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March 30, 2018

VIA HAND DELIVERY
The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

RE: In the Matter of the Estate of Marion M. Kay (Sullivan v. Brown)
Appellate Case No. 2016-002337

Dear Mr. Shearouse:

This letter is in response to correspondence from counsel for the Respondents dated March 10, 2018, and filed on the Court's Case Management System on March 15, in which he purports to answer the "Court's request for enlightenment on the subject of settlement."

For the most part, the Appellant disagrees with the positions and arguments of Respondents. The SCACR do not provide a mechanism for responding to such a letter. Rather than reargue in a letter, matters which have been largely addressed In briefs and oral argument, I respond to those matters which appear of greatest consequence.

The only thing the Court requested Respondent's counsel to provide, and which he promised to locate and provide, was for citations to proof in the Record that Respondents had requested information from the Personal Representative about his handling of the case and what fees he was charging. The following exchange took place between Respondent's counsel and Justice Hearn (See Tr. p. 28, ll. 7-13): [1]

MR. FERGUSON: Well, let's talk first of all about why there had to be a hearing. The Personal Representative would not give us any information about his handling of the case and what he was charging.

JUSTICE HEARN: Okay, can you show me in the Record where you asked for that information?

MR. FERGUSON: There – I'll have to look that up and give it to you.

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[1] References to quotes from the oral argument are to the video-recording available on the Court's website. An unofficial transcript has been prepared by the Appellant and is enclosed.

In another instance, Justice Kittredge indicated to Respondent's Counsel that he could not locate in the Record where either Respondent, Ms. Brown or Ms. Moses had responded to letters from the Personal Representative in 2008. Mr. Ferguson replied that "I believe at some point after the aborted conference, that there was some discussion. I may be wrong on that, but that's my understanding." Thereafter, in a discourse with Justice Hearn, Mr. Ferguson conceded that there was nothing in the Record on the point, it was only his recollection, and thus there is no citation available in the Record on that issue and none was provided in the March 10 letter to the Court (See Tr., p. 24, ll. 12-20).

Mr. Ferguson has failed to provide any information in his letter which is responsive to Justice Hearn's request that he show her in the Record where he or his clients had requested information on the costs being charged for handling the case by the Personal Representative. Accordingly, the statement of Appellant's counsel that Respondent's counsel could look for 10 years and he wouldn't find it, remains true and accurate.

Counsel for Respondents continues to argue this case in the guise of responding to the Court's request for a citation to the Record that would reflect responses from Respondents Brown and Moses, if any, to Mr. Sullivan's proposals for resolution. Counsel for Respondents conceded there were none, and none have been identified. The claims that the Respondents are replying to some formal request by the Court for information on settlement that was not objected to by the Appellant is imaginary or mistaken.

Appellant has reviewed the oral argument in the Court's video portal. As noted above, our review reveals that Justice Kittredge and later Justice Hearn asked counsel for Respondents for citations in the Record that may reflect affirmative steps taken by Respondents to resolve this matter or even respond to Mr. Sullivan's proposals for resolution, particularly the letter of Mr. Sullivan to the Respondents of May 2008.

Respondent's correspondence confirms what he conceded at the oral argument – Respondents Brown and Moses did not respond to Mr. Sullivan's proposals. Rather than simply addressing the Court's question by citing evidence in the Record, which he cannot do, Counsel for Respondents reargues portions of the case, cites rules of evidence and makes further, unsubstantiated personal attacks against Mr. Sullivan. The Respondents never took any affirmative steps to resolve the issues and in fact failed to respond to Mr. Sullivan's May 2008 proposal and the revised proposal that was sent after the July 2008 meeting with the Appraiser.

Since the letter from counsel for Respondents is non-responsive to any request of the Court, and certainly outside of the Court's rules of appellate procedure, Appellant requests that it be disregarded. However, if the Court would like, we would be happy to write and file a responsive brief addressing each of the points counsel for Respondents attempts to make. Nevertheless, we are prepared to stand on our briefs previously filed as well as our arguments before the Court on March 7, 2018 pending the Court's decision.

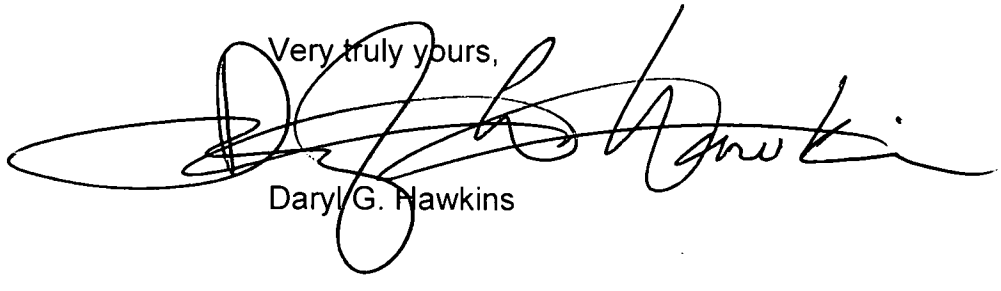
Throughout this litigation the Respondent's attacks on Mr. Sullivan have been mean-spirited and without factual support or substance. Appellant must respond directly to the claim made by Respondent's counsel that he did not disclose what he had been paid until Respondents "forced him to file an accounting" because it is so demonstrably false. Upon sale of the Estate's real property and without any prompting or request from Respondents, Mr. Sullivan prepared, filed, and sent to the Respondents and all beneficiaries accountings which fully disclosed the disbursements from the Estate, including Mr. Sullivan's compensation. The accountings, which are in the Record (R. pp. 713-720) are dated October 15, 2010, October 22, 2010, November 1, 2010 and November 12, 2010. The correspondence of Counsel for Respondents requesting a hearing; also in the Record, is dated December 6, 2010 (R. pp. 851-852). The Record is entirely devoid of any evidence to support the Respondent's claim that they "forced him to file an accounting." The accountings were filed in compliance with the S.C. Probate Code.

Unless requested by the Court for further information or argument, we will resist the temptation to respond in the event that this correspondence prompts another letter from counsel for Respondents. It is our feeling that this Court, or any court, does not appreciate being the center of a letter-writing campaign, especially since the case has been briefed, oral arguments made, the decision of the Court is pending, and Counsel's comments are thus far non-responsive to anything the Court requested Respondents to provide.

I understand this correspondence will be copied to the members of the Court.

With kind regards, I remain

Very truly yours,



Daryl G. Hawkins

DGH/rlb
Enclosure
cc: John R. Ferguson, Esquire (via E-mail and U.S. Mail)

SC SUPREME COURT

Case No. 2016-002337

In the Matter of the Estate of Marion M. Kay

ORAL ARGUMENT 3-7-18

CHIEF JUSTICE BEATTY: You may be seated. The next case up for oral argument is the Estate of Marion Kay.

MR. HAWKINS: May it please the Court?

CHIEF JUSTICE BEATTY: Well, before we get started let me make note of, for the Record that Justice Few is not sitting in this case. We're having Judge Amy McCullough sit in his stead. Thank you.

MR. HAWKINS: Good to see you, Judge McCullough.

JUSTICE MCCULLOUGH: Good to see you, Mr. Hawkins.

MR. HAWKINS: And Judge James, it'll be the first time I've had the opportunity to appear before you. Thank you for my opportunity to be here today in front of you.

JUSTICE HEARN: Aren't you glad to see the rest of us, Mr. Hawkins?

MR. HAWKINS: And I was about to say that. [Laughter] Mr. Chief Justice and the other Members of the Court, it is a pleasure always to be before all of you. This particular case – first I guess before I start the argument there are quite an extensive Record of Briefs having been filed with the Court. Hopefully we'll be able to address all of the issues during the oral

argument, but to the extent there are any issues we've raised in our Briefs that we're unable to get to because of time constraints, I wanna note for the Record that my client does not waive or abandon any of those claims in the Briefs and we would rely on our positions in the Briefs on those points we're unable to get to in argument, if any. I guess the first issue in this case is to note that the Court of Appeals applied an improper standard of review and that would be the first thing we'd ask the Court to consider.

JUSTICE HEARN: Well, let's talk about the two-judge rules, because you know, it is so scintillating. As I understand it that rule was defined in *Neinow v. Neinow*, but it related back to the old *Towns* case that some of us older lawyers grew up with. And it really was talking about a situation where there was a referral by a Circuit Judge to a Master or a Special Referee to make findings of fact, and then it would go back to the Circuit Judge and he would concur in those findings of fact and conclusions of law, or not. But the rule, as I understand it was, when you had two judges who had concurred in findings of fact, that was sort of elevated to a situation like a jury had made findings of fact, and it was subject to a very sort of limited standard of review in any evidence standard. But how is, how is that rule, how does it

have any application in a situation like this where the Circuit Court is sitting in a purely appellate capacity? And I understand there's some cases that say it does, but what's the efficacy for that rule?

MR. HAWKINS: I think somewhere along the path courts fell into a routine of just rotely quoting language from the case before about what is the two-judge rule and how does it apply. And I believe your discussion of its history is entirely accurate. And Judge Kittredge does a nice job in the case of *Lewis v. Lewis* of trying to follow that history and say how do we get to where we are. My recollection was that out of those cases and an opinion, dissenting opinion by Judge Few in this case, the first time that phrase, two-judge rule, was ever used is 1977. It's not really some ancient doctrine of law that's been with South Carolina for 100 years.

JUSTICE HEARN: That was a long time ago, Mr. Hawkins.

MR. HAWKINS: Well, not for all of us [laughter]. You know, my old boss Judge Bruce Littlejohn wrote the –

JUSTICE HEARN: Who wrote *Towns*, and I'm sure you noticed he also sat with the Court of Appeals on the decision that Judge Howell authored that said, 'of course it should apply in a probate court situation'.

MR. HAWKINS: I noticed that as well. [Laughter]

JUSTICE HEARN: I thought you would.

MR. HAWKINS: In any – well, here's how I would bring it to today's event, how does it apply in this case that we're all about here today. The South Carolina Constitution I think resolves all of that when people have slowed down a little bit to pay attention to that; in what was originally in Article V, §5, and in the 1895 Constitution became Article V, §4, this Court is mandated to review the facts found by lower courts. So it's a duty for this Court that arises, not from common law doctrines and things of that nature but our Constitution.

JUSTICE HEARN: As Justice Kittredge pointed out in *Lewis v. Lewis*, when it's an equitable matter why can't we take our own view of the facts?

MR. HAWKINS: Well I think that you can and that constitutionally you're allowed to do that. If you follow what has become the rote language of the two-judge rule then you would say the standard of review is, you reverse if there's no evidence to support a finding of a fact, or you reverse when the appellant sustains a burden of proof of showing you that a preponderance of the evidence, sometimes called a clear preponderance but there's no real distinction in the cases between a clear preponderance and a preponderance, but a preponderance of the evidence demonstrates that the

facts are otherwise; this fact shouldn't have been found, the preponderance of the evidence is opposed to the fact found by the lower court.

JUSTICE HEARN: Which standard are you gonna argue applies today? What is the lens through which this Court should view the findings of fact?

MR. HAWKINS: I believe this Court should find its facts in accordance with the Constitutional standard that says it's your job to look at the facts in all equity, in the cases that come before you. And so you should find them *de novo* in essence, in your own view of your preponderance of the evidence. But I believe under the facts of this case that we win either way in the big question, which is whether or not the fees of the Personal Representative should, Mr. Sullivan, should have been reduced or not. When we read the Record in this case we find that Judge Hocker who was the Probate Court judge who first heard the case, he took a strong position that Mr. Sullivan should not have sought the sale of the property.

JUSTICE HEARN: He just disagreed with that partition decision, didn't he?

MR. HAWKINS: That's correct.

JUSTICE HEARN: Primarily.

MR. HAWKINS: I hate to use the word 'infected', but I think it infects his opinion, it infects his decisions that once he decided no partition should have been sought, it was inappropriate to do it, there should've just been a Deed of Distribution, all of his thinking that follows is –

JUSTICE HEARN: But what's wrong with the ultimate decision he rendered, which was to award your client 10%, which is a pretty high award if you look at the statute? And I know that's another issue, whether the statute applies or not. But whether it directly applies or is used as a guidepost, I think you'd agree the statute's relevant.

MR. HAWKINS: The 5% rule statute?

JUSTICE HEARN: The 5% or the 10% for extraordinary services.

MR. HAWKINS: Well, and I understand that theory and I felt like Judge Williams –

JUSTICE HEARN: The General Assembly apparently didn't plan on any more than 10%, did they?

MR. HAWKINS: Who?

JUSTICE HEARN: The General Assembly in enacting that statute?

MR. HAWKINS: Oh. You know, they're not clear on any of that. They say that the 5% is the cap for extraordinary services, you can have increased fee but I don't see anything else in any of the Code that would say that the General Assembly

		intended, if not 5% then here's out fallback position or here's our belief as to is there a super cap?
	CHIEF JUSTICE BEATTY:	[Inaudible 8:20] then, why isn't this fee set by Judge Hocker reasonable?
	MR. HAWKINS:	Well, I feel like it's not in light of the amount of time that Mr. Sullivan put into this case, the complexity of the issues involved, and the outstanding result that he obtained at the end of the day in getting almost 94% of the pre-collapse of the American land economy in '08, appraised value. Which the two different expert witnesses testified that the result was, you know, phenomenal, that he was able to accomplish that. So for those reasons I believe that he's entitled to a greater percentage. But it does raise an issue that I've argued below and the courts have not directly addressed, which is in all Probate Court matters where a Personal Representative comes before the Probate Court and seeks to have a fee approved – it doesn't matter what amount or whether they're asking for $5,000 or 2% or any other dollar amount or percentage amount, how do you determine what is a fair and reasonable fee for that particular Personal Representative? And we have no guidance on that point. Now, we've suggested some things in our Brief; we've shown how do they do it in some other

	states, what are the factors considered in Colorado and so forth.
JUSTICE HEARN:	Why don't you take that argument to the General Assembly? Shouldn't that be something that – it is a statute in Florida, isn't it?
MR. HAWKINS:	Yes, that's correct. And Colorado.
JUSTICE HEARN:	Um-hum.
MR. HAWKINS:	Well, the difference would be for us, Your Honor, we have had other statutes that allowed for the recovery of attorney's fees by someone, in Mechanics' Lien scenarios for example, that the General Assembly established the law that states that attorney's fees are recoverable by either a prevailing party or by whatever definition they may use.
JUSTICE KITTREDGE:	Assuming we determine that this particular Will reflects the intent of this lady to award attorney's fees in a certain way, and we think it's unambiguous, so that's her intent just like giving property to A, B, or other heirs. If that intent is expressed clearly in the Will is there anything that our General Assembly has ever done that would thwart that intent?
MR. HAWKINS:	Not that I'm aware of. And so we do have those provisions that say, 'unless otherwise provided in the Will'. We believe

	that this language in the Will is sufficient to accomplish that purpose to say –
JUSTICE HEARN:	It isn't much for us to hang our hat on, though, is it, Mr. Hawkins? It's just reasonable.
MR. HAWKINS:	Well, the real question would be –
JUSTICE HEARN:	That Frank Addy said, and you know he had 12 years' experience as a Probate judge, that that was just boilerplate language in Wills. I don't know whether it is or not, I haven't drawn a Will for a lotta years.
MR. HAWKINS:	Well but, you know, what I would say, Your Honor, is that whether it is or isn't boilerplate, boilerplate is language in a Will, it's language in a contract, maybe boilerplate –
JUSTICE HEARN:	But if it is boilerplate and if it is in every Will then that statute is pretty meaningless and why wouldn't Judge Hocker have known that?
MR. HAWKINS:	Well, we don't have any evidence in the Record that I'm aware of that would tell us, is this language in 50% of the Wills in South Carolina, 10%, 90%, you know, how many of them use the language?
JUSTICE MCCULLOUGH:	In the language in the Will where it says, reasonable compensation.
MR. HAWKINS:	Yes.

JUSTICE MCCULLOUGH: And you're concerned about the complexity of the personalities in this Estate, we have in our Probate Code the mechanism to put that before the judge to review. You would agree that the Probate Court would be the proper court to review what reasonable compensation was is challenged.

MR. HAWKINS: Absolutely.

JUSTICE MCCULLOUGH: So why wouldn't that have been an issue you put before the court prior to the payment of the fees, of the commission?

MR. HAWKINS: I guess that's where, from my reading of it, the Probate Court is silent about – well it's not silent, in I believe it's §715, subsection 16, it says that the PR is allowed to pay himself compensation during the life of the Estate.

JUSTICE MCCULLOUGH: Certainly.

MR. HAWKINS: And so I don't see any provisions that say before he can pay himself or herself they need to get the permission of the Probate Court or file an accounting or take any other action.

JUSTICE MCCULLOUGH: But I believe it is your client's testimony that early on he thought there was going to be a certain fee that he was going to pay himself, but as it became more complex he realized that that would be engendering additional

		commissions. We have the mechanism to put it before the judge before we pay ourselves, and noting the complexity of the parties in this Estate, he was well aware that this was, the parties were not completely getting along early on.
	MR. HAWKINS:	Well, there were two that didn't get along; one in particular who just wouldn't cooperate or respond to, here's a proposal, if you don't like it give us a counter-proposal.
	JUSTICE HEARN:	And the PR did try before Ms. Kay's death to effectuate a partition, did he not?
	MR. HAWKINS:	That's true also.
	JUSTICE HEARN:	And he got no response.
	MR. HAWKINS:	He sent two letters and neither letter was responded to. And he sent those letters on behalf of Ms. Kay. These were her cousins, Ms. Moses and Ms. Brown. And the land had been family land historically, this farm had been. And it came to the ownership that it was in at the time of her death and the burden then fell on somebody to what's gonna happen next. And you know, in her Will she was, we feel like, very specific in saying that when she created the quarter interest given to the cemetery fund, the interest from which to maintain the Millam/Kay plot, she was plainly saying, convert it to cash, we gotta have a cash fund in order for there to be interest to be used -

JUSTICE HEARN: Well certainly some of the beneficiaries expressed to your client that they wanted cash.

MR. HAWKINS: They did indeed. The, in writing.

JUSTICE HEARN: Following on Judge McCullough's question, how much money did your client, the PR, pay himself without requesting any oversight by the Probate Court? How much had he paid out already, before we had this hearing, the settlement hearing?

MR. HAWKINS: Well, in the first year when he was attempting to resolve matters with people peacefully, let's say, you know, let's try to do some kind of a negotiation, and had people cooperated and done his fee would've been around $7,000 or $8,000, period, the end. Over with. And that is what he paid himself, was $7,000 and some change. When he filed the accountings starting in October 18th of, I forget, I think it's 2010, he files four accountings; one for each of the calendar years that had gone by during this time.

JUSTICE HEARN: He filed them with the Probate Court.

MR. HAWKINS: Yes, ma'am.

JUSTICE MCCULLOUGH: Why didn't he file them annually, as interim accountings to let all the parties see yearly expenses on a yearly event time?

MR. HAWKINS: Yeah, we don't have anything in the Record on that. You know, no one ever wrote him and asked him would you file an accounting. Or not even an accounting, you know, would you mind telling me, send me some – he was never asked for any information on it.

JUSTICE MCCULLOUGH: You would agree the Probate Court contemplates that if you're not able to conclude the Estate in year from appointment, 14 months from appointment, for all allowances, that it requires an interim accounting to be filed or a motion for extension of those requirements.

MR. HAWKINS: And that's what was done, Your Honor. Motions for Extensions were filed and they were routinely granted.

JUSTICE MCCULLOUGH: But on the accountings.

MR. HAWKINS: Yes, ma'am. And, you know, the chief asset of the Estate was clearly the 330 acre farm, the undivided interest in that farm that Ms. Kay owned. That was the big ball of wax that was gonna have value to it and would create value to the Estate. That sale doesn't happen until late 2010 or 2011, around in there, and it's at that time when he's ultimately able to strike a deal with the purchaser. And they reduced that to a written contract of sale and so forth and the sale takes place and he receives the funds from the sale, he then files all the accountings immediately thereafter. And

says, here's the money we have, here's how everything has been spent up to now, and requests, notifies the beneficiaries by statute that they have a time period in which to request a hearing and a hearing is requested. And at that hearing is when he, you know, much more of what is in this appeal begins to develop at the hearing, he brought a lawyer.

JUSTICE HEARN: Can I ask you about that before you run outta time. In the Probate Judge's Order he sets out what you, the Personal Representative was requesting approval of. And so I do wanna hear from you what you are asking this Court to do, but I'm confused because there're two figures that seem like they're exactly the same. And this is on the first page of the Probate Judge's Order. And I'm sure I'm just missing something, but this is a complicated case, I'm sure you'd agree.

MR. HAWKINS: Yes.

JUSTICE HEARN: B is $13,447.05, additional commissions not yet paid, so that would be commissions to Mr. Sullivan.

MR. HAWKINS: Correct.

JUSTICE HEARN: And then I. on the next page in that same list is the same exact figure, $13,447.05, to Daryl Hawkins for attorney's

		fees and costs. It's just coincidental those figures are exactly the same?
	MR. HAWKINS:	I cannot imagine that they are, Your Honor. And –
	JUSTICE HEARN:	Yeah, what is that?
	JUSTICE JAMES:	There's another figure, at least in the Opinion, $13,499.58 to Collins & Lacy. Is that where the confusion might lie?
	MR. HAWKINS:	Well, conceivably. And I can pull that out and sorta look at it. I hadn't studied on that before now but what I can –
	JUSTICE HEARN:	Well, you can do that when you sit down. But before you sit down now, tell me what you are asking this Court to do.
	MR. HAWKINS:	I think that what we're asking this Court to reverse the findings of the lower court reducing the amount of compensation to the PR and ordering that a refund be made. Predominately based on, and then I have a couple other points, based on Judge Hocker's –
	JUSTICE HEARN:	In dollars what are you asking for?
	MR. HAWKINS:	Pardon?
	JUSTICE HEARN:	In dollars what are you asking for, since these papers are a little confusing?
	MR. HAWKINS:	$42,000 and some change.
	JUSTICE HEARN:	$42,000.
	MR. HAWKINS:	Well, he's ordered to refund those monies.
	JUSTICE HEARN:	So you're asking that he not have to refund that.

MR. HAWKINS: Correct.

JUSTICE HEARN: You're also asking for – and that's commission, and I wanna make, I wanna be sure we're clear there're two different things sought here; commissions which would be fees to the PR, Mr. Sullivan, but he's also requesting and you're requesting on his behalf, attorney's fees and costs, reimbursement for that.

MR. HAWKINS: Correct.

JUSTICE HEARN: And that is that $13,000 figure for you and the costs incurred in having to defend at the settlement hearing.

MR. HAWKINS: I think so, Your Honor. You know, there were multiple things that are presented at that settlement hearing.

JUSTICE HEARN: Would this Court be – assuming we thought you were correct in any of this, would this Court be in a position to award fees and costs or would that have to be remanded to the Probate Court?

MR. HAWKINS: I think it'd be – generally speaking, Your Honor, and in the ways of this Court and other decisions it would be a remand for the, you know, current Probate Court judge most likely to consider all the attorneys' fees issues, those types of issues to say if you found in favor of us what's the appropriate amount, for them to determine what that ought to be.

JUSTICE HEARN: But as it stands now the Probate judge said you're not entitled to fees and costs for that hearing because you were really trying to feather your own nest as PR, and you're not entitled to it; and a majority of the Court of Appeals agreed with that. But Justice Few disagreed.

MR. HAWKINS: I think statutorily he's way off base. Judge Hocker was.

JUSTICE HEARN: And I know you didn't have time to make your statutory argument but you'll have time in reply so, and maybe the Chief Justice will be generous since Judge McCullough and I have had a lotta questions.

JUSTICE KITTREDGE: I would like to ask a question.

MR. HAWKINS: Yes, sir.

JUSTICE KITTREDGE: We have a discreet series of questions on cross-appeals before us and I think we can navigate that. My question is more overarching, how to bring this to a conclusion. And I want both sides to respond to this. It's breathtaking to look at this and see letters written back in 2008, [21:09] Moses don't even respond to it? And here we are in 2018? And there are churches involved who were given bequeaths from Ms. Kay's Estate. I mean, what can we do to help this along to bring this to finality?

MR. HAWKINS: Well, you know, from my perspective the only reason that the PR's compensation was reduced is because Judge

	Hocker felt like no partition should ever have been filed. So the paramount matter to be determined in every probate matter is what was the intent of the testator. I think that here it is clear that it was to convert all this land into cash. If you agree with that then to me the simplistic resolution of what we're looking at is to say, Judge Hocker was just wrong when he said that no partition should've been filed or Mr. Sullivan as the PR didn't have the right to do it. He did have the right to do it, and in fact it was the testator's intent that it be done. So all he's doing is trying to carry out her wishes but he's meeting a brick wall. So at the end of the day he reduces the fee cause he says, you shouldn't have done that. Well if we now determine that he should've done that -
JUSTICE KITTREDGE:	Alright, so the reason for the time delay is the brick wall on the other side. And I'm gonna be very interested to hear what they say and if they say there's a brick wall on this side. I'm just trying to look at the big picture because from a layperson looking at this they would think the system just completely has failed.
MR. HAWKINS:	Well, and they may say, Your Honor, you need to ask them where in the Record is that? Cause they've argued it below, they've never cited any facts to support that.

JUSTICE KITTREDGE: I'm just looking at the big picture trying to facilitate the resolution of this and bringing it to an end. I'd hate for this to go back on remand and two years from now we're back up here on another dispute.

MR. HAWKINS: Well, I think if we follow that the reason for reducing the fee was invalid, that carrying out the testator's intent, which was convert this land into cash, was appropriate; it was what she wanted done and that's what he did.

JUSTICE KITTREDGE: Thank you, Mr. Chief Justice, for allowing me to ask that question.

CHIEF JUSTICE BEATTY: Thank you, we'll hear you again.

MR. HAWKINS: Alright. I say you give it back [laughter]. Thank you.

CHIEF JUSTICE BEATTY: Mr. Ferguson.

MR. FERGUSON: May it please the Court? I'm, as you know, represent Ms. Brown and Mr. Moses. As far as the two-judge rule goes I would refer you to the *Estate of Crum* case that we have cited where the two-judge rule was applied to an appeal from the Probate Court. There is also the, the problem for the, the Appellant, Petitioner, that he has failed to appeal a lotta the adverse factual findings that were made against him and in favor of the Respondents.

JUSTICE HEARN: And I guess you could say you have – well no, you do appeal the finding about good faith, don't you?

MR. FERGUSON:	Yes.
JUSTICE HEARN:	Because you have all the judges who have touched this have found that the PR was acting in good faith. And doesn't that sort of undercut your arguments before us today? We don't have any finding of bad faith. By Mr. Sullivan. Despite what you argue in your Brief.
MR. FERGUSON:	I would certainly have a stronger case if there had been that finding. But what I would argue is the evidence that's in the Record that it appears that the judges overlooked, which would include excessive fees, charges with no legitimate basis –
JUSTICE HEARN:	You don't want us to apply the two-judge rule on that finding, cause there is certainly some evidence to support his finding, right? I mean, wouldn't – you'd have to concede there's some evidence to support his finding, that Sullivan acted in good faith. If you want the two-judge rule you have to have it all, through the whole thing; you can't pick and choose where you want it.
MR. FERGUSON:	I think that Your Honor might have a point there, but I think that the evidence is overwhelming that there was no good faith. I think there is an insufficient factual basis to find good faith.

JUSTICE JAMES: Is overwhelming enough, isn't just a nugget enough? One witness against 100 can win?

MR. FERGUSON: If you look at the Record that was before the Probate judge and you look at the Probate judge's findings, his findings are about what, how the Personal Representative handled the case, are in conflict with his finding that there was good faith in the handling of the case.

JUSTICE JAMES: To follow up a little bit, maybe this will cut right to, at least the chase I wanna address. What was Mr. Sullivan to do? Judge Hocker said shouldn't have filed whatever he filed. What was he supposed to do?

MR. FERGUSON: Well as it happens, he spent over $20,000 of the Estate's money on partition and never got it done.

JUSTICE HEARN: Well, why didn't your clients respond before Mrs. Kay died, to a request that the property be partitioned? Why didn't they respond when they had those settlement conferences with all the heirs there? First they wouldn't even talk. Cause the church was there.

MR. FERGUSON: Okay, at the settlement conference they were told that they were going to have a private meeting with Mr. Sullivan and with someone who knew about the property. When they got there they were ambushed by other people being there.

JUSTICE HEARN: Other beneficiaries.

MR. FERGUSON: Other beneficiaries, but –

JUSTICE HEARN: They were ambushed by the representative from the Presbyterian Home?

MR. FERGUSON: Yes. They had been told that this was going to be a private conference, and when all these other people showed up so that they didn't have this private give and take to understand what was being proposed, they took that amiss. They did not think they were being dealt with fairly.

JUSTICE KITTREDGE: So what did they do in response to get it back on the track, to get it to be resolved in a manner that they wanted it to be resolved?

MR. FERGUSON: They later did have a conference I believe with the –

JUSTICE KITTREDGE: The Record is they basically did nothing. They took the ball and went home. And let everybody stew in their juice, and that was their leverage.

MR. FERGUSON: On that day, that's certainly true. The question I think is not whether ultimately there needed to be a partition or whether a partition had to happen, but rather how it was accomplished. Because if it had been accomplished in a less in your face manner –

JUSTICE HEARN: Okay but, and I understand what you're saying but looking at what Judge Hocker held in his order he made a finding that the PR unnecessarily complicated the Estate by

insisting on filing a partition action. He goes on to say, "This was a fairly basic estate which could've been easily, quickly, and cheaply settled by Deed of Distribution." How in the world could this PR have given a Deed of Distribution with the conflicting claims of title? How could he possibly warrant good title?

MR. FERGUSON: First of all under the statute the, a Deed of Distribution, the Personal Representative is not responsible, cannot be sued for giving a Deed of Distribution under those circumstances. But what we have is things like if you say that the Respondents had a right of first refusal, well what the PR did was to sue them over that. All he had to do was offer them their right of first refusal and say, do you want it or not? So he took the difficult way to –

JUSTICE HEARN: But what did your clients do? Getting back to Justice Kittredge's question, what did they do? What affirmative steps did they take to resolve this matter without being in the Supreme Court over this? I mean, can you show me any letters they wrote to Mr. Sullivan requesting that they come talk to him? Can you, you say he should've offered, told them to, or asked them about their option, did they ever express to him in writing that they wanted to exercise an option? I mean, what did they do?

MR. FERGUSON: No, they, they never wanted to exercise an option, so if he had said to them, do you want it or not, then that would've resolved that issue, but he didn't.

JUSTICE KITTREDGE: Well, how do we deal with, like the letters in 2008, I think one was in May, I couldn't find any response from your clients, Mrs. Brown and Mrs. Moses saying, hey Mr. Sullivan, we appreciate your letter, appreciate your hard work, but we're not gonna accept that offer, here's what we're thinking and here's how we'd like to move forward. I mean, it seems like they didn't respond at all. At least I can't find anything in the Record.

MR. FERGUSON: I believe at some point after the abortive conference, that there was some discussion. I'm, I may be wrong on that, but that's my understanding.

JUSTICE HEARN: Well if you find that in the Record will you let this Court know where that is in the Record?

MR. FERGUSON: Yeah, I don't believe that any kind of oral discussion would've been in the Record, no.

JUSTICE HEARN: Well then we can't consider it, Mr. Ferguson.

MR. FERGUSON: Alright.

JUSTICE JAMES: Can I ask a question about some math?

CHIEF JUSTICE BEATTY: Sure.

JUSTICE JAMES: In the $93,000, does that or does that not include the Collins & Lacy attorneys' fees?

MR. FERGUSON: It does not.

JUSTICE JAMES: Okay, so the $93,000 that was cut to $51,000 was solely commissions, correct?

MR. FERGUSON: Yeah, that was Personal Representative fee.

JUSTICE JAMES: How about his expert witness fees, was that included in the $93,000?

MR. FERGUSON: No, sir.

JUSTICE JAMES: Okay, so what, what, in your interpretation of Justice Few's dissent, what was he, he said he agreed with everything except the Probate Judge's denial of Sullivan's request for fees and expenses. What fees, what expenses are we talking about in your estimation that he disagrees with?

MR. FERGUSON: The problem that we had with fees to begin with is that the Personal Representative did not share any information about what he was doing and what he was charging. And that had an impact on the willingness of the heirs to talk with him.

JUSTICE JAMES: Well, my question is different. What is Justice Few's dissent about? What is he agreeing with, what – he said, "I concur with the majority in all but two respects. First I would reverse the decision to pay Sullivan's request for attorneys'

		fees and expenses for the petition for settlement." That's
		the Collins & Lacy bill, correct?
	JUSTICE HEARN:	No, that was Daryl Hawkins' bill, wasn't it?
	MR. FERGUSON:	The Collins & Lacy bill was paid.
	JUSTICE HEARN:	Wasn't that the Hawkins' bill?
	JUSTICE JAMES:	The attorneys' fees incurred in the petition for settlement.
		How much are we talking about?
	MR. FERGUSON:	I believe the Records show $13, over $13,000.
	JUSTICE JAMES:	Okay. Alright. I just had a mental block about that.
	JUSTICE HEARN:	So they're both $13,000, cause I am confused about the
		figures, too, and I apologize for interrupting, Justice James.
		I thought one of the $13,000's was Mr. Hawkins' fees and
		costs in the settlement hearing. Are you saying it's also
		$13,000 for Collins & Lacy in the partition action?
	MR. FERGUSON:	No, Collins & Lacy was paid fully. The $13,447.05 is the
		claim of Mr. Hawkins for his attorney's fees and costs,
		which the courts up to now have said were for the benefit of
		the Personal Representative and not the Estate.
	JUSTICE MCCULLOUGH:	Mr. Ferguson, you said I believe that your clients were not
		allowed to know what the PR was doing during his period
		of 3 ½ years of service. Did they ever afford themselves the
		opportunity as the Probate Code allows a demand for
		notice or a petition for performance so that they could force

		the court's hand in asking the PR to explain to your clients the progress of the Estate?
	MR. FERGUSON:	They did demand information and it was not forthcoming until shortly before the hearing.
	JUSTICE MCCULLOUGH:	So they actually filed with the court.
	MR. FERGUSON:	No, they didn't file with the court, they dealt directly with the Personal Representative. I would also point out that the session of Lisbon Presbyterian Church likewise requested information from the Personal Representative about his charges and he refused to answer.
	JUSTICE HEARN:	Mr. Ferguson, could I talk to you a minute about the Court of Appeals' construction of the statute about fees and costs? And I'm really speaking of Mr. Hawkins' fees and costs here. It seems to me that the PR had to come to that hearing after he received notice from your clients that they wanted to have that hearing. They did that by filing a letter, they didn't really put forth any pleadings, but for whatever reason, and it could be correct, Judge Hocker sort of reversed the burden of proof and put the burden on the PR to justify his fees without even really knowing which fees your clients were objecting to cause they didn't file any pleadings. But be that as it may, Mr. Sullivan had to hire an attorney, had to present a case, had to have expert

		witnesses. Yeah, but the Court of Appeals read that statute very narrowly to say that it doesn't mean what it says, which it says, I believe it applies to any proceeding. They said it doesn't apply to a proceeding like this where the PR is trying to hold on to his fees. So just let me hear you on your construction of that statute, why it doesn't apply.
MR. FERGUSON:		Well, let's talk first of all about why there had to be a hearing. The Personal Representative would not give us any information about his handling of the case and what he was charging.
JUSTICE HEARN:		Okay, can you show me in the Record where you asked for that information?
MR. FERGUSON:		There – I'll have to look that up and give it to you.
JUSTICE HEARN:		Okay, can you show me in the Probate Court Code where it says he's required to periodically give this information to beneficiaries?
MR. FERGUSON:		The Probate Judge seemed to feel that he should've been doing that and because he didn't he triggered the hearing. So –
JUSTICE HEARN:		Well, should-a, could-a, I mean, it's one thing maybe he should've, but if he's not required to by any request from them or by the Code, you know, that's sort of a different matter.

MR. FERGUSON: I don't think that he can say that I'm not gonna give you any information and force you to require me to have a hearing on settlement, and then at the same time say, well gee I shouldn't have to have the expense of a hearing on settlement.

JUSTICE HEARN: Well, I mean, let's look at it from his standpoint. Prior to Mrs. Kay's death he had contacted your client, requested to resolve this matter of partition before her death. After her death he had contacted your client. He had gathered everyone together for a meeting. After that meeting he sent a proposal to your client. Again, he heard nothing. I mean, how is he supposed to know that they want information if they stonewall him?

MR. FERGUSON: I think that the situation is that if there is going to be a partition – the statute says that the Personal Representative has to settle the estate expeditiously and efficiently to the benefit of the Estate. And here it is he's spent over $20,000 on a partition and didn't get it done. If the heirs had done this –

JUSTICE HEARN: Of course, you could argue he wouldn't have had to bring that action for partition if your clients had just responded. To his request to let's go ahead and partition this property or sell it. I mean, he gave them the option to buy their half.

		But they didn't respond. I mean, what was he supposed to do? I guess that goes back to Justice James' question.
	MR. FERGUSON:	If you look at what the Record says the experts did, the expert who was dealing with the land, made several proposals that the Respondents did look at. There was a problem with inequitable division of road frontage, frontage. There was a problem with inequitable division of timber. So there was, the Record I think will show that they didn't totally stonewall this, that they did engage in some dialogue with the Personal Representative about that.
	JUSTICE JAMES:	After the partition action started. Is that right? Or before?
	MR. FERGUSON:	I'm not entirely sure about – I think it was before.
	JUSTICE JAMES:	And just explain for the Record why the partition action did not terminate and have a final ruling. Why not? What happened?
	MR. FERGUSON:	It just dragged on and –
	JUSTICE JAMES:	Did the parties resolve it?
	MR. FERGUSON:	Well, eventually it was dismissed because the land was sold. With the agreement of the Respondents.
	JUSTICE HEARN:	And ultimately sold, according to the only expert that testified about this, at an exceptional value.
	MR. FERGUSON:	Which was less than the appraised value.
	JUSTICE HEARN:	Yes, but –

JUSTICE KITTREDGE: Juxtaposed to where the economy was in 2008, '09, etc.

MR. FERGUSON: I don't think that the estimate was made when everything was hunky-dory with the property.

JUSTICE KITTREDGE: I wanna return to what Justice Hearn asked about five or six minute ago. I'd like to hear your answer to the question about your view of the Court of Appeals' construction of the statute on the payment of fees.

MR. FERGUSON: I think that the, the starting point has to be what the PR did and whether it was necessary for him to do for the expeditious –

JUSTICE HEARN: Well, we're really interested in the language of the statute, so if – because it's our job to follow the plain language of the statute, if it is plain.

MR. FERGUSON: Well, the statute says 5% unless the judge makes a finding of extraordinary service.

JUSTICE HEARN: Oh I, I think we might be talking about two different statutes, here. Yes, I think we're talking about the Court's decision that Sullivan was not entitled to fees and costs pursuant to 62-3-720. And -

MR. FERGUSON: Cause he was working for himself and not for the Estate I believe they said. And the statute deals with what he's doing on behalf of the Estate. What he is, the effort and expenditures he's making on behalf of the Estate. And if he

	spends a lot of time for his own benefit then the Estate shouldn't –
JUSTICE HEARN:	But your clients were the one that requested the hearing and I wouldn't say it was a complete win for your clients cause you didn't want them to get 10%, did you? You didn't, you were opposed to the 10% Judge Hocker gave him, so why wouldn't, under the statute, why wouldn't Mr. Sullivan be entitled to fees and costs?
MR. FERGUSON:	He would be entitled to fees and costs that were for the benefit of the Estate. And that's what the judge gave him.
JUSTICE HEARN:	The statute just says, prosecute or – well no, that's not it. I'm trying to find -
JUSTICE JAMES:	Defends and prosecutes any proceeding in good faith.
JUSTICE HEARN:	- yes, defends or prosecutes any proceeding in good faith, whether successful or not. So why doesn't that language apply to that settlement hearing?
MR. FERGUSON:	Because of the other statute that says that he is required to settle the Estate expeditiously and efficiently. You've gotta read the two statutes in conjunction; if he is going off on a tangent to benefit himself, then the Estate shouldn't be responsible for that.
JUSTICE MCCULLOUGH:	But Mr. Ferguson, you'd have to agree that he had no choice but to file the petition for settlement.

MR. FERGUSON: Yeah, but why did he have –

JUSTICE MCCULLOUGH: Along with –

MR. FERGUSON: - to file the petition for settlement is because he wasn't giving the heirs information.

JUSTICE MCCULLOUGH: No, it's required by statute to file a petition to settle the estate was an absolute statutory requirement giving the heirs notice of right to demand a hearing, which in turn they did, which required the hearing, which required him to reply to their concerns. That's the fees and costs.

MR. FERGUSON: Right, but – the, the concerns that they had dealt with what I would consider wrongdoing in his handling of the Estate.

JUSTICE HEARN: But the judge found no wrongdoing.

MR. FERGUSON: And that's set out in the Probate Judge's Order.

JUSTICE HEARN: The judge found no wrongdoing. The judge specifically said, no bad faith.

MR. FERGUSON: Bad faith I think would, you could say deals with malfeasance, it does not deal with misfeasance. And the Order is full of things that the Probate, that the Personal Representative did wrong.

JUSTICE KITTREDGE: Mr. Ferguson, I don't mean to interrupt your train of thought. I wanna pose the same question to you I did to Mr. Hawkins. Is there anything, big picture wise, going, in

	answering these discreet legal questions on the cross-appeals that we can do to bring finality to this matter?
MR. FERGUSON:	I believe that whatever you rule will bring finality to this matter. It would be good if the, the Respondents came away with a feeling that justice had been done in this case. Up to this point they are concerned that justice has not been done. I haven't had a chance to talk about my fees in this case that the Probate Judge granted and the, the Court of Appeals took away; I think they have misunderstood what is involved with a common funds case, and I think that – and also one of the issues that they rested the denial on wasn't even argued by the, the Personal Representative. So I don't think it was before him but as far as the adverse interest idea, that, I think you have to have something more than just say, here's a bit of adverse interest here and here's some there. It's just whether in the overarching part of the case were all the heirs interested in an increase of the Estate and here the Estate benefitted by $56,000.
JUSTICE KITTREDGE:	That's fine. My question dealt with a path forward, not continuing complaints about the other side. Thank you, Mr. Chief Justice.
CHIEF JUSTICE BEATTY:	Thank you very much.
MR. FERGUSON:	Thank you.

CHIEF JUSTICE BEATTY: Mr. Hawkins, in reply.

MR. HAWKINS: Thank you, Your Honor.

JUSTICE JAMES: Mr. Hawkins, can I ask you a question before you begin your actual –

MR. HAWKINS: Yes, sir.

JUSTICE JAMES: - reply? Mr. Ferguson indicated quite pointedly, and I'm sure you would wanna respond, that Mr. Sullivan, and his, Mr. Ferguson's exact words, refused to answer an inquiry from the Presbyterian Church.

MR. HAWKINS: Okay, and that's not true. Like many of the things that you've heard.

JUSTICE JAMES: Well, tell me your take on that.

MR. HAWKINS: In the – well here's what they said, Mr. Sullivan met with the Presbyterian Church through their session, which is the governing body within the church that meets and decides, you know, questions such as this; what do you wanna do with this, we've inherited this land, what do we do. He went and met with them and they told him at that meeting on May 23, 2008, and this is in the Record at page 867, is the actual Minutes of their meeting, and they said, "The members of the session stated that the church had no desire to own real estate, and especially an undivided interest in real estate." With those instructions given to him

at this early date, May of 2008, we don't wanna own land and we sure as heck don't wanna own undivided interest in land.

JUSTICE JAMES: Was Mr. Sullivan at that meeting?

MR. HAWKINS: Yes, sir. He was invited to be at the meeting. He appeared at the meeting. Now, after all of the accountings had been filed and a hearing was approaching, there's an Affidavit that was submitted by a church member that's in the Record of the case where she claims that Mr. Sullivan was asked to attend a meeting at this, you know, right prior to the February hearing, you know, within a month or two, whatever it was, and that he didn't appear at that hearing. Now he never got an opportunity to respond to that. Nobody asked him about it, it showed up as an Affidavit after the hearing was closed, after all evidence had been taken. You know, if we could've put in more evidence we would've said, 'I was told by the Reverend Hunter I didn't need to attend the meeting so I didn't go; that's why I wasn't there. The Reverend told me I didn't need to come so I didn't go.' He did give information to Reverend Hunter. Now whether Hunter ever gave it to anybody else or not, we can't answer that. And the hearing was over with and we didn't have the opportunity to address any more of it.

And then it appears in a snippet in an argument somewhere at some point where a potshot's taken by somebody that says, 'Ah, they asked for information and he didn't give it to them.' Well, we've never had a fair opportunity to address that. But let me mention a couple of other things here that I think are misrepresentations. Mr. Ferguson has argued to you that there was an abortive conference, this meeting that took place in Newberry with the appraiser of the land. First off he says that they were ambushed and that they didn't know anybody else was gonna be there. Well, on July 7, 2008, this is Plaintiff's Exhibit 7 in the Record at page 836, this is the invitation that went to all these people telling them about this meeting that he says was secret and they were ambushed. It says, "Dear Martha and Mary Leona, A meeting has been scheduled at 1:00 pm on July 31st at the office of Appraiser Paul Major to determine the equitable division of the 330 acre parcel in the above matter." It tells them where the office is located. "If you have any questions, please do not hesitate to call." He sends them that letter and it is copied to every other beneficiary that there is in the Estate. So how they could've thought that this was some private meeting between them and maybe the appraiser and Mr.

Sullivan is a total mystifying event. How is that possible that they were tricked or ambushed when this is the only notice they ever got that that there was gonna be such a meeting. And everybody that's a beneficiary is on it and is getting the same letter they got. In any event, there was a meeting! He says it was aborted and nothing happened. That's not true! Couldn't be any further from the truth! They came and they were upset. Don't know where they got the notion from, this is in Ms. Brown's testimony that's in the Record, that these other people were there. Penny Arnold, who is the representative of the Presbyterian Land Trust, testified she went to the meeting and as she described it it was like she'd never seen anything like it, she couldn't understand why these two ladies were so upset. You know, they have inherited property just like everybody else has here. They were upset that anybody else was there. But they did have a meeting and Mr. Major, who was the appraiser, and I learned through this it's tough to appraise rural property, farmland with part timber and, you know, whatever it is. It's not like a house in a residential neighborhood where you have all sorts of comparables to look at, it takes a lot longer to do and it's more complicated. But he had done it so he sat down with them to explain all those things, and all these

people testified; meaning Mr. Major testified, Ms. Arnold testified, and Ms. Brown testified. They went through it, they did have what he thought were legitimate concerns about an apportionment of road frontage and what were those values of those acreages versus others. So what came out of that meeting, once they convinced Ms. Brown and Ms. Moses, with the help of Ms. Arnold, to come in and sit down and at least listen to what everybody has to say, see if we can't make some progress in this situation, they said, "how about this, we see these problems, we all seem to agree that the road frontage is a bigger issue than maybe Mr. Major thought that it was. How about give us another shot at it?' So that's what happened, they left and he said he would work on that. He did, he created a new proposal that divvied up the road frontage differently and Mr. Sullivan sent it to Ms. Brown and Ms. Moses and everybody else. Everybody got the same letter; here's the new proposal. And after that he attempted other proposals and Ms. Brown and Ms. Moses just wouldn't respond. They wouldn't do just as you say, why can't y'all pick up the phone or write a letter and say, 'Here's what we'd like to do.' Never once did that happen. Not a shred of evidence in the Record of this case that says they ever did that. Mr.

Ferguson says he's gonna go look for that. He'll still be looking 10 years from now. So let's talk about the Probate Code and what does it say about paying the expenses of a Personal Representative when he is appearing at a proceeding. It doesn't matter whether he's prosecuting or defending. It doesn't matter whether he's defending his position on his fees or he's there because the Estate's being attacked by a neighbor who wants to challenge who owns a piece of property. It doesn't matter why he's there, whether it's for himself or for the Estate. The statute says, "If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the Estate his necessary expenses and disbursements, including reasonable attorney's fees incurred." It's a pretty simple, short statute. It doesn't have an exception that says, and if during the course of my presentation I try to get fees paid to me for the work that I've done, well I have to pay my own lawyer to do that. Imagine, the problems are already happening out in the probate world now with people trying to draft agreements to deal with this.

JUSTICE HEARN: Mr. Hawkins, I know you told me before that there might need to be a remand, but following up on Justice Kittredge's questions about what this Court might could do to bring closure to this, and not incur any more fees, in the event we did construe the statute as you would have us and believe that you might have been entitled to the fees and the necessary costs, are they in this Record? Because if the Court were taking its own view of the evidence, the Court could make that decision.

MR. HAWKINS: They may be in the accounting, Your Honor, that would be the only place. As a proposed disbursement for the future, in the amended disbursements. Part of the accounting that gets filed –

JUSTICE HEARN: Cause if we remand it then there'd be more fees incurred. And more costs.

MR. HAWKINS: I'll waive mine [laughter]. This case has been around a very long time. It's conceivable that there would have to be some other cleanup costs that would take place. Judge Hocker set aside $2,500 for Mr. Sullivan to finish off closing out this Estate. He's indicated that that might do the work that would be necessary to close it out. What else would be thrown in the till is something maybe a probate judge has to deal with, and there's not a simplistic answer but there's

this answer, you could determine what his fee oughta be and say, this is what it is; we've looked at it, we've weighed it, we've measured it, we've decided it and this is the fee that we believe it is.

JUSTICE HEARN: You mean his compensation.

MR. HAWKINS: Correct.

JUSTICE HEARN: Alright, but that's different than the –

MR. HAWKINS: I call it fee. I know it's referred to as commission, honestly I don't understand the difference.

JUSTICE JAMES: Different from attorney's fees.

JUSTICE HEARN: It's a differ from attorney's fees and costs.

MR. HAWKINS: Correct. I agree with that.

JUSTICE HEARN: Which is what, I think the statute we're talking about applies to.

MR. HAWKINS: But you could make a finding on that. I mean, talking about how do you end this, what might be a methodology that would reasonably end this thing that's been going on – she died in 2007 – would be to determine what is that fee, here's what it is, and end any more fighting about what it is by saying, this is what we find it to be.

JUSTICE HEARN: And remand for necessary costs.

MR. HAWKINS: Whatever else is, you know, would be incidental to all of that. Whatever other attorney's fees – there were some

	expert witness fees that are in the Record. There were two witnesses who were subpoenaed to the final hearing. Mr. Major and I forget Johnny's last name.
COURT:	Wouldn't that fall within the costs? Of the statute?
MR. HAWKINS:	I think so, yes.
CHIEF JUSTICE BEATTY:	Alright, thank you. Your time's expired.
MR. HAWKINS:	Thank you, Your Honor.
CHIEF JUSTICE BEATTY:	We're in recess.
	[END OF RECORDING]