

## [In "Bet the Farm" Cases, Court Calls for Close Scrutiny of Reasonableness](#)

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In [Donahue v. Donahue](#), 182 Cal.App.4th 259 (Feb. 24, 2010), a California Court of Appeal recently reversed the trial court's award of fees where simultaneous representation by multiple firms created unnecessary and duplicative fees.

The trial court charged a trust with approximately \$5 million in past and ongoing attorneys fees incurred on behalf of a former trustee in defending against the beneficiary's allegations of self-dealing and conflict of interest. Eight attorneys from three major law firms comprised the former trustee's legal team, with four to five of those attorneys simultaneously appearing at the 14-day trial.

The California Court of Appeal, Fourth Appellate District, reversed the award and remanded, noting,

[u]nderstandably, these law firms brought with them their own supervising, support and administrative infrastructure, but simultaneous representation by multiple law firms posed substantial risks of task padding, over-conferencing, attorney stacking (multiple attendance by attorneys at the same functions), and excessive research." Id. at 272.

The Donahue Court rejected the trustee's "bet the farm" rationale for his litigation decision to simultaneously retain a legal team of seven to eight lawyers with primary activity and involvement from three major law firms, and his argument that he retained attorneys at two of those law firms to preserve "institutional memory." Id. at 272-73.

Finding that this rationale resulted in overstaffing and duplication, the Court noted,

just as there can be too many cooks in a kitchen, there can be too many lawyers on a case." Id. at 272 (quoting [Guckenberger v. Boston Univ.](#), 8 F.Supp.2d 91, 101 (D. Mass. 1998)).

Similarly unavailing was the trustee's argument that the additional attorneys served as "reserves" to cross examine witnesses at trial. Id. at 273.

In fact, the Court found that such a "spare-no-expense strategy" called for close scrutiny on questions of reasonableness, proportionality and trust benefit. Id. at 273.

The Court pointed out that reasonableness depended not simply upon what fees were reasonably incurred in representing the defendant, but upon whether such fees were reasonably and prudently incurred for the trust. Id. at 274 (emphasis added). It aptly questioned,

Did [the respondent] demand a Rolls Royce defense when a prudent trustee could have arrived at the same destination in a Buick, Chrysler or Taurus?" Id.