

Second Supplement to Memorandum 87-100

Subject: Study L-1036 - Probate Attorney Fees (Policy Issue Determination)

CALJUSTICE--CONSUMER ADVOCATES FOR LEGAL JUSTICE is one of the registered lobby groups that was asked to give its views concerning probate attorney fees.

The attached letter forwards the views of this organization. You should read the letter. CALJUSTICE supports the reasonable attorney fee provisions of the Uniform Probate Code and some of the other recommendations made in the staff Background Study.

CALJUSTICE disagrees with the staff assessment that the statutory fee schedule ordinarily yields an inadequate fee for a small estate. The letter states:

Similarly, consumers complain that the statutory fees provide attorneys with a windfall for probating small, uncomplicated estates, particularly in those cases where paralegals perform most of the work at a reduced rate and attorneys bill out at their full rate. Contrary to the contentions of those attorneys who responded to your questionnaire that they bill out at a reduced rate for paralegal work, it has been our experience in talking with numerous consumers and attorneys that most attorneys do not do so.

Perhaps CALJUSTICE is discussing the fees billed when the statutory fee schedule is used. In that case (absent an agreement otherwise), the attorney is entitled to the statutory fee and does not bill at an hourly rate for his or her services and the services of the paralegal.

It is interesting to note that CALJUSTICE supports the ABA recommendation to permit a personal representative who is also an attorney to receive compensation for rendering legal services to the estate in addition to compensation for services as personal representative.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

CALJUSTICE  
CONSUMER ADVOCATES FOR LEGAL JUSTICE  
24001 Welby Way, West Hills, CA. 91307  
(818) 884-0664



December 28, 1987

John H. DeMouilly  
Executive Secretary  
California Law Revision Committee  
4000 Middlefield Road  
Suite D-2  
Palo Alto, CA 94303-4739

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Dear Mr. DeMouilly:

We have reviewed the recommendation of your staff to replace the existing Probate Code attorney fee schedule with the reasonable attorney fee provisions of the Uniform Probate Code. We are pleased to advise you that Consumer Advocates for Legal Justice (CALJUSTICE) fully supports this recommendation, and we urge the Commission to adopt it at its January meeting.

The current statutory scheme, which awards attorney fees based on a percentage of the gross value of a decedent's estate, has long been criticized as being unfair by attorneys and consumers alike. Attorneys complain that the statutory fees are insufficient to compensate them for probating small, complex estates. Consumers complain that the statutory fees provide attorneys with a windfall for probating large, uncomplicated estates. Similarly, consumers complain that the statutory fees provide attorneys with a windfall for probating small, uncomplicated estates, particularly in those cases where paralegals perform most of the work at a reduced rate and attorneys bill out at their full rate. Contrary to the contentions of those attorneys who responded to your questionnaire that they bill out at the reduced rate for paralegal work, it has been our experience in talking with numerous consumers and attorneys that most attorneys do not do so. Consumers do not object to paying a reasonable attorney fee for actual work performed by a skilled attorney. However, they do object to paying an attorney an exorbitant fee which bears no relationship to the skill of the attorney or the work actually performed. For these reasons, we believe that the adoption of a reasonable attorney fee provision is a rational and balanced response to these criticisms, and one which is fair to both the attorney and the consumer.

We also agree with the staff's assessment that the adoption of a reasonable attorney fee provision would not lead to an increase in litigation concerning attorney fees. Since the Uniform Probate Code permits judicial review of attorney fee contracts only when an interested party objects to the fee, less litigation is likely to result because the parties to the contract will have voluntarily agreed to what they believe to be a reasonable fee. Similarly, we agree with the staff's

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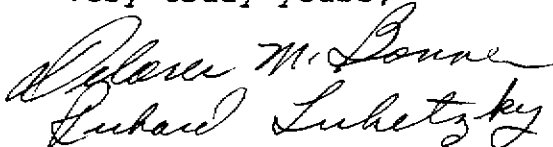
recommendations that it be made clear that Section 6148 of the Business and Professions Code applies to contracts for probate legal services, and that such contracts should contain an estimate of the total amount of the legal fees. The requirement that such contracts be made in writing will ensure that the parties have a thorough understanding of the terms of the contract, and thereby reduce the likelihood of litigation.

We also agree with the staff's recommendation to amend the Probate Code to include a statement of the factors that should be considered in determining what constitutes a reasonable attorney fee. In this regard, we urge the Commission to adopt those factors enumerated in Rule 2-107 of the Rules of Professional conduct of the State Bar of California, which governs fees for legal services generally (See Staff Report at pages 49-50). The adoption of such a statement of factors would establish a uniform standard which the parties and the courts could apply in making such a determination, and would eliminate the current ambiguity surrounding the definition of the term "reasonable."

Finally, we also support the American Bar Association's recommendation to permit a personal representative who is also an attorney to receive compensation for rendering legal services to the estate. Since a personal representative is often closely related to the decedent, the personal representative is more likely to render necessary legal services less expensively than an attorney who has no relationship with the estate. We believe that in such cases the savings in costs to the estate could be significant.

Thank you for giving us this opportunity to express our views. If you have any questions about any of the above, please feel free to contact the undersigned.

Very truly yours,



Delores M. Bonner, President  
Richard Lubetzky, Chairman, Board of Directors