

[Improper Claim Brought by Trust Beneficiaries Can be Remedied Through an Attorney Fee Award Rendered Under the Equitable Power of the Probate Court](#)

Posted on December 14, 2009 by [David J. McMahon](#)

In [Rudnick v. Rudnick](#), 2009 DJDAR 16944 (2009) the [Fifth Appellate District](#) decided a novel case involving an attorney fee award in the probate context. The court of appeal affirmed the lower court's decision granting fees and deducting them from future distributions to certain minority beneficiaries who maintained litigation against a trust in bad faith.

Philip Rudnick, Robert Rudnick, and Milton Rudnick ("Beneficiaries") were beneficiaries of a Trust. Oscar Rudnick ("Trustee") was the trustee. The majority of the trust beneficiaries approved the sale of the trust's principal asset, a large acreage piece of real property. The Trustee petitioned the probate court requesting approval of both the sale and the proposed distribution. The Beneficiaries, who held a minority interest, opposed the petition.

After hearings, the probate court came to the conclusion that the opposition submitted by the Beneficiaries was submitted in bad faith and was solely designed to delay distribution of the sale proceeds. The court awarded approximately \$226,000 in attorney fees and costs to the trustee and ordered that the fees were to be deducted against the Beneficiaries future trust distributions. The Beneficiaries then appealed.

The court of appeal affirmed the ruling of the trial court noting that the probate court had the equitable power to make the disputed award. The court distinguished between an award of fees rendered pursuant to the supervisory powers of the court versus the broad equitable powers that a probate court maintains over trusts within its jurisdiction. The court noted that attorneys hired by a trustee to aid the trust are entitled to reasonable fees paid from the trust assets. The issue was whether the burden was improperly shifted to the appellants' share of the estate. The court found that it was not.

The probate court charged the attorney fees to the appellants' future trust distributions. The court of appeal agreed with the result noting that it would be unfair to burden the majority beneficiaries with the payment of the fees that were incurred in responding to the appellants' bad faith tactics in filing a meritless opposition.