making its findings and determination related to

the mental illness question. In Hennepin County the examiners are always psychiatrists with extensive backgrounds, training and experience in this profession. Due to their expertise in this field, they assure the making of a record that substantiates the determinations of the Court. Of course, the Court is not necessarily bound by their determinations and will decide the matter on the record as a whole as provided by the statute. However, their existence as an advisory source to the Court is additional assurance that the Court will decide the case properly as the examiners have no connection with the family, the patient or any other party that may have an interest adverse to the patient. The stance of the examining psychiatrist is that of a neutral, disinterested specialist who has the duty to consider the interests of the patient as well as society at large.

At the hearing the attorney must be present who has been appointed by the Court along with any other attorney that may be retained privately by the patient. The patient has the right to be present personally to further protect his rights. The attorney by statute has the right to cross examine all witnesses, including the psychiatrist who examined the patient for the Court, for the protection of the patient. The examining psychiatrists examine the patient prior to the hearing and may give a preliminary opinion. Even before the commencement of the hearing, the patient's attorney may examine the board on its preliminary opinion and a motion for dismissal of the petition may be made and considered. When the evidence is all in, the examiners may be examined by the attorney for the

patient for a second time to ascertain what their findings and opinions are relative to the entire matter, based on all the evidence that has been presented, including the hospital records referred to previously.

The Court in receiving evidence in such a mental proceeding is bound by the rules of evidence the same as any other court and the patient's full right of cross examination is protected by the statute as well as the right to be personally present during the proceeding and to confront the witnesses. Almost invariably, the patient is present. If the patient is not present, it is because the patient does not want to be or his attorney has decided otherwise.

At the hearing the patient may present witnesses and may advance any theory of defense through counsel. The patient is directly afforded a full hearing within the meaning of all constitutional concepts, both state and federal.

At the conclusion of the hearing, dismissal of the petition may be granted or alternatives to commitment may again be examined as to any possible disposition that can be made short of commitment. This will include the alternatives of having the hearing continued without a finding of any illness or a commitment stayed on condition that the patient proceed with voluntary treatment, contemplating that if this is successful the petition will be dismissed and the entire proceeding terminated at the date to which the matter has been continued. This again protects the rights of the patient in that a record of commitment may be avoided as well as a later feeling of embarrassment.

It must be emphasized that even before the hearing is held, the patient has the right under the statute, expressly stated, that the patient can demand an immediate hearing. Thus, if it is brought to the attention of the Court at any time either by the patient or his attorney or any other reliable source that the patient desires a hearing immediately and a showing is made that indicates that the patient need not or should not be held for observation pending a full hearing on the merits, this can be granted. The matter can also be disposed of by the Court summarily. This occurs on occasion, usually for the reason that the person doesn't need commitment in that an alternative disposition already has evolved prior to the hearing. These are further protections afforded to the patient under the statute.

Step Number Six:

Commitment and Post-Commitment Phase

Assuming that commitment is appropriate and less restrictive alternatives are ruled out, the patient is sent to either a private or state hospital for care and treatment. Commitment is to a private hospital when practical because it is generally considered more desirable by patients than commitment to a state institution.

The most critical measure of the protection of the rights of a patient in a commitment proceeding is the legal test that must be applied in ordering confinement. Chapter 253A prescribes stringent requirements in this regard,

which are stated in M.S. 253A.07, Subd. 17(a), which reads:

"Subd. 17. If, upon completion of the hearing and consideration of the record which shall be made pursuant to the rules of evidence, the court finds the proposed patient is:

(a) A mentally ill person, and (1) that the evidence of the proposed patient's conduct clearly shows that his customary self-control, judgment, and discretion in the conduct of his affairs and social relations is lessened to such an extent that hospitalization is necessary for his own welfare or the protection of society; that is, that the evidence of his conduct clearly shows: (i) that he has attempted to or threatened to take his own life or attempted to seriously physically harm himself or others; or (ii) that he has failed to protect himself from exploitation from others; or (iii) that he has failed to care for his own needs for food, clothing, shelter, safety or medical care; and (2) after careful consideration of reasonable alternative dispositions, including but not limited to, dismissal of petition, out-patient care, informal or voluntary hospitalization in a private or public facility, appointment of a guardian, or release before commitment as provided for in section 253A.12, and finds no suitable alternative to involuntary hospitalization, the court shall commit such patient to a public hospital or a private hospital consenting to receive him, subject to a mandatory review by the head of the hospital within 60 days from the date of the order as hereinafter provided;"

During the sixty day period following initial commitment, the patient is on a temporary commitment of sixty-day duration, at the end of which a further report is made by the hospital as required by statute. This report is made to the Court before final determination of commitment. Also, at the end of the sixty day period, the patient may be given another hearing if requested. The report of the hospital is a further protection to the patient to indicate whether continued commitment is needed, otherwise the patient is released. Assuming at this point that further alternatives are appropriate, these can be utilized and include discharge, provisional discharge, half-way house, or other disposition as may accord with the re-evaluation at that time.

Another right is established for the patient by M.S. 253A.11, which provides that upon admission to a hospital on commitment, the hospital or other public health facility "shall notify forthwith the patient's spouse or parent . . . If the patient was admitted upon the petition of a spouse or parent, the head of the hospital or public health facility shall notify an interested person other than the petitioner." The general thrust of this section is to make certain that someone is notified of the patient's admission to the hospital in order to assure that the patient is not simply salted away without notice to anybody.

During the period of commitment and stay at the hospital, the statute guarantees the patient several rights which are enumerated therein. This is like a patient's Bill of Rights. These

rights are contained in Section 253A.17 and relate to the following matters:

Subdivision 1 Protection on the use of restraints.

Subdivision 2 Censorship and the right to correspond with officials and an attorney.

Subdivision 3 Patient's right to special correspondence outside the institution.

Subdivision 4 Papers and envelope privileges with stamps furnished at State's expense and right to privacy in correspondence.

Subdivision 5 Correspondence rights of the patient requiring that any restrictions must be put on the record and the reasons therefore, which must be based on the medical welfare of the patient and subject to review by the commissioner. Correspondence to patient cannot be retained where it cannot be delivered and must be returned to sender.

Subdivision 6 Any patient is entitled to receive visitors and particularly the patient's personal physician, spiritual advisor and attorney shall be permitted at all reasonable times.

Subdivision 7 The head of the hospital must have the physical and mental condition of every patient assessed not less than annually.

Subdivision 8 Restrictions on surgical procedures on patient and imposing civil and criminal liability, if performed in violation.

Subdivision 9 Standards of service are prescribed for care and treatment within the institution during confinement.

Further, during the period of commitment to the State Hospital, the statute provides that the patient has a right to demand a review before a board that is established by the statute to periodically examine all patients every six months to assure that no patient is held that should be released. This is provided in M.S. 253A.16. Each patient is notified

in writing of this right. See Subdivision 3 of M.S. 253A.16. In the event that the review board makes a determination adverse to the patient, the patient has a right to appeal to the Supreme Court for additional review.

The statute also contains a procedure for provisional discharge which affords the patient an additional right. By the provisional discharge system, the head of the hospital can study the effects upon the patient of a release back into the community. A provisional discharge is more readily granted to a patient because it can be done on a temporary basis and can be revoked in the event it turns out that the patient is not ready for final discharge. This provision, however, does not relate to those persons committed as psychopathic personality or to those persons committed as dangerous to the public. The latter persons can be discharged under a hearing procedure before a special review board under M.S. 253A.16, Subd. 5.

Finally, if the patient is not assertive in the protection of his or her rights, M.S. 253A.19, Subd. 1, provides that any interested person may petition the court for an order adjudicating that an individual is not mentally ill or an inebriate. This has been construed to include the patient as petitioner, as well as others. There is no time limitation in this provision; therefore, such petition may be made at any time. In essence, this is a restoration proceeding and the patient again is afforded the rights of counsel, hearing, cross examination, and presence.

There are various other minor provisions here that flow throughout the statute for the protection of a patient which I will not mention, but the foregoing rights are the primary rights that are afforded to the patient, the great bulk of which were provided in the reform act of 1967 with subsequent amendments having added to those rights from time to time.

September 13, 1979

TO: HENNEPIN COUNTY BOARD OF COMMISSIONERS
FROM: MELVIN J. PETERSON, JUDGE IN PROBATE
SUBJECT: REPORT OF HENNEPIN COUNTY PROBATE COURT ON CURRENT OPERATIONS AND BUDGETARY CONCERNS

Members of the Board, I appreciate this opportunity to make this report, as I requested, relating to guardianship, conservatorship and mentally disabled proceedings in this County.

I wanted this report to be made in an open setting with complete public disclosure of the communications to the Board. This is to avoid any question of the position of this Court on those matters and thus avoid any question as to what I am reporting to the Board. I also want to make this information public for a better understanding of this Court's function.

The matters that I wish to discuss have a weighty impact upon the future budget of Hennepin County and is, therefore, very significant to every taxpayer and citizen.

The request to communicate openly to this Board follows recent newspaper articles in the press in the morning Tribune. I believe you are all familiar with these articles. These articles relate primarily to the question of the protection of the rights of the elderly, when they reach that stage in life that requires intervention through guardianship or conservatorship proceedings. Such proceedings generally provide for a substitution of judgment on behalf of a ward by the guardian exercising control of property and physical custody of the person or the ward. I also wish to discuss a corollary problem which is that of the mentally disabled and commitment procedures.

These recent articles have engendered deep concern among Board members as to what is happening in this area, as to what the facts are, and as to what administrative or other actions the Board should take as may be required by the circumstances. I share those same concerns and feel that only through a direct report to the Board can the true facts appear. The Court is charged with the responsibility for the administration of the judicial functions. I am the Probate Judge and am charged with that responsibility, and only through such a report as I am now giving you can the

Board understand the scope of authority of the Court, its duties and functions, the policies of the Court, and the limitations on actions the Court can take.

First, I wish to emphasize that many of the facts represented in the press, in my opinion, are distorted, fact selection, and are designed to impart the impression that there is lack of concern in the office of the Probate Court. It is made to appear that there is wholesale mismanagement of funds of wards, including the sale of houses below market value, and that speculators are making windfall profits at the expense of the elderly. Also, it's made to appear, by journalistic manipulation that elderly people are being snatched out of their homes, their property sold without a hearing, and that the elderly are being shoved into rest homes when they are perfectly capable of handling their own affairs. Now, that is how it appears to me. It may be possible that the role of the Court and the limitations upon the Court in this matter is not understood by those who are responsible for the writing of these newspaper articles. If that is the case, this report should be of some help in providing understanding.

There is no question that, as a result of recent developments in the law expanding the jurisdiction of the Probate Court, that at the present time the Court is understaffed and lacking in space facilities. There is no question that we do not have adequate personnel to handle expanding jurisdiction that has been given this Court since 1976. My request for an additional Judge for the Probate Court has been made and is well known to the Governor, the Legislature and the Supreme Court, as well as to the District Court Judges. Also, along with a new Judge, there will have to be provided auxiliary personnel to assist the Judge in carrying out his functions, together with additional space requirements. I've had little response in this area to affirmatively provide another Judge. I have been told by the Legislature that they will again consider my request at the next session. We're presently making some progress on space needs, but with this also comes a need for additional personnel to expand the Court functions. To acquaint

you with this situation is part of the reason why I wish to appear here today and solicit your support.

Despite the lack of space and personnel to meet the great needs of our growing society, and the expanded jurisdiction created by the Legislature, I believe the Board and the citizens of this County need to know that the Court, its Referees and personnel have not only done a good job in meeting the challenge, but have done an excellent job in the face of very adverse conditions. This Court has, at the present time, very few additional personnel over what it had twenty years ago; yet the population of the County is up from that time, along with a demand for greatly expanded services and broadened trial jurisdiction.

Furthermore, the newspaper articles, in my opinion, have not dealt fairly with the facts, whether this be intentional or by mistake, and I fear that we may rush into hasty impromptu, ill-conceived responses to these articles that can lead to the wrong corrective actions in the wrong areas, to create unnecessary expenses and waste without addressing the real problems and deal adequately with the proper functions of the Court.

In order to understand the problems of Probate administration, a discussion of its functions are in order. What is the Probate Court? The Probate Court has three primary areas of jurisdiction. These are: number one, the cases that deal with the division of property and its distribution when people die; the second area is the area of guardianship and conservatorships. This deals with the problems of persons under disability, either through advancing years or because they are minors. The Court handles the property, in either case, at both spectrums of the life span. The guardianships and conservatorships are very similar in nature, the primary difference being that in guardianship cases the person is determined and adjudged to be incompetent, and the person loses the right to vote and contract. Conservatorships, on the contrary, do not result in a person being declared incompetent, and the person continues to have power to vote and to contract. Also, in a conservatorship, the Court can prescribe the degree of control of the conservator

over the conservatee. The third area of jurisdiction is mental illness cases dealing with the problems of the mentally disabled, drug addicts, alcoholics, and persons who may be dangerous to the public. These areas of jurisdiction are all very volatile. They deal with the rights and freedoms of individuals and with property rights between various parties. There is always room for criticism or challenge that individuals' rights are being jeopardized. There is also the possibility of fraudulent concealment of assets, fraudulent sale of assets, or outright conversion of property belonging to wards and estates. This has always been true and always will be as long as people have a right to own property and we have the democratic freedoms that we have in this country pertaining to the rights of individuals. Any administration of these areas is, therefore, inherently delicate, difficult, and controversial.

In order to understand the Probate Court system, one must know how the Court exercises its jurisdiction; what its actual functions are in relation to the proceedings that are before it. The principle function of the Court is a judicial one. That is, to determine fact and law questions in the cases that come before it, and to adjudicate the rights between people in contested cases. The Court also has judicial functions on hearings that come before it to open estates and determine whether or not there are any objections to certain actions for administration, including admitting and probating wills, and if there are objections then the Court must hold hearings and adjudicate rights on the basis of contested cases. Since the Court function is primarily a judicial one, one must readily see that in a democracy with constitutional division of power between executive, legislative, and judicial branches of government, the Court is not an investigative body or an office for the prosecution of complaints. Such matters must come before the Court in contested cases brought by those persons who have been affected, or by government agencies that are charged with the responsibility to bring proceedings related to violations of rights of individuals in the areas concerned.

The Court can only make decisions based on a sworn record made in the courtroom, and not on the basis of news stories written for journalistic purposes. In the process of carrying out the foregoing duties, the Court is a Court of record, and this is a public record showing the history of all of the cases that are before it and the ultimate determinations that are made in a particular proceeding. A large part of the Probate function is devoted to record keeping in addition to the judicial function. This county has been served by a single Probate Judge heading the Probate Division since the state was admitted to the Union in May of 1858. There are four Court Referees who assist the Court, but the Referees may not make a final order without Court review and the signature of the Judge. In exercising the Probate Court functions the Court has auditing clerks who check accounts that are filed for mathematical errors, who check receipts and vouchers, and who review the disbursements. In this connection the Court does review whether or not the charges of the attorney and guardian or representatives in estates are fair and reasonable, but the Court does not have any field investigating personnel. There are no persons in the Court that can go out into the field and look through bank accounts and carry on a general investigation. There is practically no Probate Court in the United States that exercises that kind of jurisdiction. This would be added as a special function, which is very unusual, and not in the Probate tradition. One such Court that this Court is aware of is Los Angeles County, where recently a separate unit was added to provide an attorney and investigative staff. In most jurisdictions this is handled by the County Attorney, District Attorney, or other administrative agencies charged with responsibility of protecting the rights of persons and property. If such functions are to be added, a decision must be made as to what agency will exercise these and the scope of the jurisdiction. In 1970 the Court requested a former County Board to establish a permanent Guardianship Auditor. This was denied as unnecessary.

In order to further understand what is happening in the Probate Court system, I must briefly review what has happened in the Legislature in the last few years which has a direct bearing on what

supervisory powers this Court has, as well as what the limitations are on its jurisdiction saw fit to greatly restrict the Court's supervisory power in order to simplify proceedings, reduce record keeping, and to keep the Court from interfering with the private rights of families to administer their own affairs. The basic philosophy adopted in that law, which is The Uniform Code, is stated as follows:

> "Overall, the system accepts the premise that the Court's role in regard to Probate administration and its relationship to personal representatives who derive the power from public appointment, is wholly passive until some interested person invokes its power to secure resolution of a matter. The State, through the Court, should provide remedies which are suitable and efficient to protect any and all rights regarding successors, but should refrain from intruding into family affairs unless relief is requested, and limits its relief to that sought."

The adoption of The Uniform Code was heralded as new day in Probate proceedings that would remove the shackles of the Court. The Minneapolis Tribune and the Star supported that as a reform. I personally appeared before the Legislature at numerous meetings to oppose the lack of supervisory authority that The Uniform Probate Code contained. Suddenly, today, the Tribune has reversed its position, declaring that the Court should exercise all kinds of supervisory powers when it suited a journalistic purpose. The Court's power is now reduced in several areas. There is little or no bonding in estates, little or no supervision, the filing of vouchers is legally eliminated. In an informal proceeding the filing of accounts is no longer necessary. If something goes wrong there is no security provided whereby the injured person can recover.

It is obvious that there is no way that any Court can eliminate all fraudulent activities, but today if we have a misappropriation, there is little or no security in the system. Legislative and other administrative bodies must make up their minds as to which way they will have it. Either we have more record keeping, supervision, and security; and personnel to administer it, or we don't. We know that sooner or later there will be uncovered misappropria-

tions of funds in the system. Certainly in view of my record in the Legislature, I feel that I was diligent in trying to present supervision and proper record keeping. I wish to give public notice now that we do not have adequate protection in estate proceedings since the Uniform Probate Code was adopted. Mismanagement and misappropriation can happen and may be happening at this very moment and there is nothing to prevent it. Recently, one of your own employees who handles estate funds was brought in for a mandatory accounting concerning misappropriation of assets. This was a public employee charged with the responsibility to preserve the assets of the estate affected. This will happen from time to time. Some form of security for mismanagement must be provided in all estates and guardianships such as bonding or other security forms.

The current caseload of this Court is such that we are processing 2,400 probate proceedings per year, 500 to 750 guardianship and conservatorship proceedings, and over 800 mental illness proceedings. We have 140,000 accrued probate files; 65,000 accrued conservatorship and guardianship files. Certainly, one Judge can't be charged with responsibility to make field investigations to see what is occurring in these cases. I am busy in the courtroom. The functions that I've just cited to you means that we're carrying an inventory in each one of those categories of approximately 10,000 estate files that are still open and active; 5,000 guardianship or conservatorship files that are still open at all times. If you're going to have field investigators check all those files, you have a massive task before you to provide administrative and physical personnel to take care of it. The newspaper says the Probate Court should go through Fiduciary bank accounts in every case and try to ascertain if there is any money lost in the administrative process. This is physically impossible and would involve a field investigation in depth in every case at tremendous cost.

Now, let's get back to the specific cases at hand which were reported in the press. First, I would like to deal with the problems reported in the case of Ludvig Hagen, which was a guardian-

ship proceeding. The general thrust of the newspaper articles in relation to Ludvig Hagen was to convey the impression to the public that his rights were not properly handled in a number of particulars. First, it was reported that he didn't sign the petition for appointment of a conservator and that it was imposed upon him without his knowledge by his church friends. Secondly, it was reported that he had no knowledge of his house being sold; never wanted it sold; and objected to its sale. Third, that the sale by Evangelical Church officials, who were friends of Hagen and in which church he had been active, were people who were not concerned about his welfare and were more concerned about their interest as beneficiaries under his will. You will recall that the Court appointed one of Ludvig's church friends as guardian, which was Robert Hagen, who was an officer of the church. It was reported that Ludvig, who was a member of this church group had no knowledge of what the officials were doing to him and that the matter was processed without his consent or participation. Finally, it was reported that Hagen could be taken care of in his own home and was capable of handling his own affairs and living in his home and the Court did not protect his right to stay there. The Court wishes to express its concern about such allegations. In each case that comes before the Court for the sale of any homestead the Court requires proof by sworn testimony that the ward cannot live in the house and in addition thereto, a medical statement from the attending physician is required by the Court even though this is not required by statute. Now, what happened in Ludvig's case? As was shown at the trial of this matter, he did sign the petition. In addition, Robert Hagen, who was well-liked by Ludvig, was a friend of his for a considerable period of time. He was instructed by Ludvig on several occasions to do many things for Ludvig prior to the establishment of the conservatorship, including an instruction to sell his house in a statement which he signed. There are exhibits in the file which you can examine yourself, signed by Ludvig. He also instructed Robert Hagen to do other things for him in connection with his accounts. Five years prior to the establishment of the conservator-

ship Ludvig stated that he wanted to be in the Lutheran Hall at the Ebenezer Society when he reached the state in his life where he needed such service. All the medical testimony was to the effect that Ludvig could not be taken care of in his home. In addition, the Court observed him in the courtroom. At about 2 o'clock on the day he appeared at the hearing, Ludvig could no longer sit in his chair in the courtroom because of his physical problems and had to lie prostrate. I, therefore, instructed his aids to place him on the couch in my chambers where he slept until 4:30. When I adjourned at 4:30 I could not return to my chambers as it took 45 minutes for three people to get him off the couch into a wheelchair to wheel him out of my chambers. I personally visited Ludvig the other night at the Lutheran Hall. He is well cared for and in good physical condition considering his age. He requires considerable attention. To go to the bathroom it's necessary that two nurses assist him. The same is true when he leaves his wheelchair to be placed in bed. His memory is confused. He is still looking for his wife and stated to me again that she was lost in the crowd and he has been looking for her for two days in the home and was wondering if I could find her someplace, even though she has been dead for several years. He cannot leave his wheelchair unassisted. In addition, he needs observation and attention from a medical doctor on a quite regular basis. At the time of the trial Ludvig stated he wanted to return home to Norway. He also stated he would like to go home to his brother and wife in Heaven. There was no practical way to stay in his home which would require at least two nurses in attendance or a practical nurse and a registered nurse. Besides, it would be difficult to get a physician to attend to him on a regular basis. In any case, he would not be conscious as to where he was most of the time. If any of you have any doubts about this you can visit him in room 410 at the Lutheran Hall of the Ebenezer Society on Park Avenue. The guardian in this case, Robert Hagen, was a very conscientious individual. He was a Christian person, active in his church group at the Salem Evangelical Free Church and carried out many activities on behalf of people who were aged,

such as taking them to dinner on Sundays and returning them home and many other activities. The publicity given him was undeserved and he has become very distraught over these proceedings, and has resigned as guardian and has left this country to serve on a foreign mission in the Orient. I gave him a hearing in order to afford him opportunity to explain his conduct. The fees that were charged were allowed by Judge Barbeau on special hearing and I concurred in his decision that the fees were fair and reasonable and were only necessary by reason of the publicity given in the morning Tribune. Many guardians are now frustrated and concerned about their responsibilities and many no longer wish to serve.

I might add here that guardians are instructed by the Court as to their responsibilities and are given instructions in the courtroom in writing.

I would like to comment briefly on the other press reports related to cases in general as well as some specific cases that we handle. I am furnishing each Commissioner with a transcript of a typical kind of case so that you may be aware firsthand what the problems are and what decisions have to be made. There are no simple answers to these problems nor simple solutions. In the Ruth Christy matter, which was reported in the press, it was mentioned as a case that was not properly handled. Long before this was reported in the press the Court had taken action when the matter was presented. A guardian was appointed and action was commenced to recover funds. That case is now pending in the District Court and will be on for trial shortly. The matter was processed as expeditiously as possible and, as is true with any case involving a guardianship matter, is given special priority in the District Court and will be tried in a much shorter time after its commencement than ordinary cases are. This case was handled on a cooperative basis between the Welfare Department, the County Attorney's office and the Probate Court. Another such case is the case of Anita Bancroft, where the ward conveyed approximately $250,000 in assets to a third party friend without the protection of any security as the transfers were outright. The Court held hearings on this matter in cooperation with the County Attorney's office and the

Welfare Department and the funds were transferred into trust to protect the ward, in agreement with all parties, including the County Attorney's office, the Welfare Department, and the potential heirs of the ward. Such cases are constantly arising from time to time and the rights of the wards are a constant concern of the Court and it is submitted that these are properly handled in accordance with the statutes.

The same is true in the case of Albin Mortenson. The Court held proceedings immediately to recover assets conveyed at an unreasonable price. The assets were recovered. The property was reconveyed and the ward's property reconstituted in the probate proceeding. Preliminary publicity had been given to that problem but the successful recovery of the assets was not reported. Nor is there any publicity given to the hundreds of cases that are properly handled with success and without unreasonable expenses.

The questions raised concerning the sale of houses by the Estate Management Corporation is a matter upon which I will not comment as the matter is under investigation and there are hearings before the Court. The only thing that I will mention in that connection is the fact that the houses involved required considerable improvement; were not up to code, and required substantial work before they could be sold. The newspaper articles however, give the impression there were substantial profits made without any effort of any kind in a short period of time. The details of those situations will be looked into further by the County Attorney's office and a report made. If it appears that there is any overreaching of the ward's rights in those proceedings, the Court will authorize the County Attorney's office to proceed by the appointment of special guardians to recover any losses that can be approved.

In such cases, the Court must rely on the field appraisers. If an appraiser makes a mistake, this is human error and not a defect in the system. Ordinarily, the protection is there. On June 26th, 1979, the Court requested the Lawyers Professional Responsibility Board to research issues related to ethical problems

pertaining to the Estate Management Corporation. On June 29th of 1979 that Board responded that it would research the issues raised by the Court and on August 10th, 1979, advised the Court it was making an investigation of that corporation that handles estates and guardianships. That investigation is now in process, which supplements the investigation by the County Attorney's office.

Other matters that I would like to comment on relate to what the office is doing in connection with the auditing and management of guardianship and estate accounts as well as problems related to mental illness cases, space needs, and the need for additional employees to manage the changes that are proposed. These changes were proposed long before any of the publicity reached the public and I am only stating them at this time in order to give the Board an up-to-date status of the new proposals which have been studied for the last year and are culminating in certain recommendations, some of which the Board is already familiar with.

First, I would like to give you some background on what we are presently doing in the area of bringing delinquent probate files up to date. These files include both guardianships and estate files. A number of years ago I designed a procedure using a special citation form which we call a Notice and Order to Proceed. The purpose of this order is to require that lawyers, guardians and representatives proceed to clear up delinquencies that appear from the records in the handling of files. The probate personnel who check these files for delinquencies prepare the orders for the Court. 868 Orders to Proceed to close or bring files up to date have been issued since July of 1978. In July of 1978 I assigned two law clerks to form a unit to assist one of the permanent employees to check files that were not properly being processed. In 50 cases lawyers failed to respond properly to the Orders to Proceed and citations were issued to require the lawyers to personally appear in Court to account for their actions. Of those instances, six lawyers were reported to the Lawyers Professional Responsibility Board and two lawyers have been disbarred. Other disbarment proceedings are pending at this time. In the case of an administrator or guardian failing

to respond, the result is usually removal of the guardian or administrator and in some instances he or the bonding company will be surcharged. This citation calendar is held every week on Friday. Although the Court has no permanent fulltime employees available for such a unit it has been able to secure temporary help through federal work study programs and has authorization for the hiring of temporary law clerks to serve in this unit. At this time I would like to make this unit permanent and would like further to expand its operation to deal effectively with the problem of the delinquent files of probate and to further audit and review files. How many employees should be assigned to such a unit and the nature of their functions will have to be presented to judicial administration and reviewed by the County Board. If such a unit is to have a field audit type of investigatory function, the personnel in such a section will have to be greatly expanded. This would then be supplemental to some of the work done by the Welfare people and the County Attorney's office. In any event, even to carry on the auditing functions that we are now doing, it is necessary that this unit be made permanent and that it be expanded. If the County Board desires that there be checks made by the Court on the actual situation existing in the field, then the Court would need to have a social worker also assigned to look after wards to see they are properly being cared for and that the guardian is performing properly in caring for the wards. Traditionally, Probate Courts do not have this function but it's up to the Board as to whether in this County this should be a proper function. If it is, then the Court must proceed with additional personnel and perhaps further statutory authority, which would have to be passed by the Legislature. Some further legislative authorization is necessary to give the Court further power in connection with citing of lawyers involved in probate proceedings when there is no specific complaint by members of the public who have an interest in the estate or guardianship. In this area the Court is presently relying on its inherent powers rather than specific legislative authority and this should be clarified.

Some lawyers have questioned the extent of the Court's power in this area.

In the upcoming session of the Legislature I will be asking for an additional Judge to be assigned to the Probate Court to handle mental commitment functions together with the administration of guardianship files. At this time I am asking for support from the Board of County Commissioners to support me in the efforts to secure such a Judge. It is contemplated that such a Judge would be housed on the third floor of the Government Center and would be provided auxiliary personnel to assist the Judge in carrying out his duties, together with adequate additional space requirements. The plans for these functions have already been drawn up some time ago and have been submitted to administration and will need some supplementation. Guardianship administration should be housed on the third floor as well as the personnel assisting the Court with mental commitment procedures. The expanded auditing unit for guardianships would be, therefore, on the third floor also.

SUMMARY OF CONCERNS AND NEEDS OF THE COURT

These concerns have evolved in recent years as the result of increased Probate Court jurisdiction and increased workloads without a compensating increase in staffing and resources. Listed below is a recap of these areas of concern and a recap, where applicable, of changes that are being made to meet these concerns.

1. Guardianship and Conservatorship Files:

It is the responsibility of guardians or conservators to file the following:

a. One month after appointment, a verified inventory listing all assets and obligations of the ward.

b. Annual accounts listing all receipts and disbursements of the guardianship or conservatorship.

A tickler system has been implemented utilizing the services of the law clerk whereby all new guardianships, as they are filed, can be monitored to prevent future delinquencies. In addition, as staff time allows, old files are being reviewed and audited and appropriate notices sent if delinquencies presently exist.

The Court, as staffing allows, is also desirous, in the future, of scheduling and requiring hearings on all annual accounts in guardianships on a yearly basis. This can only become a reality if the present staff is increased.

2. Formal Estates:

Similar to guardianships, it is required in the probate of estates that the personal representative file an inventory within three months. Subsequently, the personal representative, within 18 months, must obtain an order of complete settlement or have the decree entered. As in the guardianship files, a tickler system has been implemented to verify that the personal representative has filed all required documentation. However, it must be emphasized that under the Uniform Probate Code there is little or no security against misappropriation of funds and a damaged party will go uncompensated in most cases.

3. Wills:

The storage facilities in which wills have been deposited for safekeeping are inadequate. Six thousand dollars has been requested in the 1980 budget for fireproof, secure filing cabinets.

4. Space:

The current space allocated to the Probate Court is inadequate to efficiently serve the needs of Probate Court. There is immediate need to provide functionally located, adequate space to serve the following needs of the Probate Court:

a. Adequate Referee chambers.

b. Court Reporter offices adjacent to Judge and Referee chambers.

c. Added courtroom space for the additional Judge and Referees.

d. Expanded assignment office.

e. Additional clerical space in mental commitment area.

f. Jury deliberation room.

g. New space on third floor for guardianship administration.

During the past year, the County Board did authorize the National Center for State Courts to conduct a space study. The study did recognize most of the above needs and as a result recommended an expansion of the Probate Court to the third floor. Recently, an architectural firm was awarded a contract to complete the detail design. Because of aniticipated clerical and administrative changes in the areas of guardianships and mental commitments, the implementation of the space recommendation may require modification.

5. Procedural Manuals:

It is desirable that office manuals be written for each work station. These would serve as a resource for existing and future staff, while establishing firm guidelines as to responsibilities and duties of each work area. Limited progress has been made in this regard, but complete manuals will not become a reality until such time as those individuals with necessary expertise can devote the required time to research and writing.

6. Court Reporters:

There exists a need in the Probate Court for all the Referees to be staffed by permanent Court Reporters. This request was approved by the County Board on August 13th, 1979.

7. Counter Supervision and Staffing:

The filing counter, until recently, has lacked supervision. To coordinate the filings and the information given to the public, a

supervisor has been designated to coordinate the duties of the counter personnel. The quality of service to the public has improved, but, due to inadequate staffing, there are frequent delays.

8. Orders:

Court Reporters are being trained to prepare orders which have in the past been prepared by the "Orders Clerk". As their knowledge improves, and they begin to work independently, the "Orders Clerk" can devote more of her time to counter supervision and the writing of procedural manuals.

9. Automation:

Funds have been requested in the 1980 budget for implementation of an automated record keeping and index system.

10. Legal Hearings:

The Court has made the following recent changes in the mental commitment area:

a. Hearings limited to six per day for each Referee.

b. Increased compensation paid to Court-appointed attorneys from $40.00 per patient to $50.00 per patient.

c. Required additional testimony and more extensive findings.

d. Assigned additional Referees to conduct commitment hearings.

e. Instructed that the pool of Court-appointed attorneys and medical doctors be expanded.

This Court, in conjunction with the County Attorney, is creating a Task Force on mental commitment proceedings in Hennepin County which is to be directed to procedures, policies, staffing and recommended changes.

11. State Judicial Information System:

The clerical functions of reporting all judicial activity to the State of Minnesota has generated additional duties for the entire staff.

12. Registrar's Office:

Due to the necessity of assigning the Referee who was serving as Registrar to hear mental commitment cases, the duties of Registrar have been discharged by the Deputy Registrar. The clerical support required by the Deputy Registrar has been provided by utilizing an intern for a period of ten weeks and by existing clerical staff.

13. Courtroom Clerks:

Due to the fact that Probate Court has become a Court of record, it has been necessary for courtroom deputies to be assigned to all hearings. These deputies have been made available from the clerical staff with the result that some of the clerical duties have suffered. It will be necessary to request additional staffing in the future to accommodate this need.

WHAT HAS CAUSED THE WORKLOAD IMPACT ON THE PROBATE COURT?

In general, the increase in population in Hennepin County over the last twenty years in itself has placed a considerable increase in caseload upon this Court. In addition thereto, however, there have been several recent changes in the law which have made a considerable impact on the activity of the Court. These are as follows:

1. Elimination of Trial De Novo on Appeal from Probate Court:

Until recently, hearings in the Probate Court could be held without attendance of a Court Reporter because any appeal provided for a complete new trial in the District Court. Today a record must be made of all hearings. All appeals are on the record with the Court Reporter required to prepare a transcript whenever an appeal from a decision of the Probate Court is filed. The elimination of the Trial De Novo has also resulted in longer trials and expanded the findings that are prepared by the Court and the Reporter. The longer trials and expanded findings are a result of the following:

a. Longer Trials.

Trials have become longer and more precise because attorneys are aware that they are "on the record" and decisions must be sustainable on the record. Any appeal will not be determined upon evidence and testimony at a new trial as before, but upon the record made in the Probate Court. In the past, attorneys could put in a less formal case and hope for a favorable decision, because they always could avail themselves of the opportunity to file an appeal and have an entire new hearing. To a degree, in the past some attorneys were also simply using the Probate hearing as a discovery proceedings. Today the hearings are longer because the trial Court decision is on the record that is made in the Probate Court without an opportunity to present new testimony and evidence in the District Court.

b. Expanded Findings and Orders.

Findings prepared today by the Probate Court with the elimination of the new trial in District Court are more extensive than in the past. The findings prepared by the Probate Court must be supported by the record and require more Judge/Referee and Court Reporter time to prepare. The Three-Judge Panel acting as an Appellate Court determines whether these findings are supported by the record and support the legal conclusion.

c. Mental Hearing Scheduling and Caseload Increase.

On March 1st, 1979, the caseload for mental hearings reached a point that required some alteration by the Court as to the maximum number of hearings that any hearing official for the Court should hear in any given day. On that date this Court ordered that a maximum of three mental hearings be scheduled in the forenoon and three in the afternoon for any hearing official. Our past record on

number of hearings had resulted in as high as fourteen a day to be held by one hearing officer. The splitting of the mental hearing caseload that previously required one Hearing Official and one Reporter has resulted in the necessity of assigning an additional Referee and Court Reporter to conduct hearings at various health care facilities. It is the Court's opinion that a Clerk should be furnished to the Hearing Officer to accompany the Referee and Court Reporter to assist the Hearing Officer in administrative functions as hearings are being held, to establish an orderly procedure so that the Referee or the Judge doesn't have to do manual tasks while conducting the hearing.

The mental hearings have become longer and the findings which must be subsequently prepared have become more extensive. The volume in Hennepin County on mental petitions is extremely large when compared to the remainder of the State. In 1977, 35.4 percent of all petitions were filed in Hennepin County, although it represents 23.6 percent of the State's population. By comparison, Ramsey County, which represents 12 percent of the State's population experienced only 7.4 percent of all petitions filed. Again, the primary reason for the large percentage in Hennepin County appears to be that in this County we have far more health care facilities to which people are sent from all parts of the state and when commitment becomes necessary the proceeding is commenced in the County wherein the petitioner appears.

3. Increased Jurisdiction.

Recent legislation has expanded the jurisdiction of Probate Court resulting in more hearings than in the past. The new areas of jurisdiction are as follows:

a. Determination of title to property in certain cases. M.S. 524.3-105.

b. Determination of interests in multi-party accounts. Chapter 528; M.S. 524.3-105.

c. Determination of contracts to make a will. M.S. 524.2-701.

d. The determination of forfeiture of distributee's interest by reason of commission of felonious act causing the death of decedent. M.S. 524.2-803.

e. Determination of heirship even though decedent left no property and without administration. M.S. 524.1-302, M.S. 524.3-105, and M.S. 524.3-108.

f. Determination of partition proceedings. M.S. 524-3-911 - Formal (Effect of Chapter 558); M.S. 524-3-906 - Informal; M.S. 524.3-912 - By agreement.

g. Determination of absentee property. Chapter 576.

h. Determination of sterilization. M.S. 252A.13.

i. Determination in special proceedings for retarded wards under Mental Retardation Protection Act. Chapter 252A.

j. Expanded jurisdiction in determination of attorneys fees. M.S. 525.515; M.S. 525.3-721; M.S. 524.3-720; and M.S. 525.491.

I will not discuss in detail here the impact of the new jurisdiction as that would require considerable space. It is sufficient to say that the Court is fully occupied at this time in the Courtroom with pretrial and trial proceedings, including jury trials which it did not have before and cannot adequately handle matters without an additional Judge and more Courtroom space and personnel.

PENDING DEVELOPMENTS IN THE MENTAL COMMITMENT AREA

There has been considerable pressure in the mental commitment area that is now asserted upon the Court for new changes in procedure to allegedly protect patients' rights. I have now served as the Judge for the Probate Court for Hennepin County for 21 years. I have gone through several reform movements. I recall that in 1967 we modified the Commitment Act after several years of study and input from every segment of society interested in this field. I recall Governor Harold Levander saying that this was the most human and advanced commitment law in the country. That proclamation had little duration as the ink was hardly dry when the reformers again demanded new changes and there is presently a philosophical shift on commitment proceedings completely reversing the 1967 approach. The cry at that time was for informal hearings in an informal setting, minimizing the trauma on the patient, with hearings to be held in the hospital room next to the patient, picking up the patient without uniform and without any badge and transporting them in unmarked cars. Now this is under attack and it is said that the Sheriff's units sneak up on the patients in the early morning hours without identification, without uniform and in unmarked cars and snatch the unwary patient from his bed without just cause or concern.

I am providing all members of the Board with a copy of my brief of the present law, setting forth various rights that are provided by the statute on procedure. With adequate personnel I

feel that these are sufficient procedures to meet all constitutional objections.

However, we now have a report made by the Supreme Court Study Commission that urges considerable change which, if carried into law and practice, will cost what I project as an annual cost to this County of a one-million-dollar per year increase over the present budget, which our taxpayers will have to bear. I believe this cost is without any corresponding benefit to the patient. I cite with approval the words of the United States Supreme Court Justice Berger where he stated in the U.S. Supreme Court Decision James Parham, et al., vs. Minors, decided June 20, 1979,

> "The State has significant interests in confining the use of costly mental health facilities to cases of genuine need, in not imposing unnecessary procedural obstacles that may discourage the mentally ill or their families from seeking needed psychiatric assistance, and allocating priority to the diagnosis and treatment of patients as soon as they are admitted to a hospital rather than to time-consuming preadmission procedures."

The Justice also stated:

> "We do not accept the notion that the shortcomings of specialists can always be avoided by shifting the decision from a trained specialist using the traditional tools of medical science to an untrained judge or administrative hearing officer after a judicial-type hearing. Even after a hearing, the nonspecialist decisionmaker must make a medical-psychiatric decision. Common human experience and scholarly opinions suggest that the supposed protections of an adversary proceeding to determine the appropriateness of medical decisions for the commitment and treatment of mental and emotional illness may well be more illusory than real."

We must be careful not to spend all the money on legal technicalities and procedures, including the high cost of attorney fees that are generated by the creation of extended trials in such cases with manufactured controversies for the sake of form without substance when we need the money for treatment. The mere legal process of seeking help for a patient will cost more than the treatment itself aside from the traumatic impact upon families by manufactured trials.

In view of the new demands in response to the request of Judge Miles Lord in the case of Wilsen, et al., in which I am a

defendant, consideration at this time is appropriate to seek some solution to the problem. Any solution must be satisfactory to the contending parties, otherwise a resolution cannot be achieved except by extended Court action. The Hennepin County Attorney's Office and this Court jointly have agreed upon a Task Force to make a study of the commitment law as administered in Hennepin County to determine whether any modifications are necessary in view of the recent developments in this area. The Task Force will be of particular benefit to Hennepin County as it concentrates its concerns with the situation that there exists. This Task Force is under way and will hold its first meeting on September 27, 1979. Undoubtedly the recommendations of such a Task Force will have a considerable influence on the interests of Hennpin County on this subject and will be of help to the County Board in formulating its recommendations when the time arrives.

At this time this Court has some views to express on changes that might be considered which would be practical in their application and of some benefit to patients without incurring unreasonable costs. I feel that it is appropriate at this time to make them known to the County Board in anticipation of the changes that might occur and what the Board will be faced with in the impact upon the County budget. Time is fleeting and the Legislature will meet shortly. We, therefore, all need to be prepared.

I recommend for consideration the expansion of the mental health screening unit which perhaps will have to be placed in the Hennepin County Welfare Division, or will exist as an independent unit detached from either the County Attorney's office or the Probate Court. This unit will investigate in-the-field requests for commitment and examine information available to ascertain the necessity of committing the affected mental patient. Such a unit should have a quasi-judicial administrative officer who would make substantial findings pertaining to the need for commitment and to establish probable cause for commitment of the patient by administrative order. Thereafter, the petition would be reviewed by the County Attorney's Office and filed with the Court in a request for

hearing. The Court would then issue its Order to apprehend and confine the patient for study, pending hearing, which usually is a seven-day hold. In such proceedings the Court would maintain a list of attorneys, not less than 35, or whatever number is selected, as submitted by the Hennepin County Bar Association, with recommendations for appointment. From such submitted list the Court will select 35 lawyers to be on the list on a rotating basis. A similar list of psychiatrists would be kept as may be submitted by the Hennepin County Psychiatric Society.* All hearings would be conducted in a formalized setting according to the Rules of Evidence, supported by the medical records made by the hold Order study and any other available medical records, together with testimony of witnesses supporting the commitment need. The Board of Examiners would serve the same role as they do now with the right of cross-examination and their recommendations to be not binding upon the Court but advisory. Contact with examiners should be made only in the presence of opposing counsel and it would be anticipated that the hearing in each case would be of substantial duration and contain sufficient evidence to establish a need for commitment by clear and convincing evidence or beyond a reasonable doubt, whichever standard is selected. A copy of the Petition itself will be served on the patient. If hearings are to be conducted in the hospital, adequate hearing rooms will have to be required to establish and maintain security of the system and the formality of the proceeding. A Hearing Officer will be assigned a Clerk and a Reporter, and wear robes like any other Judge in any other Court. In Hennepin County it will be required that a fulltime Judge be appointed to head the mental health division of the Probate Court, together with such ~~auxiliary staff as~~ may be necessary to maintain the Court. It would appear that two fulltime Referees will be necessary to assist the Judge. Additional County Attorney staff will have to be taken into consideration to properly present cases with an adequate record, considering investigative needs, legal study and research, and preparation of the cases for trial. This Court anticipates that the County Attorney's Office will have to be completely separate

* Consideration must also be given to maintaining a comparable list of qualified psychologists.

from the staff of the Probate Court and separated from the screening unit that is mentioned above. It would further appear that it will be necessary to hold some form of hearing after commitment when the point is reached for a final determination of commitment after the 60-day period of study has gone by, which follows the original commitment. This would be especially true for those committed as psychopathic personality or those that are committed as mentally ill and dangerous. After discharge from hospitalization, the County needs to provide post-commitment follow-up through such social agencies as are appropriate to accomplish some type of post-release supervision for at least a period of time.

In addition to the above recommendations, consideration should be given to a rule that the evaluation center, which evaluates patients for the Court during the hold period, cannot serve as the treating hospital after commitment is made. This is to assure that no financial interest in treatment will have any influence in making a report to the Court on the need for commitment.

The Court has considered the matter of the duties of an attorney to appeal after an Order of Commitment has been made. Some mechanism must be created and authorized by Statute for any attorney representing a patient to be provided a means to getting authorization to appeal his case to a higher Court, including the Minnesota Supreme Court. Such a mechanism does not exist in the present law.

Finally, I wish to point out that we are rapidly reaching a point where the procedural cost of getting someone treatment is so expensive, burdensome and difficult that serious consideration must soon be given to the philosophical question of whether or not the public can bear the economic burden of involuntary commitment. This is perhaps the real goal and objective of those attacking the present system, and the public will have to determine whether or not the goals to be achieved by involuntary commitment are worth the price that is being paid. This would leave the problem with the families that are affected and they would have to resolve the matter in their own way without help from society in general.

MISCELLANEOUS PROTECTIVE AIDS

This Court has, for some time, recommended to persons and agencies concerned that the County have a public administrator serve in Guardianship and Conservatorship cases. Such a public administrator would serve in those cases where the funds of the ward are so nominal as to be inadequate to support the costs of administration by private guardians. Such a public administrator would be available to the Court on special occasions to bring special proceedings ordered by the Court, when circumstances are brought to the Court's attention indicating need. This official could be housed in the Hennepin County Welfare Department or some other appropriate agency, as the County Board may wish to recommend. A special guardian of this kind could also serve as an ombudsman in case of need for protection arising within a Conservatorship or Guardianship administration. This office would be a statutory creation and, therefore, needs action by the Legislature. In the years gone by I have been unable to find any reform group that would pick up that recommendation, and I believe it is time to now proceed with trying to establish such an office. In numerous other jurisdictions such an official exists.

Another question that is frequently raised is that pertaining to fees of attorneys. Presently, this is covered by §525.515. This statute reads as follows:

> (a) "Notwithstanding any law to the contrary, an attorney performing services for the estate at the instance of the personal representative, guardian or conservator shall have such compensation therefor out of the estate as shall be just and reasonable. This section shall apply to all probate proceedings.
>
> (b) "In determining what is a fair and reasonable attorney's fee effect shall be given to a prior agreement in writing by a testator concerning attorneys fees. Where there is no prior agreement in writing with the testator consideration shall be given to the following factors in determining what is a fair and reasonable attorney's fee:
>
> 1) The time and labor required;
>
> 2) The experience and knowledge of the attorney;

3) The complexity and novelty of problems involved;

4) The extent of the responsibilities assumed and the results obtained; and

5) The sufficiency of assets properly available to pay for the services;

(c) An interested person who desires that the Court review attorney fees shall seek review of attorney fees in the manner provided in §524.3-721. In determining the reasonableness of the attorneys fees, consideration shall be given to all the factors listed in clause (b) and the value of the estate shall not be the controlling factor."

The problem with this provision of law is that it does not provide for standards that can be applied with uniformity in Estate, Guardianship and Conservatorship proceedings. Yet it gives certain criteria which the Court must follow and, therefore, the Court can not, in view of the statute, establish schedules for fees even though the newspaper may think the Court has such authority. The Court must apply the general standards. The Minnesota County Judge's Association passed a resolution at the last annual meeting calling for the establishment of more definite standards. This recommendation I conveyed to the Judiciary Subcommittee of the Senate, in which Senator William Luther was active. He advised me that it was not possible in the last session to deal with this problem, but that he would take it up again in the forthcoming session. Legislative direction on this subject is necessary before the Court can deal adequately with the problem. In order to protect small Guardianship and Conservatorship administrations on fee matters, this Court held a meeting with the primary agencies handling this type of administration. These agencies are the Richfield Bank & Trust Co., First Fiduciary Corporation, and Estate Management Corporation. I tried to get a consensus, by common agreement, that would protect overcharging in this area. The Veterans Administration appeared on behalf of the veterans who are affected, and a general consensus has been reached. I'm giving the County Board a copy of the transcript of that meeting. I think this indicates the concern of the Court in this area and, under the circumstances, has brought about a more reasonable cost impact on such proceedings than existed prior hereto. That meeting was held on April 20, 1979. I feel this

may be of interest to the County Board in view of the fact that Welfare funds are directly involved in those cases, and Howard Kelly, representing the Hennepin County Department of Public Assistance, attended that meeting, together with John Graf, Divisional Director of Community Services Department.

As the Probate Court of Hennepin County has now been converted to being primarily a trial Court, it is important to analyze its efficiency through its performance. Presently, a trial of all minor or major cases can be had within a maximum period of 60 days after the attorneys have completed their pretrial and discovery procedures and are ready for trial. The trial calendar is current and there are no pending cases under advisement that are held over 30 days after all matters are submitted. In most major cities in the United States, similar trial calendars are as much as five (5) years or more behind schedule on trying their cases. I submit that there is no Court that tries their cases any sooner. As far as Decrees or Orders are concerned involving the closing of Estates, the closing Orders are issued by this Court within the first ten (10) days after the hearing is held requesting that the estate be closed. The only exception being where taxes or other problems are involved where the Court may be required to hold additional hearings, or additional documents have to be submitted. The Court, at this time, is in its best posture than ever before in the handling of estate closings.

APRIL 20, 1979

CONFERENCE RE:
GUARDIANSHIP FEES

Present in this conference conducted in the Conference Room 4C Government Center were:

Honorable Melvin J. Peterson - Probate Court Judge.

Probate Court Referees - Lenore Miller, John Casey, Richard Wolfson.

Howard Kelly - representing Hennepin County Department of Public Assistance.

John Graf - Divisional Director of Community Services Dept.

John M. Coonan - President of First Fiduciary Corporation.

James R. Hall, Esq., - representing the Veterans Administrati.

John D. Anderson, Esq., - representing Estate Management Corp.

JUDGE PETERSON: Okay. The record may reflect that we are formulating guidelines at this time pertaining to the charges on the guardians and conservators in welfare cases.

REFEREE MILLER: Is this corporate guardianships?

JUDGE PETERSON: It also relates to corporate guardianships. Do we have personal guardianships we should consider?

REFEREE MILLER: Normally they don't charge.

JUDGE PETERSON: We are not concerned that much with them at this time.

REFEREE MILLER: The V.A. accounts, generally, that I have conducted which is--I've had very few personal guardians charge.

JUDGE PETERSON: At the most, we are talking about corporate guardians and conservators in welfare cases. Mr. Hall, you had a suggestion that summarized a type of guideline that was acceptable to you and may be acceptable to most corporate fiduciaries in welfare cases. Would you state what that is now?

MR. HALL: In the instance of guardianships wherein welfare benefits are being paid continually from the beginning of the accounting period through the end of the beginning period without interruption, the fee of the guardian shall be thirty-five ($35) dollars per month, or 5% of the income handled by the fiduciary, whichever is greater.

JUDGE PETERSON: That income includes receipt from all sources flowing into the account.

MR. HALL: Yes. Actually handled by the guardian and, I suppose, something being paid directly to the nursing home.

REFEREE MILLER: Mr. Coonan, do you consider the setting-up of the file initially any extraordinary expense? Or would $35 be your charge also for the very first month?

MR. COONAN: The fee would include the complete setting-up of Probate Court.

JUDGE PETERSON: Mr. Hall, did you get your entire statement in there, or did you have more?

MR. HALL: I was writing it out, but I would like to say this. I don't feel I can be bound by this either, except that I think it's something we can try out to see how it works, and after a period of time by just using this formula maybe it will become established as a common method of charges.

JUDGE PETERSON: I think everyone understands that.

MR. HALL: Okay.

MR. KELLY: May I make an objection? There are variances in practice as far as the commercial guardians are concerned and that corporate guardians, and that is while you spread your initiation costs throughout, I think other corporate guardians will balloon it at the first.

JUDGE PETERSON: What do you mean?

MR. KELLY: In other words, they will charge--those will be extraordinary expenses, but will be paid for or accounted out of the initial accounting and first year's annual. I think that there would be a variance there. (Short interruption to identify all persons present. Mr. Kelly continues speaking.) I was. In making the point, I believe there were large charges in extras in the corporate guardians, and either spreading the initial costs or charging a balloon cost at the very beginning.

REFEREE MILLER: And what Mr. Coonan and you are telling us now is that $35 per month--you are averaging those costs within your $35--that you are including, that you are averaging them. That there will be some months where you may have only two checks to write, you charge $35. Charging $35 the first month you're appointing guardians?

MR. COONAN: That's right. We don't make an initial charge for establishing the guardianship/conservatorship. That it is just part of the whole deal.

REFEREE MILLER: That is one of the reasons you wanted to have the minimum charge?

MR. COONAN: Well, I suppose you could say that. We don't make any big deal about it.

REFEREE MILLER: And, administratively, it's cheaper for you to charge $35 a month then?

JUDGE PETERSON: Then you close it out on the same basis?

MR. COONAN: That's correct.

JUDGE PETERSON: Okay. Mr. Hall, you're still working on some more material that you want to write out?

MR. HALL: Yes, Your Honor, I'd like to comment on the reason for requiring that welfare benefits be continuous, without interruption, from the beginning of the accounting period through the end. And, as we've discussed here, I believe we're in agreement this is necessary because when there is an interruption in welfare benefits, this usually means that there is a charge of income to the estate. And this could mean extraordinary services to be performed by the guardian and in that instance, it may be that the guardian should have additional fees and should not be bound by the standards that we're setting forth exclusively for welfare recipients under guardianship.

JUDGE PETERSON: All right. Have we pretty well summarized and completed what is informally agreed upon as a guideline? Anything else that should be noted on this?

REFEREE MILLER: We should note that John D. Anderson, Estate Management Corporation has just come to the meeting.

MR. ANDERSON: I am here instead of Duane Franke, who is out of town.

MR. HALL: Which reminds me to make one additional point, Your Honor, with respect to attorney's fees and those welfare cases.

JUDGE PETERSON: That is another point we haven't covered in the record and I suppose we could address that right at this time.

REFEREE MILLER: Perhaps I can sum it up quickly for John. It is the consensus that $35 a month, 5% of the income receipts handled by the guardian when this is continuous from month to month, not allowing for interruptions which may constitute extraordinary expenses, should be $35 a month or 5% of the income in receipts from day one and would not allow for any set-up fee. The set-up fee would be included or amortized over the period of the year. This also would go from day one to the last day, which would include putting it on for final--putting the final account on for hearing. We have not yet dealt with attorney's fees.

MR. ANDERSON: Did that take into the fact the--would the guardian be putting down --

REFEREE MILLER: This is just for welfare cases.

MR. ANDERSON: Would the guardian be the only one going through the arduous period of qualifying them for assistance, or are they already on assistance?

REFEREE WOLFSON: What is your understanding, Mr. Coonan?

MR. COONAN: My understanding is that the application for welfare benefits will be part of the $35 a month cost.

JUDGE PETERSON: That will include processing the application?

MR. COONAN: That's correct.

REFEREE WOLFSON: I assume that is satisfactory to the Veterans Administration and Welfare Department?

MR. HALL: It's my understanding that fee includes everything, period.

MR. COONAN: Everything excepting such things as possible sale of house, or other major items.

MR. KELLY: We would agree to that, but it seems the cost involved in the sale of a house should be a cost to the sale, subtraction from the proceeds rather than charging the account on an ongoing basis related to the $35 a month.

REFEREE MILLER: Perhaps the Estate Management had had more difficulty in getting people on eligibility for welfare, but there have been matters that I have heard where, for various reasons, the administrative process operated very slowly and was

such that there was--there were extraordinary amounts of effort and time that had to be put into it. I can see he is about to mention that. What he feels about --

MR. ANDERSON: The basic problem is that in those situations, if you're going to the requirements, if you do run into problems it can be a major problem and then a year later, after you put in all the work, everybody is looking at the situation where there is maybe Social Security or V.A. coming in, and not very much coming in, and they say, "Why do we need this? Why don't we make a nursing home representative payee and we can save $35 or whatever?" And in a particular instance you could throughout that year--you may never be able to really re-coop the intake much or the amount of money that it takes to get these people on medical assistance. And that is a real problem. I understand one situation where it was just impossible. We had an uncooperative spouse, and attorney's fees, and guardian fees. It was just astronomical and it can be a real problem.

JUDGE PETERSON: That is an exceptional situation, and those are guidelines and not necessarily binding in every instance where a showing can be made. And as Mr. Hall states, he does not feel that he is necessarily bound in all instances by this. There may be variances that make the guidelines not appropos, but we're talking about usual and normal circumstances.

MR. ANDERSON: Okay.

JUDGE PETERSON: Okay. Did you want to address the fee question, Mr. Hall, at this time?

MR. HALL: With respect to attorney's fees?

JUDGE PETERSON: Right.

MR. HALL: Well, it's been my experience that in these welfare cases there are limited financial transactions and as a consequence the guardians are able to prepare their own accounts, and certainly in the case of first fiduciary they prepare all of their accounts without the service of counsel, and, therefore, I don't believe that attorney's fees should regularly appear as an expense to the estate unless, again, it's for an exceptional situation other than preparation of the annual account, and files in conjunction with that annual account.

JUDGE PETERSON: First Fiduciary accept that proposition?

MR. COONAN: We do.

JUDGE PETERSON: You care to comment, Mr. Anderson?

MR. ANDERSON: Now, are we including this when there's a hearing or just the routine proposition?

REFEREE MILLER: Including the hearing.

MR. COONAN: It includes the hearing, Jack.

REFEREE MILLER: Mr. Coonan is not an attorney. He often comes in and presents the final account as guardian, as do many individuals.

MR. ANDERSON: When an attorney comes in, I --

REFEREE MILLER: The point is, is it necessary that an attorney prepare the final account when you have a corporate fiduciary, and is it necessary that an attorney present the final account?

JUDGE PETERSON: We're also talking about the welfare. These are welfare cases.

MR. ANDERSON: Mm Hmm.

MR. HALL: That works out to $420 a year for the most simple kind of guardianship. I don't think that is a bad fee, especially when there's only two or three sources of income and there's one or two expenditures a month to a nursing home. I think that is a very good fee.

REFEREE MILLER: There may be some Estate Management files which will benefit from this rule. It's my recollection of some that I've seen. Even including attorney's fees. Even now excluding them, the monies going to Estate Management would be more than what Estate Management in some instances was charging for guardianship fees and attorney's fees.

JUDGE PETERSON: Did you want to make any comment, then, further on that?

MR. ANDERSON: No. Well, other than I guess if there's not going to be an attorney involved, that would be fine. I don't know, like for Estate Management Corporation, they don't have a person like John Coonan who has been in banking for some time and they just--I don't know if they would be qualified to really come

in and to present something. And perhaps nine times out of ten they will. Like Mr. Hall says, there's-they are usually the simpler cases.

JUDGE PETERSON: Doesn't Mr. Dally come with you sometimes?

MR. COONAN: Usually he comes down. There have been a couple times when there might have been a disagreement of fee that I would come down here by myself, but usually someone's here at that time. And it's usually on a V.A. case, not a welfare case. Normally I don't appear before the Court myself, no, Your Honor, I don't.

JUDGE PETERSON: Who appears?

MR. COONAN: Usually Ken Dally does.

JUDGE PETERSON: He presents the account?

MR. COONAN: Correct.

JUDGE PETERSON: He is a lawyer?

MR. COONAN: Yes, he is.

JUDGE PETERSON: All right. Have we covered welfare? Is there anything on welfare we should mention?

MR. KELLY: I can't think of anything, Your Honor.

JUDGE PETERSON: What is next? The Veterans situation, Mr. Hall? Is there something you want to put forth at this time in connection with veterans?

MR. HALL: With respect to guidelines for guardianship fees and other V.A. matters?

JUDGE PETERSON: Right.

MR. HALL: Well, the rule that we have worked with over the years, and until the legislature changed attorney's fees and in fact did not comment on guardian fees, is that 5% of the income worked very well. And it's an easy standard to adhere to. It appears to be fair, and our experience with it has been real good.

JUDGE PETERSON: Do you feel you've had problems in Hennepin County with that?

MR. HALL: I don't think that that rule is being used anymore. I think the idea of --

JUDGE PETERSON: What is your ideas what is happening at the present time?

MR. HALL: I think what the Court has done, and guardians too, is they have taken the statutes with respect to attorney's fees so that--and applied it to guardians and we have guardians charging on an hourly basis. And although that would sound like a reasonable standard, in fact it isn't because we have the problem of the person who is doing the work determining how much work they want to do and in many cases that is so negligible. It's a standard that can't be controlled and you can't ascertain what is a valid fee for the services rendered, especially in guardianships where you have an incompetent. We have cases where an incompetent who doesn't have a normal life will come in and sit and talk to the guardian and he doesn't care if it's costing $50 an hour, or whatever, as long as the guardian will sit and talk to him. He will sit there all day. Well, if they allow that, the guardian could sit there and talk to the ward and the ward would talk to the guardian and that would be a $400 charge for the day. Those things happen. With the 5% rule it's a sliding scale, so when there's a larger estate and more responsibilities there's more income to the guardian. When there's smaller estates, then there's less work and the 5% rule has always worked well.

JUDGE PETERSON: Of course you could get more property in a veteran's file than a welfare case.

MR. HALL: Oh, substantially. That is why I think we have to distinguish those two cases. When welfare's involved, it's a different kind of case.

JUDGE PETERSON: Is it your opinion the 5% rule is a fair rule and the average, normal situation as to all veteran's cases that are not welfare regardless of type of assets or amount?

MR. HALL: Certainly there are exceptions, Your Honor, and I think the Court could deal with them. Generally speaking, we've had a lot of experience with the 5% rule. I personally have had the experience for 12 years. It's worked out very well. Case in point is Richfield Bank. That is a corporate fiduciary, they have overhead expenses, all expenses, and they manage quite well with 5% and they are happy with it.

REFEREE MILLER: Does that include legal fees?

MR. HALL: No. Attorney's fees would be separate, but generally speaking, if a guardian is performing the services as a business, they develop, and should be required to show expertise, and that expertise should be reflected in the preparation of an annual account and other routine filings. There is nothing mysterious about filing an annual account.

JUDGE PETERSON: What would be extraordinary in those kinds of cases?

MR. HALL: Well --

JUDGE PETERSON: What might necessitate a deviation from the 5% rule, assuming that was being followed?

MR. HALL: Generally, Your Honor, I think those instances arise when you have a guardian of the estate getting involved with the person of the ward. He is unruly, he may be in jail in some other state, and it's not the normal, everyday duties of receipt and disbursement of funds.

JUDGE PETERSON: It could apply in welfare cases, too, where the party became unmanagable or something.

MR. HALL: Yes, it could. I don't think we have a lot of it, but it's true, it could.

JUDGE PETERSON: Getting back to veterans cases, then, is there anything you visualize as being extraordinary?

MR. HALL: You're catching me unprepared for this. Extraordinary services --

JUDGE PETERSON: We're doing the best we can here. We're just trying to pin it down as much as possible and get an understanding of the problem.

MR. HALL: I think many times you have a ward, who because of his relationship, may have a duty to perform he is unable to do. For example, say his parents died and he is the only individual, the only heir. Normally, it would be the guardian that would take over the job of becoming the administrator --

JUDGE PETERSON: Then, of course, he gets fees. In that estate that is a separate allowance for a service.

MR. HALL: That's right. If a ward is married and needs a divorce, those would be unusual services. The guardian

would have to obtain the services of a lawyer, and work with the lawyer. Other lawsuits may be involved. An individual might become incompetent as a consequence of an accident which gives rise to the guardianship. The things of that nature where the guardian would be doing something other than receiving, disbursing funds from regular sources of income.

REFEREE MILLER: How about when there's a petition for license to sell real estate, and what about if that petition is contested in any way? This Referee having had one of those recently.

MR. HALL: Generally, the bulk of the work will fall on the lawyer. In that instance, it's the real estate broker and I think the guardian.

REFEREE MILLER: The guardian is present at extended hearings.

MR. HALL: That is true, but generally the guardian should let the real estate firm and the lawyer handle those cases. I know that many times the guardian does get involved, but they frequently then feel they have an entitlement to a broker's fee. I don't think that is appropriate. The average person who is selling or purchasing property--when he has an attorney or realtor--doesn't do too much unless it requires the repair of a home, and in that instance the guardian would hire somebody to fix up the house.

REFEREE MILLER: What about--I believe I've seen files where first fiduciary has acted, in a sense, as realtor and attorney. And the overall charge for the sale of real estate came as a sale of real estate charge, but added up to considerably less then when they hired a realtor, but they did put in a charge for selling the home as opposed to giving it out. If it would have been, let's say, 10% between attorney and realtor maybe it came up to 5%.

MR. HALL: Fine. Nobody would object to conserving the assets of the estate and I would be in agreement with that. It's just that we're making the assumption that that property's being appraised. That would be the case, certainly we would be very much in favor of that kind of arrangement.

REFEREE MILLER: Assuming it's being properly marketed by the corporate guardian. To get away from the real estate commission issue, I guess back to the extraordinary fees, Mr. Hall and I had--we had a case where, for example, as I recall there was real estate sold, a garage that burned down, and the guardian had a struggle with the insurance company over the exact loss, the exact amount of the loss. There were a number of personal problems involved. With the ward, he had been evicted from several nursing homes apparently because of his unruly behavior. Those sorts of personal things, and the estate management types of things dealing with insurance companies in the event of a loss or a sale, or some sort of extraordinary financial management, such as some problem with a contract for deed, for example. There again, that might be better handled by a lawyer.

MR. HALL: Right. That is truly an extraordinary situation. And in those instances, then, I think that when it's appropriate, additional fees can be applied. However, I would require this of extraordinary fees, that they be clearly and well documented as to time and place and person. If a guardian is providing extraordinary services, I think that the Court should require that of him, that he comes in with documentation that can be verified. He has the man's name, and the date and the time, and if that is submitted to the Court and the Veterans Administration, we can go do a spot check and see it's appropriate and certainly we are not going to have objections.

REFEREE MILLER: You realize the fees are going to be different if they are going by the hour, because different people have different overhead and place different value on their services?

MR. HALL: Would you say that again, please?

REFEREE MILLER: If I have an office and it costs me $500 a month and someone else has an office for $1,000 a month, I must charge so much an hour and they charge so much an hour. You're going to find different--it's going to be reasonable for me and someone else to be charging different fees for performing the same services.

MR. HALL: No. The guardian shouldn't serve --

REFEREE MILLER: We're not setting an hourly fee.

MR. HALL: The guardian shouldn't serve for his own benefit. He should serve for the benefit of the ward, and if he can't do it competitively, he shouldn't do it. And unless we're talking about some very extraordinary, large estate, we don't want a man who's accustomed to $100 per hour handling a guardianship that has only a few hundred dollars a month. He shouldn't be in that business. I also think that when the guardian has services to offer a ward, if the ward can't use those services to his benefit, they shouldn't be extended to the ward and shouldn't be charging for them. I'm talking about computers. If a bank has a computer plan and using computers for investment and as long as they are handling the very large estates that can handle--that can take advantage of computers, fine. But, when they are handling small guardianships, like $5,000 and $10,000 where there isn't significant investment, those banks can't function as a corporate fiduciary competitively and shouldn't be in that field, because the ward can't--doesn't benefit from the computer. The only one that benefits from the computer is the corporate guardian. And this is the instance that you're talking about. If we have people who charged different wages, it isn't for the benefit of the guardian, it should be for the benefit of the ward.

JUDGE PETERSON: You see any problem with this statement that he has made?

MR. COONAN: Basically, no. The only comment I would care to make on that is that there are some cases which don't have too much activity. They have a normal amount. I'm talking about the abnormal activity where you have the person who can't handle "penny one." Soon as he gets it in his pocket, it's gone. Those cases you have to make remittances weekly, maybe two or three times a week.

REFEREE MILLER: Maybe the ward's going to call you ten times a week.

MR. COONAN: Absolutely. This is it, it takes you away from the adequate administration of some other account. In those cases I think additional fees are warranted because you

can't write a check out for a couple dollars.

REFEREE MILLER: How does this come, now, into your amortizing? Shouldn't it be part of your whole charges on this case? You're going to write two checks and write them regularly and never hear from the ward, and the next case you're going to hear from the ward ten times and write five checks, so between the checks you've written seven checks and had ten or twelve phone calls.

MR. COONAN: Normally we have used the basis of an average account. We'll use between two and three checks a month, so we use an average figure of forty checks a year.

REFEREE MILLER: When we discuss this in Court, we talked about there would be times when maybe 20 checks a month and you said that still came under the $35 a month.

MR. COONAN: We're confusing two things. We are no longer talking about welfare, we're talking now about the V.A. guardianship and other types of guardianships.

REFEREE MILLER: That particular case we're involved in there was a veteran not on welfare.

JUDGE PETERSON: We're talking about veterans cases, now.

REFEREE WOLFSON: It is clear, is it not, that each case, though, is going to be that although there may be a guideline, in the abstract, that there be a guideline in some cases that approximate the statistical norm? That each case is going to be decided on the merits and we're certainly not going to have a relatively simple guardianship bear part of the cost of the more troublesome ones.

REFEREE MILLER: Except that by the 5% rule we're establishing that, we're saying that.

MR. HALL: We're just discussing --

JUDGE PETERSON: We haven't established anything at the moment.

REFEREE MILLER: We're considering this may happen.

JUDGE PETERSON: But, let Mr. Coonan elaborate more on his problem, what kind of cases he is really talking about.

MR. COONAN: I'm talking about the chronic alcoholic, as we normally think of them, who you have to furnish a check three times a week to, who comes into your office loaded. He makes obscene phone calls to your office, and this sort of thing. This becomes a problem, and --

JUDGE PETERSON: All right.

MR. COONAN: You really have to--it takes time.

JUDGE PETERSON: In those files you can identify that in your accounting.

MR. COONAN: That's right. But Jim was talking about the 5% and adhering pretty close. That 5% has not been changed for many years.

MR. HALL: Well, you don't have the same impact, or it doesn't have the same impact, that some other rule would have with respect to inflation. You can't say because there's inflation you should increase the percentage, because the income of the individual's increasing proportionately. I suppose carrying that out to the most ridiculous conclusion would be to say that as the economy continues to inflate, we should increase the percentage. Eventually, you would have the guardian getting 100% of the income for a fee.

REFEREE MILLER: Fortunately, the V.A. and welfare adjust for cost of living, and so the 5% should continue to be fair, if it is fair.

JUDGE PETERSON: That's one advantage of the percentage system. It does follow the inflationary curve, anyway. But, in the situation just being alluded to it does point out that you would have some unusual situations where you had those numerous activities being required because of a peculiar type of ward. And I say there you can flag the file and point out what it is, and it would be decided on its own merits. It's one of the cases you could argue about, so I think that we can just absorb that as a part of the problem area that we may have in this thing. But it doesn't necessarily detract from the overall approach of trying to get some standard guidelines.

REFEREE MILLER: One question we haven't dealt with, but falls in here is some are guardianship of the estate, and some

are guardianships of the person of the estate, and that may also have --

MR. HALL: With the V.A. that would be less than 1%.

JUDGE PETERSON: Any other problems you see here with the veterans' calendar?

MR. COONAN: No. Usually between the V.A. and myself or the office we get those difficult problems resolved.

JUDGE PETERSON: Mr. Anderson, do you see anything you want to cover or any comment you wish to make?

MR. ANDERSON: Okay. The first thing would be that the basis of Mr. Hall's saying that the guardian can determine his own fee by talking with the war; I don't think that is very common at all. I think it might be that that is money well spent for the ward, if the ward calls up and needs someone to talk to. I don't think it happens very often. I think most of the time these people are such a problem that the secretaries are instructed not to let the calls through. Getting back to the 5% now, when selling a home and you have homes now that are inflated in price are you going to include the capital gain in that 5%? That is one question that problably should be talked about now, otherwise you're going to have someone come in and they are going to claim 5% of the $20,000 capital gain.

MR. HALL: That is the principal. That is part of the corpus of the estate, a matter of changing the identity of the corpus that is not income.

MR. ANDERSON: It's income to the ward and that has to be required for income taxes.

REFEREE MILLER: For income tax purposes?

MR. HALL: But not for your purposes here. It's clearly reflected as part of the principal in the account. You simply change the character of that.

JUDGE PETERSON: I think the real estate sales proposition is a separate item of discussion which we'd have to go into. Let's reserve this for the moment and get into that a little later. Do you have any other comments on this?

MR. ANDERSON: No.

JUDGE PETERSON: Any other types of assets that are of particular significance that create other problems?

MR. ANDERSON: Well, I guess the obvious problem here would be the fellow with a large number of assets and very little income. Again, that could be brought out and flagged as an unusual circumstance, and I suppose there will always be the borderline cases where they will be subject to litigation or some contested proceedings. I think you're going to have that situation in whatever system you use.

JUDGE PETERSON: Are we then ready to discuss real estate sales? And I'd like to ask is Jack around, because he has definite views on this definite problem. (At this point there is a short recess, during which time Referee Miller leaves the conference and Referee Casey joins it.) Okay. Now, you, of course, know Jack. Well, I just--for your information, we have covered some general background information and discussed some informal types of guidelines that might be agreeable to the V.A. and the Welfare Department, and also to the fiduciaries who do most the work in Hennepin County on these types of files which would be, of course, First Fiduciary Corporation, Estate Management Corporation, and also the Richfield Bank. Unfortunately, Richfield Bank isn't here at this time. However, we have representatives here from the First Fiduciary Corporation and also from Estate Management. So, these general guidelines and exceptions have been discussed, both as to the welfare cases and the V.A., dealing with guardianships of veterans and conservatorships of veterans. But, the unusual problem we are down to now, which has been mentioned here along the way, and we sort of resolved til this time, and I called you in on because you had experience with it and some ideas concerning it, is the matter of the corporate fiduciary selling real estate, and the question is how to compensate them. This, I think everyone's agreed, involves extraordinary types of services and does not come within the ordinary standard formulas involving monthly charges, but it leaves the question remaining as to how we're going to deal with it. And while I have everybody here, I want to review that proposition first to see just where we stand on that in the

community and what the corporate fiduciaries are doing. If I may, Mr. Hall, I'd like to get your reflections. Do you have ideas on that particular subject.

MR. HALL: With respect to the --

JUDGE PETERSON: Sale of real estate such as a home or substantial real estate property that are sold in a guardianship or conservatorship. And you have the corporate fiduciary selling the property without benefit of a realtor.

MR. HALL: Okay. I certainly don't feel that a brokerage fee is an appropriate charge, and I think that the fiduciary is entitled to an additional fee because that is in the area of an extraordinary service. And in that instance, like all extraordinary services, I think that he should document his time, individuals that he contacts, and the amount of work that he actually puts into it. Generally speaking, however, I believe that the transaction should be handled by a realtor and an attorney, but when it is clear that the guardian can conserve some of the assets of the estate by handling it himself with the appropriate appraisals, then he should be paid on a Quantum meruit basis for the services rendered.

JUDGE PETERSON: What would be your idea of a fair Quantum meruit basis?

MR. HALL: Well, it would have to be an hourly rate based on the number of hours that he has to spend, and assuming that he would not have to spend so much time it would exceed the cost of retaining the services of a real estate firm. In an instance where a homestead is going to be sold that belongs to a senior citizen, and the property going to be sold to a son or daughter, so you already have the purchaser, and the property appraised, and an attorney handles the transaction, the hours that the guardian spends shouldn't be great, but he should receive a reasonable fee for his services. And I suppose a reasonable fee will change from time to time. I think corporate guardians feel they can get by on $25 an hour, is that correct?

MR. COONAN: That's pretty small. You still have to maintain office and help and that. I think that --

MR. HALL: This isn't for doing legal services. The

lawyer would handle the legal transaction, and in the event there wasn't a built-in buyer the real estate firm would handle the real estate transaction.

JUDGE PETERSON: If you can handle cases for reasonable attorney's fees, then handling the transaction would be proper, and in addition to that a fee for the conservator would be appropriate, based on time spent primarily on the particular transaction, provided that they were not unreasonably long over a long period of time involving accumulation of a bundle of hours. But say the fiduciary has attempted to sell it and accumulated a lot of hours and hasn't been able to obtain a buyer and he turns it over to a realtor, probably, and we get a realtor impact, too.

MR. HALL: That would be the exceptional case, Your Honor, but as long as the fiduciary acted properly and felt that the sale would be consumated without going through a realtor, just as any private party would if he knows he has a buyer, there's no sense in going to a realtor. That, again, is an instance where he knows he is entering into an extraordinary service and, again, should be prepared to provide documentation of all the things he does. And he will be able to explain to the Court why initially he thought he could handle this and do it reasonably and economically, and as the facts claim then he was required to seek the services of a realtor.

JUDGE PETERSON: Mr. Coonan, what do you think is a fair approach?

MR. COONAN: Normally when we look at a piece of real estate, we give a pretty close scrutiny to see if we can do anything with it, or just wash our hands of it and put it in the hands of a realtor. Normally we don't fool around and spend a lot of time and then hand it over to a realtor and charge it back to the account.

JUDGE PETERSON: What is your experience? Have you been able to sell some of those?

MR. COONAN: Very few.

JUDGE PETERSON: What do you do most of the time? Turn it over to a realtor?

MR. COONAN: Yes.

JUDGE PETERSON: You pay the usual 7%? Or 6%?

MR. COONAN: Whatever their fee is, unless it's a land deal and then we may haggle a bit with them into giving us a reduced schedule of fees. But that would be very exceptional.

JUDGE PETERSON: What is the usual you have to pay?

MR. COONAN: Around 7% to 8%.

MR. ANDERSON: If it's vacant land I've been running into 10% fee.

JUDGE PETERSON: On vacant land you get a higher charge. Mr. Anderson, you care to comment on this? How does Estate Management approach this?

MR. ANDERSON: I've not been involved with Estate Management too closely for some time now, and I don't know what they're doing on selling their real estate. I think they may be advertising and having open houses on their own, and doing--treating it similar to real estate companies. But I don't know this for sure. The one question I have is, are we talking now about V.A., now, where real estate sales--where the V.A. is involved? And I'm wondering why would we treat a corporate fiduciary any differently than an individual? That is my question. If we've got--I represent several, quite a few individual guardians, and I do represent Estate Management on some files, and from what I can tell it seems that Estate Management Corporation does a lot better job than the individual guardians, and oftentimes the individual guardian wants more money than the corporate fiduciary.

JUDGE PETERSON: Well, let's say generally individual guardians do not. Many of them waive fees, too. They're family members, and so we're dealing with corporate guardians right now and trying to see if we can treat them on a uniform basis.

MR. ANDERSON: As opposed to--do you mean uniform basis for all corporate guardians?

JUDGE PETERSON: That's right. Not the personal, because there's so many variations because family members--some want their expenses, some will waive them, and others will want some type of a fee; but, in general, it's been my experience that personal guardians usually do not charge as much as a corporation.

That is not a business basis because most do not have offices, and do not have the overhead and any other problems of a corporate fiduciary. So right now, and for the purposes of this meeting, we're dealing with the corporate fiduciary to see if we can get some standard guidelines to apply here that are fair to the circumstances that we have. Actually, as far as the sale of real estate is concerned, it shouldn't be different here whether it's V.A. account or somebody else's. The same standards should apply. But we do have input from the V.A. and the other persons present, and I'd like to get whatever I can as to what is going on in the community, and what seems to be a fair standard, and, therefore, the persons that are affected, giving them a forum here with the Court to try to resolve these problems.

MR. HALL: Your Honor, if I can, I'd like to make one comment about extraordinary services. We've talked about extraordinary services when they are above the normal duties, or in addition to normal duties, but there are those situations where the guardian does substantially less than the average guardianship. I think the most notable case is a situation where we have a veteran who has a very large estate. He is incompetent, he has no dependents, and he is in the V.A. hospital. We cut off his V.A. money and we take care of him. In that instance, the guardian has absolutely nothing to do and if we have a veteran with $100,000--$150,000 estate, money in U.S. bonds or saving account, and the money just sitting there, I don't think that in that instance it's appropriate for the guardian to charge 5%.

JUDGE PETERSON: Have you been having problems with that kind of account?

MR. HALL: When we do, we take exception to that.

JUDGE PETERSON: Have you substantial problems in that area?

MR. HALL: No, but as long as we're discussing extraordinary services, I would like at the outside of the --

JUDGE PETERSON: Well, if you have that situation that would have to be taken care of on a deviation from the norm.

MR. COONAN: I'd have to cite one example. We had one not too long ago. Veteran in the V.A. Hospital in St. Cloud,

he received no compensation from the V.A., a single man with no dependents, had an estate in excess of $100,000, but getting three sources of income. And three sources of income and $100,000 estate, and the value that we place on what we get, which is roughly 8%, we feel that we're making on our investment--we're doing good work for that man.

MR. HALL: You're saying then that you should have $5,000 for serving?

MR. COONAN: I'm not saying we should have $5,000, I'm saying we should have 5% of the income.

MR. HALL: I see. You're saying that even though you don't have expenditures, and all you're doing is receiving monies, that you should have 5% of that, notwithstanding the fact that you don't provide any other services?

MR. COONAN: We provide the normal services of the annual account, making the investments, seeing to it that the individual has the--making the payments as requested by the V.A.M.C., whatever is needed by the veteran. You're still performing a service.

JUDGE PETERSON: If he has an income on an investment, a value up to $125,000, and from that you get an income of $8,000, you apply the 5% to the $8,000 and you think that would be a reasonable approach?

MR. COONAN: I think it's justified.

JUDGE PETERSON: In that situation we're going to have to look at them as they come up and see how much activity there is. And I understand we've received your tentative expressions or suggestions on that subject--there would be no question. Are you raising a question on that, Mr. Coonan? The whole thing is not contingent on how many checks you write out for the individual. That isn't the criteria--what services do you perform for the individual.

MR. HALL: What services do you perform when he is in a V.A. Hospital and three sources of income?

MR. COONAN: If you're receiving three checks a month, you've got three checks a month, I don't care how you cut it, Jim, you've got to have somebody do that work. Just because checks aren't going out, doesn't mean you aren't providing ser-

ices to the account.

MR. HALL: How long does that take to receive three checks?

MR. COONAN: They come in at different times. Three checks a month take you about 20, 25 minutes at least.

JUDGE PETERSON: What I understand we're talking about at this point is the big estate, and the question as to how you're going to approach the fee problem and Mr. Hall is stating he is not committing himself in any way on those cases and he will look at each individual case, and if he feels there is no activity and you're getting that much money, he is going to raise an objection and the Court will have to resolve it when it comes.

MR. HALL: That is fair, Your Honor.

MR. COONAN: The reason I brought it up, there is contention--you brought it up. You don't perform a service unless you're writing a check out. But that isn't all that service is.

JUDGE PETERSON: I understand that point, but I'm trying to pinpoint just as to what we appear to have general contention on and what we do not. The subject matter we're discussing, the problem that arises when you've got an estate running in around $150,000 and an investment and there is a lot of interest or dividends or other interest income coming in. The question, then, is how do you apply a formula and, I think, we can reach any general expression of what you do in that situation because of the variables, and therefore, you just have to charge what you think is reasonable when you get one of those, and Mr. Hall will raise his objections and you'll present it to the Court and we'll have a look and decide on the facts of that particular case.

MR. COONAN: Did you want to make a comment on that?

MR. ANDERSON: Yes. I'd like to add one thing. Another thing, if the responsibility--you may not write a check, or may not--supposedly you could have it where it would be just automatically deposited in a bank and you wouldn't have any activity, but you do have that responsibility. If you leave $25,000 in where it's not getting interest or something, conceivably for a year, you look at that and you're going to get surcharged for 6% of that and, conceivably, that is the value of your not doing it.

So, are you going to--you're going to have to pay out the 6% interest on this $25,000?

JUDGE PETERSON: I recognize your responsibility. All I'm saying is we can't formulate guidelines on that. That is a judicial matter.

MR. ANDERSON: This is another aspect of it. The actual physical or motor activity is, I don't think, any indication of--it's not a good indication, but it's not the total indication of how much a fee should be.

JUDGE PETERSON: We will decide that on an individual basis. Commenting on the real estate situation, then, as far as the Court is concerned I'll look at each one of those problems as it arises. And it is the Court's position that just applying a blanket commission isn't the right approach. I don't accept that, and we'll look at each individual situation and consider the time spent, the services rendered, the success obtained in the particular case for the benefit of the ward, and any other factors that may appear appropriate at the time and fix a reasonable fee based on all the circumstances.

REFEREE CASEY: Just a statement about--and I understand we're talking about guardianships. When this Court is considering guardianship fees and attorney's fees, no matter who performs them, we look upon that as the total administrative cost and sometimes in those accounts, it's put in "guardianship fees such and such," and then something, "sale of house," somewhere else, and tax preparations somewhere else; and so far as the Court is concerned, if it's the work that the guardian would be doing, then we appreciate it if it's so reflected as guardianship fees so that when someone's looking at this account, they don't find guardianship fees "X amount of dollars, and sale of house, and tax preparations," because if the corporate fiduciary is not doing that and is engaging someone else to do the tax preparations or whatever it is, that is still considered by the Court as guardianship duties and sometimes in looking at those accounts, our personnel that the Court has to audit them has to ferret out from the account what the attorney's fees and guardianship fees are.

JUDGE PETERSON: That is a point that should be reflected in this record. If there are extrordinary services, or

unusual services by the guardian, then it's more appropriate to limit those to his own fees, and then set a schedule indicating that in addition to the ordinary services he sold, he or she or the corporate fiduciary sold, real estate, and the nature of it and an explanation of it. Also, if he did special tax work that should be explained or some other service that was unique for which a separate charge is being made. As long as it is performed by the guardian or fiduciary it should be included in the charge, rather than throwing it in through various other forms in the account which makes it difficult to audit, because it gives the impression that somebody else did it and not part of the guardian's duty. And, therefore, it makes trouble, some for the auditing people as well as the Referees and myself when we review the account.

REFEREE CASEY: I might mention as long as the guardian does it, if the guardian engages someone else to have it done, then that should be considered in the total schedule of guardianship fees so that if the guardian engages someone else to do the tax work, which would normally be done by the guardian, or someone to do some other part of the guardianship duties, then that should be considered as the gross guardianship fees for consideration by the Court.

MR. COONAN: In other words, what you're saying, if we use H&R Block we don't put on there H&R Block. We put it in our fee?

REFEREE CASEY: Include that in the total fees and schedule it as what they are because if the guardian goes to engage somebody else to do part of the guardianship functions, that is part of the guardianship fees we're considering, and if someone else is handling something that would normally be handled by the guardian, we view those, in looking over the entire--in the reasonableness of the entire fee. And if I might add one other thing, Mr. Hall had mentioned--and most of the difficult real estate, more regular real estate sales are made in an guardianship so we're dealing with guardianships. If there is a sale in the offering, you don't need, as Mr. Hall mentioned, a realtor. Then the reason why the guardian would be doing that,

it would be a saving to the guardianship estate. And you get into the question of conflict of interest when the guardian makes a choice of seeing if he can spend so much time in selling it and subsequently engages a realtor, so that I gather from Mr. Hall's statement he is considering or suggesting that, and maybe Mr. Hall can correct that, that unless there is something that is quite evident that is going to be financially beneficial to the ward, or conserving fee by the guardian making the sale, that they shouldn't start engaging in the sale process as a regular program with the idea that if that doesn't work they'll go back to a realtor with their fee.

MR. HALL: I agree with that.

JUDGE PETERSON: All right. I think we probably cleared the air on this. I'll have the reporter type up the information here and see if probably it can be condensed, and I'll see that those that are affected have a transcript of it.