

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

|                       |             |       |
|-----------------------|-------------|-------|
| ADOPTED               | <u>    </u> | (Y/N) |
| ADOPTED AS AMENDED    | <u>    </u> | (Y/N) |
| ADOPTED W/O OBJECTION | <u>    </u> | (Y/N) |
| FAILED TO ADOPT       | <u>    </u> | (Y/N) |
| WITHDRAWN             | <u>    </u> | (Y/N) |
| OTHER                 | <u>    </u> |       |

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Moraitis offered the following:

**Amendment (with title amendment)**

5 Between lines 653 and 654, insert:

6 Section 3. Subsection (4) of section 733.106, Florida  
 7 Statutes, is amended to read:

8 733.106 Costs and attorney's fees.—

9 (4) (a) When costs and attorney's fees are to be paid from  
 10 the estate pursuant to subsections (1)-(3), s. 733.6171(4), s.  
 11 736.1005, or s. 736.1006, the court, in its discretion, may  
 12 direct from what part of the estate they shall be paid. If the  
 13 court directs an assessment against a person's part of the  
 14 estate and that part is insufficient to fully pay the  
 15 assessment, the court may direct payment from the person's part  
 16 of a trust, if any, if a pourover will is involved and the  
 17 matter is interrelated with the trust. All or any part of costs

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18 and attorney's fees to be paid from the estate may be assessed  
19 against one or more person's part of the estate in such  
20 proportions as the court finds to be just and proper.

21 (b) The court in the exercise of its discretion may  
22 consider the following factors:

23 1. The relative impact of an assessment on the estimated  
24 value of each person's part of the estate;

25 2. The amount of costs and attorney's fees to be assessed  
26 against a person's part of the estate;

27 3. The extent to which a person whose part of the estate  
28 is to be assessed, individually or through counsel, actively  
29 participated in the proceeding;

30 4. The potential benefit or detriment to a person's part  
31 of the estate expected from the outcome of the proceeding;

32 5. The relative strength or weakness of the merits of the  
33 claims, defenses, or objections, if any, asserted by a person  
34 whose part of the estate is to be assessed;

35 6. Whether a person whose part of the estate is to be  
36 assessed was a prevailing party with respect to one or more  
37 claims, defenses, or objections;

38 7. Whether a person whose part of the estate is to be  
39 assessed unjustly caused an increase in the amount of attorney's  
40 fees and costs incurred by the personal representative or other  
41 interested persons in connection with the proceeding; and

42 8. Any other relevant fact, circumstance or equity.

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43 (c) The court may assess a person's part of the estate  
44 without finding that the person engaged in bad faith, wrongdoing  
45 or frivolousness.

46 Section 4. Subsection (2) of section 736.1005, Florida  
47 Statutes, is amended to read:

48 736.1005 Attorney's fees for services to the trust.—

49 (2) (a) When ~~Whenever~~ attorney's fees are to be paid from  
50 out of the trust pursuant to subsection (1) or s.  
51 736.1007(5) (a), or when the court assesses attorney's fees  
52 against a person's part of an estate under s. 733.106(4)  
53 involving a pourover will and the matter is interrelated with  
54 the trust but the person's part of the estate is insufficient to  
55 fully pay the assessment, the court, in its discretion, may  
56 direct from what part of the trust the fees shall be paid. All  
57 or any part of attorney's fees to be paid from the trust may be  
58 assessed against one or more persons' part of the trust in such  
59 proportions as the court finds to be just and proper.

60 (b) The court in the exercise of its discretion may  
61 consider the following factors:

62 1. The relative impact of an assessment or not on the  
63 estimated value of each person's part of the trust;

64 2. The amount of attorney's fees to be assessed against a  
65 person's part of the trust;

66 3. The extent to which a person whose part of the trust is  
67 to be assessed, individually or through counsel, actively  
68 participated in the proceeding;

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69 4. The potential benefit or detriment to a person's part  
70 of the trust expected from the outcome of the proceeding;

71 5. The relative strength or weakness of the merits of the  
72 claims, defenses, or objections, if any, asserted by a person  
73 whose part of the trust is to be assessed;

74 6. Whether a person whose part of the trust is to be  
75 assessed was a prevailing party with respect to one or more  
76 claims, defenses, or objections;

77 7. Whether a person whose part of the trust is to be  
78 assessed unjustly caused an increase in the amount of attorney's  
79 fees incurred by the trustee or other persons in connection with  
80 the proceeding; and

81 8. Any other relevant fact, circumstance or equity.

82 (c) The court may assess a person's part of the trust  
83 without finding that the person engaged in bad faith, wrongdoing  
84 or frivolousness.

85 Section 5. Subsection (2) of section 736.1006, Florida  
86 Statutes, is amended to read:

87 736.1006 Costs in trust proceedings.—

88 (2) When ~~Whenever~~ costs are to be paid from out of the  
89 trust pursuant to subsection (1) or when the court assesses  
90 costs against a person's part of an estate under s. 733.106(4)  
91 involving a pourover will and the matter is interrelated with  
92 the trust but that person's part of the estate is insufficient  
93 to fully pay the assessment, the court, in its discretion, may  
94 direct from what part of the trust the costs shall be paid. All

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95 or any part of costs to be paid from the trust may be assessed  
96 against one or more persons' part of the trust in such  
97 proportions as the court finds to be just and proper. The court  
98 in the exercise of its discretion may consider the factors set  
99 forth in s. 736.1005(2) as they relate to costs to be paid from  
100 the trust.

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102  
103 **T I T L E A M E N D M E N T**

104 Remove line 9 and insert:

105 applicability; amending ss. 733.106, 736.1005, and 736.1006,  
106 F.S.; providing for payment of costs and attorney's fees in  
107 probate and trust proceedings from estate and trust assets;  
108 authorizing a court to assess any or all fees against the share  
109 of one or more persons in the estate or trust in a proportion  
110 found to be just and proper by the court; authorizing the court  
111 to consider certain factors in the exercise of its discretion;  
112 providing an effective date.