

Memorandum 87-87

Subject: Study L-1058 - Filing Fees in Probate

This memorandum proposes technical amendments to take care of some gaps in the statutes governing filing fees in probate. At the last meeting consideration of this draft was postponed so that the staff could confer with the State Bar. This has been done and we now suggest that these amendments be considered for inclusion in a probate clean-up bill to be introduced in the 1988 legislative session and to become operative on July 1, 1988, at the same time as AB 708.

The staff discussed the problems with Chuck Collier, who had conferred with Bill Schmidt and Commissioner Stodden. The staff believes we are in agreement that the existing sections are unclear and difficult to apply in many situations, but that cleaning up the entire area would be impracticable at this point. It appears that different courts apply the statutes in varying ways so that filing fees are not being charged in a uniform manner throughout the state. Ideally a petitioner should be able to expect the same fee for the same paper in every county and should be able to determine the applicable fee from the statute. Rational standards should determine what fee, if any, is to be charged. However, past experience indicates that an attempt to revise filing fees can be unrewarding. Consequently, as suggested at the last meeting, we propose to make some technical adjustments of the existing fee statutes to fill gaps resulting from recent revisions of the Probate Code. The staff does not suggest completely rewriting the statutes governing probate filing fees at this time. Perhaps the Commission is interested in considering this matter at a later time or forwarding a suggestion for reform to the Judicial Council.

The staff proposes the following amendments, which are explained in the comments to the sections:

Government Code § 26827 (amended). Fee for first papers in probate

SEC. . Section 26827 of the Government Code is amended to read:

26827. (a) The total fee for filing the first petition for letters of administration, a petition for special letters of administration, a petition for letters testamentary, a first account of a testamentary trustee of a trust that is subject to the continuing jurisdiction of the court pursuant to Chapter 4 (commencing with Section 17300) of Part 5 of Division 9 of the Probate Code, a petition for letters of guardianship, a petition for letters of conservatorship, a petition for compromise of a minor's claim, a petition pursuant to Section 13151 of the Probate Code, a petition pursuant to Section 13650 of the Probate Code (except as provided in Section 13652 of the Probate Code), or a petition to contest any will or codicil ~~shall be~~, is the sum fixed by resolution pursuant to Section 68090, which shall not exceed the following maximum amounts:

(1) In any county where a fee is collected for the court reporter fund, the total fees shall not exceed eighty-six dollars (\$86).

(2) In any county where a fee is not collected for the court reporter fund, the total fee shall not exceed sixty-one dollars (\$61).

(b) The fee set forth in subdivision (a) shall also be charged for filing any subsequent petition ~~for letters of administration, special letters of administration, letters testamentary, letters of guardianship, letters of conservatorship, or a first account of a testamentary trustee, or a petition to contest any will or codicil of a type described in subdivision (a)~~ in the same proceeding, by a person other than the original petitioner. ~~When the public administrator or an employee of the State Department of Mental Health in his or her official capacity is the petitioner, he or she shall be required to pay the fee only out of the assets of the estate coming into his or her possession.~~

Comment. Subdivision (a) of Section 26827 is revised to clarify the testamentary trust accountings that are subject to this provision. Subdivision (a) is also revised to include petitions under Probate Code Sections 13151 (order determining succession to real property) and 13650 (order determining or confirming property passing or belonging to surviving spouse). Subdivision (a) also recognizes the exception provided in Probate Code Section 13652, which excuses the fee otherwise applicable to a petition under Section 13650 if probate proceedings are already pending.

Subdivision (b) is revised to eliminate language repeated from subdivision (a). The provision relating to fees payable by a public administrator or the Department of Mental Health, formerly in subdivision (b), is generalized in Section 26827.5.

Note. The staff notes that a petition for letters of administration with the will annexed is not listed in this section. Presumably it is included in a petition for letters of administration, although some sections in the Probate Code list both types. See, e.g., Prob. Code §§ 500-502; see also Judicial Council Form DE-110 (Petition for Probate). Should a petition for letters of administration with the will annexed be added to this section?

The staff has simplified subdivision (b) by treating all subsequent petitions alike in this section. We do not know of any substantive reason for the failure of existing law to list a petition to compromise a minor's claim in subdivision (b), other than the likelihood that there would not be a subsequent petition by another person.

Matters for possible future consideration include the following:

(1) Should all petitions for which there is a first paper filing fee be listed in this section, or should it be drafted in general terms? Adding the references to Sections 13151 and 13650 does not exhaust the possibilities. For example, there are no specific references to petitions under Probate Code Section 17200 (Trust Law), nor do these fee sections specifically cover Probate Code Sections 200 (proceedings to establish fact of death), 230 (proceedings to determine survival), 6602 (small estate set-aside). There may be other petitions that are not covered by Government Code Sections 26827 or 26827.4. If the general provision governing fees for first papers in civil actions covers these other proceedings, the need for most of Section 26827 is questionable.

(2) Note that the word "first" appears only twice in subdivision (a) -- first with reference to a petition for letters of administration and then with reference to an account by a testamentary trustee. Does this reflect a rational scheme or is it just inconsistent drafting? Since subdivision (b) governs the fee for a subsequent petition in the same proceeding by a different person, it would seem that "first" should apply to all of the petitions in subdivision (a).

(3) The list of the various types of letters may not be needed if "letters" is defined in upcoming legislation to include the various types.

Government Code § 26827.4 (technical amendment). Fee for subsequent papers in probate

SEC. . Section 26827.4 of the Government Code is amended to read:

26827.4. (a) The fee for filing of a subsequent paper in a proceeding under the Probate Code which requires a court hearing shall be is fourteen dollars (\$14), except for papers for proceedings

required by any of the following:

(1) Section ~~591-2~~ 10501 of the Probate Code.

(2) Accountings of trustees of testamentary trusts that are subject to the continuing jurisdiction of the court pursuant to Chapter 4 (commencing with Section 17300) of Part 5 of Division 9 of the Probate Code.

(3) Division 4 (commencing with Section 1400) of the Probate Code.

(b) Objections to any papers exempt from the fee imposed by this section ~~shall be~~ are subject to the filing fee of fourteen dollars (\$14). This section does not apply to petitions filed pursuant to subdivision (b) of Section 26827.

Comment. Subdivision (a)(1) of Section 26827.4 is revised to correct a cross-reference to petitions required under the Independent Administration of Estates Act.

Government Code § 26827.5 (added). Payment of fees by public administrator of State Department of Mental Health

SEC. . Section 26827.5 is added to the Government Code, to read:

26827.5. Where the public administrator or an employee of the State Department of Mental Health is the petitioner in an official capacity in a proceeding described in Section 26827 or 26827.4, the fee is payable only out of the assets of the estate coming into the official's possession or control.

Comment. Section 26827.5 is a new provision that generalizes a provision formerly set out in Section 26827(b). This section applies to all filing fees described in Sections 26827 and 26827.4, whereas the former provision appeared to apply only to part of Section 26827. In addition, this section refers to assets under the control of the official.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel