

TRUSTEE FEES AND THE TERRESTRIAL KINGDOM OF GOD

This brief analysis refers to the case [*Smith v Kirkland \(2017\)*](#). This case is summarized in a previous blog titled: "[TRUSTEES: CHOOSE WISELY--CASE SUMMARY \(SMITH V. KIRKLAND\)](#)." To best appreciate the following analysis, read this previous blog. (Hover over the title with your cursor and click.)

The *Kirkland* case is a perfect example of a Trust that was drafted with almost incredible blindness to a host of perfectly foreseeable surprises. While the full ironies in the case are only best appreciated by a person steeped in the culture of fringe Utah religious groups, the straightforward legal issues presented in the case are still a lesson for everyone interested in creating an estate plan that actually works.

Initially, it should be noted that paying a professional trustee \$50 per hour to administer a trust is not unreasonable at all; such a rate is not in left-field; in fact, such a fee is on the lower end of the spectrum. Professional trustees--especially trustees who are also attorneys or CPAs--charge five to six times this amount in performing the complex accounting, administrative, and legal work of managing a trust.

Professional trustees who are not attorneys or CPAs may charge \$50 to \$100 per hour in the end, but when legal or accounting issues arise in administering a trust—and such issues arise constantly—the professional trustee must retain the attorney or CPA at their higher rates to address those issues.

The point is that professional trustees—and related attorneys and CPAs—are charging an average of five or six times \$50 per hour.

Further, diligent and honest professional trustees are worth every dollar they ask. Professionals can do in one hour what it takes a non-professional family trustee ten hours to do. Professionals do not make costly mistakes. Professionals account to beneficiaries. Professionals minimize and contain conflicts.

Now, with all this in mind, if Mr. Kirkland still insisted on naming amateur trustees to manage his “Kingdom of God Trust,” he should have at least indicated in his trust a clear hourly rate his trustees would be paid (say \$25 per hour, to increase each year by say 3%) instead of using the boilerplate and ambiguous phrase “reasonable compensation.”

But there are much more serious problems with the Kingdom of God Trust than ambiguous compensation terms. These problems include poor choice of trustees; failure to appreciate the role of good trustees; poor beneficiary notification provisions; poor accounting requirements; and poor amendment provisions.

Like all other cases summarized in this blog, the conflict in this case could have been avoided altogether if the documents had been drafted by an obsessive, paranoid, competent attorney. But perhaps Mr. Kirkland was just too smart to retain an attorney. And if he did retain an attorney, where was this attorney mentally when he prepared the “Terrestrial Kingdom of God Trust”?

By Craig E. Hughes

Click here to see [Smith v Kirkland \(2017\)](#), 2017 UT App 16.

Click here to see our summary of this case in the blog titled: "[TRUSTEES:
CHOOSE WISELY--CASE SUMMARY \(SMITH V. KIRKLAND\)](#)."