

Third Supplement to Memorandum 87-100

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

Attached is an additional communication concerning probate attorney fees from the Estate Planning, Trust and Probate Law Section of the State Bar.

It should be kept in mind that the policy issue presented by substituting a reasonable fee concept for the existing California fee system is not that the cost of probate would necessarily be reduced for each estate. Rather the issue is whether each individual estate should pay a reasonable attorney fee for the legal services rendered to that estate instead of a fee that is computed using a statutory formula that is not based on the reasonable value of the legal services actually provided.

The State Bar Section letter attached to the First Supplement to Memorandum 87-100 was critical of the Background Study because the Background Study did not take into account a 1966 study as to the cost of probating \$100,000 of personal property in all 50 states. The 1966 study has been criticized because it ignored additional compensation for extraordinary services and because it did not consider the extent to which real property is considered in determining the base for use of a statutory fee schedule in various states. But, more important, the 1966 study has become worthless in light of the probate reforms that have taken place since 1966. The probate reform movement reached its peak during the late 1960s and early 1970s after the 1966 study was made. In Stein and Fierstein, *The Role of the Attorney in Estate Administration*, 56 Minn. L. Rev. 1107, 1108, n. 4 (1984), the developments since 1966 are summarized as follows:

In the last fifteen years, virtually every state has, to some extent, revised its probate code to simplify and modernize probate procedures and estate administrations.

In Stein and Fierstein, *The Role of the Attorney in Estate Administration*, 56 Minn. L. Rev. 1107, 1109, n. 5 (1984), it is reported that 14 states have enacted the substance of the Uniform

Probate Code regarding succession law and procedure: Alaska, Arizona, Colorado, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Pennsylvania, and Utah. In addition, Florida, Hawaii, Illinois, Missouri, Oregon, and Wisconsin have enacted probate codes that show strong UPC influence. Other states that have revised their probate codes by adding provisions that were inspired by the UPC are: Alabama, Iowa, Kentucky, Maryland, Massachusetts, Texas, Virginia, Washington, and West Virginia. Some states that had a statutory fee schedule in 1966 no longer have one; only California and seven other states now have a statutory fee schedule.

The Stein Study does not mention California as one of the states in which probate reforms have been enacted since 1966. But, since 1966, substantial probate reform has been enacted in California, beginning with the enactment of such significant reforms as the Independent Administration of Estates Act and the petition procedure for the surviving spouse to determine or confirm community property. However, the statutory fee in California has not been reduced since 1966 (except possibly for estates over \$25 million) and has in fact been increased substantially. See Table 5 on page 38 of the Background Study.

In light of the developments since 1966, the staff considers the 1966 study worthless. Even the Stein study, published in 1984 and reviewed at length in the staff Background Study, is not of great value in view of developments since 1972 in the states covered by the study, especially in view of the significant increase in the California statutory compensation that has taken place since 1972 when the Stein Study data was collected.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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January 2, 1988

California Law Revision Commission
Room D-2, 4000 Middlefield Road
Palo Alto, California 94303

VIA FEDERAL EXPRESS

Re: Study 87-100 - Attorney's Fees

Dear Commissioners:

The Executive Committee of the Estate Planning, Trust and Probate Law Section, State Bar of California, submitted a questionnaire in late-November to more than 3,500 section members requesting the members' views on various proposals for payment of attorney's fees in probate.

Because the matter was originally scheduled for the December 10, 1987, meeting of the Commission, responses were requested by December 4. Most responses were received before the middle of December. Because of the short response time, undoubtedly some section members did not respond. However, approximately 40% of the membership of the Section did respond within the brief period of time allowed between mailing of the questionnaire and the requested response time.

More than 1,500 questionnaires were completed and returned. Responses to the questionnaire were received from 50 of the 58 counties in California. The tabulation of totals includes 1,506 responses. Some additional ones have been received but not as yet tabulated. It is not anticipated that they would have any material effect on the results. Of the 1,506 responses tabulated, 1,374 were tabulated on a county-by-county basis, allowing a comparison of the responses from the northern half of the state, from the southern half of the state, from large metropolitan areas versus rural areas, etc.

Attached are the following:

Alternative Methods of Determining
Attorney's Fees in Probate:

Exhibit 1: All responses.

Exhibit 2: Responses from the northern half of the state (generally areas north of the northern boundary of San Luis Obispo County and Kern County).

Exhibit 3: Responses from the southern half of the state (areas south of the northern line of San Luis Obispo County and Kern County).

Exhibit 4: Responses from the metropolitan counties in the northern part of the state (Alameda, Sacramento, San Francisco, San Mateo and Santa Clara).

Exhibit 5: Responses from the metropolitan counties in the southern half of the state (Los Angeles, Orange and San Diego).

Exhibit 6: Responses from the large counties (Alameda, Sacramento, San Francisco, San Mateo, Santa Clara, Los Angeles, Orange and San Diego).

Exhibit 7: Responses from all other counties other than the large counties.

Exhibit 8: Published results of 1984 poll of section members.

General Comments on the Exhibits 1 through 8:

As the exhibits make apparent, there is a consistent response ranging from 69.5% to 77%, depending upon the particular area covered by the exhibit, in favor of retention of the existing statutory fee system.

Reasonable fees by private agreement with no court involvement except in case of a dispute (Alternative 2) was favored as a first choice by from 9% to 18% of the members, depending upon the geographic area, with an overall average of 16%.

Reasonable fees fixed by the court for all services was favored as a first choice by a low of 1% and a high of 4% of the members, depending upon the geographic area, for an average of 3.1%.

The personal representative in the case of independent administration determining the fees and serving a notice of proposed action and paying those fees without court involvement unless there was a dispute was favored by a low of 2% and a high of 7% of the members, depending upon the geographic area, with an average of 5.3%.

Therefore, there is a very strong preference among those responding for retention of the existing fee structure in California. The second choice, reasonable fees by private agreement, received only about 1/4th of the number of first choice votes as did retention of the existing system. The results of the current poll of members are similar to a poll taken in 1984 (Exhibit 8).

Generally there was very little variation on a percentage basis attributable to differing geographic areas, or metropolitan areas versus rural areas, as Exhibits 1 through 7 show.

Statutory Fees Versus Time Charges:

Those persons responding to the questionnaire were asked, based upon their experience, whether for ordinary or usual services, that is, statutory services, their charges would be higher, lower or about the same as statutory fees if those services were rendered on a straight hourly time charge basis. The section members responding to the questionnaire were asked to respond with reference to an estate of \$100,000, an estate in the range of \$100,000 to \$300,000, an estate in the range of \$300,000 to \$600,000, and an estate in excess of \$600,000.

The responses which are tabulated on the same basis as those set forth in the exhibits above are identified as follows:

Exhibit 9: All responses.

Exhibit 10: Responses from the northern half of the state (north of the north line of San Luis Obispo and Kern Counties).

Exhibit 11: Responses from the southern half of the state (south of the north line of San Luis Obispo and Kern Counties).

Exhibit 12: Responses from the metropolitan counties in the northern part of the state (Alameda, Sacramento, San Francisco, San Mateo and Santa Clara).

Exhibit 13: Responses from the metropolitan counties in the southern half of the state (Los Angeles, Orange and San Diego).

Exhibit 14: Responses from the large counties (Alameda, Sacramento, San Francisco, San Mateo, Santa Clara, Los Angeles, Orange and San Diego).

Exhibit 15: Responses from all other counties other than the large counties.

General Comments on Exhibits 9 through 15:

The responses indicate that if a \$100,000 estate was handled on a straight time charge basis, that in approximately 50% of the estates the time charge would be higher than the statutory fee and in another 30% the time charge would be about the same as the statutory fee. Only about 7.4% of the total responses indicated that the fees would be lower on a time charge basis than a statutory fee in an estate of \$100,000.

In an estate of between \$100,000 and \$300,000, 27% indicated their time charges would be higher, 45% said they would be about the same and 16% said they would be lower. As the size of the estate increases, the member indicating that their fees might be lower increases but still remains a minority percentage even in estates in excess of \$600,000.

While it is not possible to pinpoint a level at which time charges would be the same as or less than statutory fees, it appears to be for estates in excess of \$300,000. For estates less than that, the responses indicate that the time charges generally would be equal to or greater than the statutory fees allowed for usual and ordinary services.

Comments from Attorneys Answering the Questionnaire:

Many attorneys who answered the questionnaire either wrote separate letters setting forth their views in greater detail or made written comments on the questionnaire itself. Attached are the following:

Exhibit 16: Representative comments in support of statutory fees.

Exhibit 17: Representative comments in support of reasonable fees determined by private agreement.

Exhibit 18: Representative comments relating to the court determining all fees.

Exhibit 19: Representative excerpts from letters setting forth the writer's views in greater detail.

Size of Estates:

Most states are relatively small. The Law Revision Commission several years ago increased the exemption for property to be passed by affidavit to \$60,000, Probate Code Section 13100. This doubled the amount previously in effect which was \$30,000 and exempted many more estates from the probate process.

The State Controller's Office, while the inheritance tax was in effect, prepared annual statistics on the size of estates subject to inheritance tax (the inheritance tax exclusions were very small and therefore almost all estates were subject to some type of inheritance tax). While the available figures are somewhat out of date, an attempt has been made as explained hereinafter to adjust those figures to current figures based upon changes in the cost-of-living index. The exhibits attached are taken from a publication of the State Controller's Office entitled "Statistics of California Estate Inheritance Tax Fiscal Years 1973-74 and 1974-75."

Two tables from that statistical analysis are attached as follows:

Exhibit 20: Table 3 - Trends in Inheritance Tax Estates (showing average size of estates).

Exhibit 21: Table 17B - Estate Values, Inheritance Tax Assessed by Gross Estate Size (showing the number of estates in each size range).

Also attached is a chart entitled "Fast Facts" as taken from the Pasadena Star News, September 8, 1987, citing figures from the U. S. Census Bureau on the average wealth of families in various age categories. That is identified as Exhibit 22.

General Comments Re Size of Estates:

As the exhibits prepared by the State Controller's Office indicate, the average gross value of an estate subject to inheritance tax increased from \$107,500 in 1964-65 to \$135,000 in 1974-75.

In 1974-75 of the estates subject to inheritance tax, 47.40% of all estates were under \$50,000, 54.24% of all estates were under \$60,000, and 70.60% were under \$100,000.

As of January 1, 1967, the cost-of-living index was 100. In December 1975, it was 166.3. During that period of time, based upon the average estate shown on Table 3 (Exhibit 20), the average size of the estate increased from \$110,800 (1967) to \$135,000 (1975), a 21% increase, although the cost-of-living index had gone up by 66.3% during that same period of time. From December 1975, when the index was 166.3, to June 1986, when the index was 340.1, the index had increased by slightly more than two times. Using the increase in the average estate from 1967 to 1975 when compared to the increase in the cost of living during that period of time, the cost of living was increasing 3.16 times as fast as the value of assets was increasing during that period of time. Using this same measure, it would indicate that from December 1975 to June 1986 the average value of assets would have increased 55% ($174 \div 3.16 = 55$). Adjusting the 1974-75 figures therefore to determine the average value of estates as of June 1986, it would appear that 47.40% of the estates in 1986 would have been under \$77,500, 54.24% would have been under \$93,000, and 70.60% would have been under \$155,000. The consumer price index has been fairly stable for the past several years.

Adjusting these numbers on a different basis using a straight cost-of-living adjustment, which was slightly more than doubled during the period from December 1975 through June 1986, then it would appear that 23.47% of the estates would have been under \$50,000, 47.40% would have been under \$100,000, 54.20% would have been under \$120,000, and 70.60% would have been under \$200,000, as of June 1986.

Probate Costs in California:

In the December 1986 issue of Trusts and Estates, a chart was published as to the cost of probating \$100,000 of personal property in all 50 states. Attached hereto are the following:

Exhibit 23: Chart as published in December 1986 issue of Trusts and Estates, page 1137.

Exhibit 24: Same chart modified to reflect the cost of a probate of \$100,000 in California, using the current California applicable rates (assuming all other jurisdictions had no change in fees).

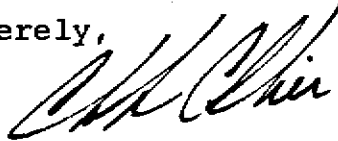
General Comment:

As these charts indicate, California's cost of probating a \$100,000 estate has been substantially below the national average.

Consumer Protection:

The statutory fee, as the answers to the questionnaires indicate, is consumer oriented for the vast majority of estates. Hourly time charges would normally be equal to or more than the statutory fees. Statutory fees are simple to administer. They avoid litigation between beneficiaries and the personal representative. They save court time in determining fees and are favored by a very significant majority of all attorneys who responded to the questionnaire.

Sincerely,



Charles A. Collier, Jr.
for the Executive Committee,
Estate Planning, Trust and
Probate Law Section, State
Bar of California

CAC:vjd

Enclosures

cc: D. Keith Bilter, Esq. (w/encls.)
James V. Quillinan, Esq. (w/encls.)
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Part I: Members of the Estate Planning, Trust and Probate Law Section were asked to indicate their individual preference among the four alternatives for attorney's fees outlined in Memorandum 87-100. Their responses as tabulated are as follows:

Alternative 1:

Statutory fees payable upon order of court and reasonable fees for extraordinary services as determined by the court (existing law).

First Choice	Second Choice	Third Choice	Fourth Choice
1048	126	135	86
69.5%	8.3%	8.9%	5.7%

Alternative 2:

Reasonable attorney's fees for all services a matter of private agreement between personal representative and attorney with no court involvement unless an interested party objects to fees, in which case the court would review the fees.

First Choice	Second Choice	Third Choice	Fourth Choice
241	502	318	337
16.0%	33.3%	21.1%	22.3%

Alternative 3:

Reasonable attorney's fees fixed by the court for all services (ordinary and extraordinary).

First Choice	Second Choice	Third Choice	Fourth Choice
47	385	314	606
3.1%	25.5%	20.8%	40.2%

Alternative 4:

The personal representative under the Independent Administration of Estates Act would serve an Advice of Proposed Action on all interested persons of proposed reasonable attorney's fees to be paid and could pay such fees without court involvement absent an objection. If there was an objection by an interested party (or if the Independent Administration of Estates Act was not utilized), the fees would be fixed by the court.

First Choice	Second Choice	Third Choice	Fourth Choice
81	322	544	403
5.3%	21.3%	36.1%	26.7%

Based upon answers to 1506 questionnaires. Not all questions were answered. Exhibit 1

ATTORNEY'S FEES

Part I: Members of the Estate Planning, Trust and Probate Law Section were asked to indicate their individual preference among the four alternatives for attorney's fees outlined in Memorandum 87-100. Their responses as tabulated are as follows:

Alternative 1:

Statutory fees payable upon order of court and reasonable fees for extraordinary services as determined by the court (existing law).

First Choice	Second Choice	Third Choice	Fourth Choice
489	32	20	21
74%	5%	3%	3%

Alternative 2:

Reasonable attorney's fees for all services a matter of private agreement between personal representative and attorney with no court involvement unless an interested party objects to fees, in which case the court would review the fees.

First Choice	Second Choice	Third Choice	Fourth Choice
63	155	79	109
9%	23%	11%	16%

Alternative 3:

Reasonable attorney's fees fixed by the court for all services (ordinary and extraordinary).

First Choice	Second Choice	Third Choice	Fourth Choice
9	64	69	107
1%	9%	10%	16%

Alternative 4:

The personal representative under the Independent Administration of Estates Act would serve an Advice of Proposed Action on all interested persons of proposed reasonable attorney's fees to be paid and could pay such fees without court involvement absent an objection. If there was an objection by an interested party (or if the Independent Administration of Estates Act was not utilized), the fees would be fixed by the court.

First Choice	Second Choice	Third Choice	Fourth Choice
19	50	101	65
2%	7%	15%	9%

ATTORNEY'S FEES

Part I: Members of the Estate Planning, Trust and Probate Law Section were asked to indicate their individual preference among the four alternatives for attorney's fees outlined in Memorandum 87-100. Their responses as tabulated are as follows:

Alternative 1:

Statutory fees payable upon order of court and reasonable fees for extraordinary services as determined by the court (existing law).

First Choice	Second Choice	Third Choice	Fourth Choice
547	26	52	20
76%	4%	7%	3%

Alternative 2:

Reasonable attorney's fees for all services a matter of private agreement between personal representative and attorney with no court involvement unless an interested party objects to fees, in which case the court would review the fees.

First Choice	Second Choice	Third Choice	Fourth Choice
49	99	45	51
6%	13%	6%	7%

Alternative 3:

Reasonable attorney's fees fixed by the court for all services (ordinary and extraordinary).

First Choice	Second Choice	Third Choice	Fourth Choice
15	116	88	198
2%	16%	12%	27%

Alternative 4:

The personal representative under the Independent Administration of Estates Act would serve an Advice of Proposed Action on all interested persons of proposed reasonable attorney's fees to be paid and could pay such fees without court involvement absent an objection. If there was an objection by an interested party (or if the Independent Administration of Estates Act was not utilized), the fees would be fixed by the court.

First Choice	Second Choice	Third Choice	Fourth Choice
25	96	170	109
3%	13%	23%	15%

Answers based upon 1,374 questionnaires.

ATTORNEY'S FEES

Part I: Members of the Estate Planning, Trust and Probate Law Section were asked to indicate their individual preference among the four alternatives for attorney's fees outlined in Memorandum 87-100. Their responses as tabulated are as follows:

Alternative 1:

Statutory fees payable upon order of court and reasonable fees for extraordinary services as determined by the court (existing law).

First Choice	Second Choice	Third Choice	Fourth Choice
269	34	42	22
72%	9%	11%	5%

Alternative 2:

Reasonable attorney's fees for all services a matter of private agreement between personal representative and attorney with no court involvement unless an interested party objects to fees, in which case the court would review the fees.

First Choice	Second Choice	Third Choice	Fourth Choice
67	133	72	96
18%	36%	19%	26%

Alternative 3:

Reasonable attorney's fees fixed by the court for all services (ordinary and extraordinary).

First Choice	Second Choice	Third Choice	Fourth Choice
13	108	76	175
3%	29%	20%	47%

Alternative 4:

The personal representative under the Independent Administration of Estates Act would serve an Advice of Proposed Action on all interested persons of proposed reasonable attorney's fees to be paid and could pay such fees without court involvement absent an objection. If there was an objection by an interested party (or if the Independent Administration of Estates Act was not utilized), the fees would be fixed by the court.

First Choice	Second Choice	Third Choice	Fourth Choice
27	89	153	91
7%	24%	41%	24%

*Alameda, Sacramento, San Francisco, San Mateo and Santa Clara

Answers based upon 1,374 questionnaires. Exhibit 4

ATTORNEY'S FEES

Part I: Members of the Estate Planning, Trust and Probate Law Section were asked to indicate their individual preference among the four alternatives for attorney's fees outlined in Memorandum 87-100. Their responses as tabulated are as follows:

Alternative 1:

Statutory fees payable upon order of court and reasonable fees for extraordinary services as determined by the court (existing law).

First Choice	Second Choice	Third Choice	Fourth Choice
454	54	50	37
75%	8%	8%	6%

Alternative 2:

Reasonable attorney's fees for all services a matter of private agreement between personal representative and attorney with no court involvement unless an interested party objects to fees, in which case the court would review the fees.

First Choice	Second Choice	Third Choice	Fourth Choice
103	173	162	135
17%	29%	27%	22%

Alternative 3:

Reasonable attorney's fees fixed by the court for all services (ordinary and extraordinary).

First Choice	Second Choice	Third Choice	Fourth Choice
20	199	151	241
3%	33%	25%	40%

Alternative 4:

The personal representative under the Independent Administration of Estates Act would serve an Advice of Proposed Action on all interested persons of proposed reasonable attorney's fees to be paid and could pay such fees without court involvement absent an objection. If there was an objection by an interested party (or if the Independent Administration of Estates Act was not utilized), the fees would be fixed by the court.

First Choice	Second Choice	Third Choice	Fourth Choice
32	128	207	211
5%	21%	34%	35%

ATTORNEY'S FEES

Part I: Members of the Estate Planning, Trust and Probate Law Section were asked to indicate their individual preference among the four alternatives for attorney's fees outlined in Memorandum 87-100. Their responses as tabulated are as follows:

Alternative 1:

Statutory fees payable upon order of court and reasonable fees for extraordinary services as determined by the court (existing law).

First Choice	Second Choice	Third Choice	Fourth Choice
725	88	102	59
74%	9%	10%	6%

Alternative 2:

Reasonable attorney's fees for all services a matter of private agreement between personal representative and attorney with no court involvement unless an interested party objects to fees, in which case the court would review the fees.

First Choice	Second Choice	Third Choice	Fourth Choice
170	306	234	231
17%	31%	24%	23%

Alternative 3:

Reasonable attorney's fees fixed by the court for all services (ordinary and extraordinary).

First Choice	Second Choice	Third Choice	Fourth Choice
33	307	217	409
3%	31%	22%	42%

Alternative 4:

The personal representative under the Independent Administration of Estates Act would serve an Advice of Proposed Action on all interested persons of proposed reasonable attorney's fees to be paid and could pay such fees without court involvement absent an objection. If there was an objection by an interested party (or if the Independent Administration of Estates Act was not utilized), the fees would be fixed by the court.

First Choice	Second Choice	Third Choice	Fourth Choice
59	228	360	306
6%	23%	37%	31%

Answers based upon 1,374 questionnaires.

ATTORNEY'S FEES

Part I: Members of the Estate Planning, Trust and Probate Law Section were asked to indicate their individual preference among the four alternatives for attorney's fees outlined in Memorandum 87-100. Their responses as tabulated are as follows:

Alternative 1:

Statutory fees payable upon order of court and reasonable fees for extraordinary services as determined by the court (existing law).

First Choice	Second Choice	Third Choice	Fourth Choice
310	34	29	22
77%	8%	7%	5%

Alternative 2:

Reasonable attorney's fees for all services a matter of private agreement between personal representative and attorney with no court involvement unless an interested party objects to fees, in which case the court would review the fees.

First Choice	Second Choice	Third Choice	Fourth Choice
58	173	78	84
14%	43%	19%	21%

Alternative 3:

Reasonable attorney's fees fixed by the court for all services (ordinary and extraordinary).

First Choice	Second Choice	Third Choice	Fourth Choice
15	97	100	84
4%	24%	25%	21%

Alternative 4:

The personal representative under the Independent Administration of Estates Act would serve an Advice of Proposed Action on all interested persons of proposed reasonable attorney's fees to be paid and could pay such fees without court involvement absent an objection. If there was an objection by an interested party (or if the Independent Administration of Estates Act was not utilized), the fees would be fixed by the court.

First Choice	Second Choice	Third Choice	Fourth Choice
21	85	166	116
5%	21%	41%	29%

Probate Administration Survey—Your Views

The California Law Revision Commission is commencing its review of Division III of the Probate Code, that is Sections 300 through 1313, the division dealing with probate administration. The Executive Committee of this Section recently sent a questionnaire to all Section members to ascertain members' views on certain basic areas of probate administration. In addition, the questionnaire was distributed at certain of the recent CEB programs on Impact of California's Probate Code Reform. The questionnaire has also been used by the Probate Section of the San Bernardino County Bar Association and of the San Diego County Bar Association to ascertain the views of their members. The questionnaire was intended to compare basic aspects of probate administration where there is a significant difference between existing California law, provisions of the Uniform Probate Code (UPC) and other proposals of the Law Revision Commission (LRC). Your responses will provide guidance for the Section's Executive Committee in its presentations to the California Law Revision Commission and to appropriate committees of the California Legislature considering probate reform.

RESULTS

The summary which follows includes a tabulation of answers on 1313 questionnaires. In some instances not all questions were answered by all persons and therefore the totals for specific questions do not always add up to that number, but in most cases they are very close to the total number. In some cases the answers indicated that the person found more than one alternative acceptable.

Your views as expressed in answering the probate administration survey are as follows:

	Approve	Disapprove		Approve	Disapprove
1) WILL			9) BONDS		
a) Admit to Probate by court order after notice (existing law)	1,090	122	a) No bond if all interested parties waive bond for personal representative	1,137	117
b) Admit to probate by clerk without prior notice to interested parties (UPC Concept)	232	995	b) Court discretion on bond even if all interested parties waive bond	340	766
2) PERSONAL REPRESENTATIVE			c) No bond for special administrator if all interested parties waive bond	985	182
a) Appointed by court after noticed hearing (existing law)	1,041	142	10) ACCOUNTINGS		
b) Appointed by clerk without prior notice (UPC concept)	268	952	a) Formal Accounting Settled by Court Order after notice hearing (existing law)	708	205
3) INVENTORY AND APPRAISEMENT			b) Formal Accounting Served on Beneficiaries and filed with Court as matter of record, but not reviewed by Court	386	695
a) Appraisal of all non-cash items by probate referee (existing law)	684	428	c) Informal Accounting given beneficiaries to become final in 60 days if no objection filed. Not filed with Court unless objections.	495	680
b) Self-appraisal of all probate assets by personal representative (UPC)	624	611	11) FINAL DISTRIBUTION		
c) File inventory with court (existing law)	874	248	a) By court order (existing law)	971	24
d) Serve copy of inventory on beneficiaries of estate, but don't file with court (UPC)	442	751	b) Informal distribution by personal representative without court order (one UPC alternative)	152	919
4) REAL PROPERTY SALES			c) Informal distribution with closing statement filed with court and served on interested parties showing distribution. No court hearing unless objections filed within 6 months (another UPC alternative)	419	727
a) Require court order confirming sale (existing law)	694	426	12) PROBATE ADMINISTRATION GENERALLY		
b) Allow sale without court confirmation under independent administration (LRC proposal)	660	546	a) Retain existing system	811	155
5) §630 AFFIDAVIT			b) Repeal §§300-1242 and replace with Uniform Probate Code	237	774
a) Increase dollar amount to \$50,000	756	356			
b) Increase dollar amount to \$100,000	400	728			
c) No change in existing \$30,000 limit	281	743			
6) INDEPENDENT ADMINISTRATION					
a) Make advice of proposed action binding on all who receive advice and don't object within 15 days (LRC proposal)	1,002	240			
b) Make advice nonbinding (existing law)	294	753			
7) EXECUTOR'S COMMISSIONS					
a) Statutory commissions (existing law)	1,012	192			
b) Reasonable fees fixed by court	261	841			
c) Reasonable fees determined by personal representative (UPC concept)	231	918			
8) ATTORNEYS' FEES					
a) Statutory fees (existing law)	1,022	180			
b) Reasonable fees fixed by court	238	868			
c) Reasonable fees determined by personal representative (UPC)	271	883			

COMMENTS

More than 400 of you who answered the survey added comments. In some cases, these comments were lengthy letters; in other cases, they were very brief. Some comments discussed probate administration generally; many comments spoke of only specific areas. While it is not possible to accurately reflect all of the comments by way of summary, there were

TOTALS - ALL RESPONSES

Part II: Members of the Estate Planning, Trust and Probate Law Section were asked, based upon their experience, to indicate whether the attorney's fees would be higher, lower or about the same if an estate was handled on a straight time charge basis or on a statutory fee for ordinary services in estates of various sizes. Their responses as tabulated are as follows:

1. In a probate estate of \$100,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 722 - 47.9%, lower 112 - 7.4% or about the same 443 - 29.4% as statutory fees for those services?
2. In a probate estate of between \$100,000 and \$300,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 407 - 27.0%, lower 240 - 15.9% or about the same 689 - 45.7% as statutory fees for those services?
3. In a probate estate of between \$300,000 and \$600,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 178 - 11.8%, lower 547 - 36.3% or about the same 634 - 42.0% as statutory fees for those services?
4. In a probate estate of over \$600,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 155 - 10.2%, lower 688 - 45.6% or about the same 384 - 25.4% as statutory fees for those services?

Based upon answers to 1506 questionnaires. Not all questions were answered on each questionnaire.

Part II: Members of the Estate Planning, Trust and Probate Law Section were asked, based upon their experience, to indicate whether the attorney's fees would be higher, lower or about the same if an estate was handled on a straight time charge basis or on a statutory fee for ordinary services in estates of various sizes. Their responses as tabulated are as follows:

1. In a probate estate of \$100,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 128 - 19%, lower 26 - 3% or about the same 83 - 12% as statutory fees for those services?
2. In a probate estate of between \$100,000 and \$300,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 47 - 7%, lower 45 - 6% or about the same 137 - 20% as statutory fees for those services?
3. In a probate estate of between \$300,000 and \$600,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 21 - 3%, lower 114 - 17% or about the same 96 - 14% as statutory fees for those services?
4. In a probate estate of over \$600,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 21 - 3%, lower 141 - 21% or about the same 42 - 6% as statutory fees for those services?

Answers based upon 1,374 questionnaires.

Part II: Members of the Estate Planning, Trust and Probate Law Section were asked, based upon their experience, to indicate whether the attorney's fees would be higher, lower or about the same if an estate was handled on a straight time charge basis or on a statutory fee for ordinary services in estates of various sizes. Their responses as tabulated are as follows:

1. In a probate estate of \$100,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 696 - 97%, lower 89 - 12% or about the same 309 - 43% as statutory fees for those services?
2. In a probate estate of between \$100,000 and \$300,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 352 - 49%, lower 201 - 28% or about the same 537 - 75% as statutory fees for those services?
3. In a probate estate of between \$300,000 and \$600,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 134 - 18%, lower 404 - 56% or about the same 523 - 73% as statutory fees for those services?
4. In a probate estate of over \$600,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 120 - 16%, lower 525 - 73% or about the same 304 - 42% as statutory fees for those services?

Answers based upon 1,374 questionnaires.

NORTH - LARGER COUNTIES*

Part II: Members of the Estate Planning, Trust and Probate Law Section were asked, based upon their experience, to indicate whether the attorney's fees would be higher, lower or about the same if an estate was handled on a straight time charge basis or on a statutory fee for ordinary services in estates of various sizes. Their responses as tabulated are as follows:

1. In a probate estate of \$100,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 235 - 63%, lower 18 - 5% or about the same 105 - 28% as statutory fees for those services?
2. In a probate estate of between \$100,000 and \$300,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 109 - 29%, lower 58 - 16% or about the same 197 - 53% as statutory fees for those services?
3. In a probate estate of between \$300,000 and \$600,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 37 - 10%, lower 132 - 35% or about the same 172 - 46% as statutory fees for those services?
4. In a probate estate of over \$600,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 32 - 9%, lower 211 - 57% or about the same 103 - 28% as statutory fees for those services?

*Alameda, Sacramento, San Francisco, San Mateo and Santa Clara.

Answers based upon 1,374 questionnaires.

SOUTH - LARGER COUNTIES*

Part II: Members of the Estate Planning, Trust and Probate Law Section were asked, based upon their experience, to indicate whether the attorney's fees would be higher, lower or about the same if an estate was handled on a straight time charge basis or on a statutory fee for ordinary services in estates of various sizes. Their responses as tabulated are as follows:

1. In a probate estate of \$100,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 402 - 67%, lower 34 - 6% or about the same 153 - 25% as statutory fees for those services?
2. In a probate estate of between \$100,000 and \$300,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 223 - 37%, lower 96 - 16% or about the same 267 - 44% as statutory fees for those services?
3. In a probate estate of between \$300,000 and \$600,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 102 - 17%, lower 198 - 33% or about the same 292 - 49% as statutory fees for those services?
4. In a probate estate of over \$600,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 70 - 12%, lower 317 - 53% or about the same 176 - 29% as statutory fees for those services?

*Los Angeles, Orange and San Diego

Answers based upon 1,374 questionnaires.

LARGE

Part II: Members of the Estate Planning, Trust and Probate Law Section were asked, based upon their experience, to indicate whether the attorney's fees would be higher, lower or about the same if an estate was handled on a straight time charge basis or on a statutory fee for ordinary services in estates of various sizes. Their responses as tabulated are as follows:

1. In a probate estate of \$100,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 636 - 65%, lower 52 - 5% or about the same 258 - 26% as statutory fees for those services?
2. In a probate estate of between \$100,000 and \$300,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 519 - 53%, lower 154 - 16% or about the same 464 - 47% as statutory fees for those services?
3. In a probate estate of between \$300,000 and \$600,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 111 - 11%, lower 330 - 34% or about the same 464 - 47% as statutory fees for those services?
4. In a probate estate of over \$600,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 100 - 10%, lower 518 - 53% or about the same 280 - 28% as statutory fees for those services?

Answers based upon 1,374 questionnaires.

SMALL

Part II: Members of the Estate Planning, Trust and Probate Law Section were asked, based upon their experience, to indicate whether the attorney's fees would be higher, lower or about the same if an estate was handled on a straight time charge basis or on a statutory fee for ordinary services in estates of various sizes. Their responses as tabulated are as follows:

1. In a probate estate of \$100,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 190 - 47%, lower 50 - 12% or about the same 142 - 35% as statutory fees for those services?
2. In a probate estate of between \$100,000 and \$300,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 76 - 19%, lower 91 - 22% or about the same 211 - 52% as statutory fees for those services?
3. In a probate estate of between \$300,000 and \$600,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 37 - 9%, lower 187 - 46% or about the same 145 - 36% as statutory fees for those services?
4. In a probate estate of over \$600,000, if you charged for your ordinary services on a straight hourly time charge basis, would your charges be higher 39 - 10%, lower 238 - 59% or about the same 78 - 19% as statutory fees for those services?

Answers based upon 1,374 questionnaires.

COMMENTS IN SUPPORT OF STATUTORY FEES

The following are representative comments received from attorneys who are in favor of retention of the statutory fee system in California.

"Statutory fees provide a protection to the administrator who is held responsible by the beneficiaries who in turn are not apt to be aware of or appreciate the amount of work and time involved in probate administration."

"Client acceptance and ease of calculation for purpose of advising client makes percentage formula preferable."

"The percentage schedule provides a very desirable certainty which clients appreciate. 'Reasonable' is a step backwards. Let well enough alone!"

". . . in smaller estates the amount of time spent in probating the estate and dealing with the executor and administrator is greater than what the statutory fees will allow, especially if you have to do an accounting. However, in much larger estates just the reverse is true."

"A smaller estate's fees are balanced by the larger estates. This system is similar to workman's compensation where the overall average is fair and reasonable."

"Why create another area of difficulty comparable to fixing fees for trustees."

"The percentage fee is easier for the client to understand and know what will be involved fee wise."

"After over 30 years of general practice, including probate, it has been my experience that the time and charges do average out over a period of time. The statutory fee has been reasonable for the time and services required."

"The present system encourages efficiency. Hourly fees would allow those with less experience to bill for their learning at the expense of the estate."

"There is absolutely nothing wrong with existing law. It is fair and reasonable to both the attorney and the estate beneficiaries and this structure provides a good basis for ascertaining the fee in advance."

"Easier to explain to clients and sufficient for ordinary work."

"There is an old saying you people have never learned 'When something ain't broke--don't fix it!'."

"I believe the present system places all attorneys (sole practitioner or firm) on an equal footing. It effectively eliminates cutting of fees and effectively the client gets the same service from anyone."

"It (statutory fees) approximates the time spent and is easy to determine."

"I have found that in most cases the statutory fee is a fairly accurate measure of reasonable services when compared to an hourly fee."

"I believe, after 40 years of practice in probate, including 20 years on the bench, that the present system is more just and fair than any of the alternatives; less room for prejudice and differences of opinion. The present system is fine and the statutory fees are actually quite reasonable."

"The present system of statutory fees allows a personal representative, as well as the beneficiaries of the will, to feel free to discuss all matters pertaining to the estate with the 'lawyer for the estate.'"

"I feel that the fee structure balances out and the ability of assuring the client that the fees are fixed by law is an important protection to the client."

"Leave as is! I have never had any complaints from any clients re statutory fees. It all averages out in the long run. The present fee schedule should not be tampered with."

"I much prefer the existing law for its ease of application and equality between executor and attorney. But clients like the law primarily for its certainty."

"To change the present method of setting probate fees by statute will only lead to additional litigation before the courts and clog an already overworked judiciary."

"Based upon my 20 years of experience in Los Angeles and Santa Barbara Counties, I believe that the present system provides the lowest cost and the greatest protection to the client. It is consistent with the reasonable amount of court supervision of fees."

"Statutory fees are boon to consumer."

"It would be a mistake to change the present system which, in my estimation, has been accepted by the public and is working effectively for both attorney and estate."

"If I go to hourly billing all probates will cost the client more no matter the size of the estate."

"A statutory fee is the only fair one, since it assures uniformity throughout the state. Fees would not then be dependent on which county was decedent's residence."

"I like the statutory system - it avoids problems with clients and heirs."

"Actual cost of handling smaller estates not covered by statutory fee - the present law balances out as to time versus compensation."

"I continue to feel that the statutory fee accomplishes a number of objectives. It effectively curbs the overly eager attorney. It effectively prevents arguments over regular attorney's fees between either the attorney and the executor or the attorney, the executor and the legatees and devisees of the estate. It serves as a medium ground between the estate that requires endless and detailed work, which is non-compensable under an extraordinary services theory, and the estate which is smooth and simple."

"The present system makes services available to large and small estates."

"The present statutory fee arrangement eliminates the fluctuations in court fixed fees which a practicing attorney experiences many times in conservatorship proceedings."

"In 40 years of practice I have found that clients have more confidence in the statutory determining of fees than when they do not know the fee basis."

"The present system is a leveling process that works."

"The younger attorney certainly needs the guidance provided by statutory fees. This also applies to the less experienced."

"Strongly opposed to any change."

"Elimination of statutory fees would encourage fee disputes and would impose greater cost by way of increased fees in estates of less than \$100,000."

"It prevents clients from being overcharged by 'slow' attorneys."

"Prefer a percentage method set by law that is objective."

"Smaller estates will pay more if statutory fees change."

"Don't forget that probate fees are not paid as incurred. Oftentimes they are carried for more than a year with no compensation."

"I have also observed, after practice in the probate courts for a number of years that no two judges agree on what is reasonable."

"The current system is fair and working well; there is no reason to change it. I am not getting any complaints. People want high quality and good service and feel that the present system is reasonable."

"Most lawyers take estates less than a \$100,000 knowing that they will lose money on them because taking estates of that size is an appropriate service to the community."

"In small estates, \$50,000 or less, reasonable fees would almost always exceed statutory fees. Relatively poor people will have more difficulty in getting estates probated in a 'reasonable fee system'."

"My experience is that the statutory system gives clients comfort and improves our working relationship. (i.e. client is not always worrying about what is being done, its necessity and the time involved). The general public does have a fear of lawyers and their fees. The statutory approach eliminates that fear."

"Choice 1 [existing law] thus permits a sort of averaging probate costs with the benefit to smaller estates, about equal with intermediate size of estates, and some recoupment from large estates for the under-priced fees from the smaller estates."

COMMENTS IN SUPPORT OF REASONABLE ATTORNEY'S FEES
BY PRIVATE AGREEMENT BETWEEN THE PERSONAL REPRESENTATIVE AND THE ATTORNEY

"Private agreement between client and attorney, no court involvement. Why should a probate matter be different from a fee for a trust?"

Reasonable attorney's fees based on time and services rendered, result achieved and reasonable hourly time rate for time and services performed. There should be no 'guesswork' or dictatorial percentage fee, which often is either unfair to the attorney or to the heirs of the estate. This fee should be not arbitrarily dictated by statute. There should be no statutory fees . . ."

"Reasonable fees a matter of agreement between personal representative and attorney but payment conditioned upon automatic court approval as to reasonableness unless all residual beneficiaries waive right of court review."

"Alternative 2 [private agreement as to attorney's fees] plus conclusively or presumptively reasonable statutory schedule."

"Probate fees fixed by the court on a 'reasonable' basis are too uncertain and too variable. Probate fees should be solely a matter of private agreement between attorney and executor."

"Ordinary services set by private agreement. Any extraordinary to be set by court."

"Reasonable attorney's fees for all services a matter of private agreement between personal representative and attorney with no court involvement unless majority interest of interested parties objects to fees, in which case the court would review the fees for reasonableness but not fix them in a proceeding de novo."

"Alternative 2 [reasonable fees by private agreement] where the option of the personal representative to use advice of proposed action."

"In my experience most judges are reluctant to award fees to adequately compensate an attorney for his time, overhead, etc."

"Approval by court usually means review and approval by a court paralegal and only a cursory review by the judge. The amount of documentation required by a court re attorney's fees is tremendously time-consuming and tedious for the benefit."

"'Reasonable' leaves the matter at the whim of the probate judge. Some judges are 'reasonable,' others think attorneys should work for practically nothing."

"If reasonable attorney's fees are to be fixed by the court, too much could be subjective and great and unfair variances could result."

"By recent experience in re probate matters in Vermont, New York and Massachusetts has been that probate fees in California are considerably lower . . . The current system in Arizona which uses reasonable fees, from my experience, is unsatisfactory to both consumer and attorney."

"It should not be up to the judges to determine what reasonable fees are particularly after the fact. All too often we have judges who have never been in private practice and cannot understand why attorneys would bill at more than \$70.00 per hour. There is a valid safeguard in the area of extraordinary fees, but this would cause some real problems in the area of 'statutory' or usual fees."

"Reasonable fees as allowed by the courts has been in an amount about ten years behind the times."

"If 'reasonable' is to be the standard, then the hourly rate schedule should be adopted to fix the standard rather than the subjective test and conclusions of individual judges."

"Reasonable attorney's fees fixed by the court with guidelines to provide some uniformity from court to court (county) and among judges."

COMMENTS RELATING TO REASONABLE FEES
DETERMINED BY THE COURT

"What would be the basis for reasonable? Probably the 'old' statutory rate. Also some judges may not be in touch with today's costs and overhead. The court often does not understand the expenses of a law practice and the time involved. The time spent justifying fees is an added expense to the client which is unnecessary."

"For the most part where a California county has only one Superior Court judge, he is spread so thin he has no fundamental understanding of the probate lawyer's problems and the worth. The result is an unhappy probate lawyer and an irked judge."

"In 25 years' practice I have seen judges who were unreasonable or unrealistic on extraordinary fees. I would not trust them in determining 'reasonable' fee."

"In my experience estates with no statutory fee plans charges are higher. I have practiced in Virginia."

"'Reasonable fees' in other states are generally higher than California statutory fees. Much distortion of time and expertise available when requesting fees on time basis."

"My concern with moving away from a fee fixed by statute or by agreement of the parties is the inconsistency of the court in awarding reasonable fees. I would be very reluctant as a practicing attorney to take on a matter on which my fee would ultimately be set by a judge who may have very little if any experience in sophisticated aspects of estate/trust administration or an understanding of the economics of the legal practice."

"At the time of death or serious disability of a member of the family, the survivor, or the representative of the family, is in no condition to negotiate fees. Further as we all know, there is almost no way of knowing the exact amount of fees which would be 'reasonable' in a given case."

"My biggest concern about letting the court fix the fees is that, here in . . . county, at least, the court tends to be unrealistically low in the hourly rate it allows. It seems to be out of touch with what the "going rate" is for attorney's fees (or perhaps the court chooses to ignore the going rate)."

"If reasonable attorneys' fees are to be fixed by the court, too much could be subjective, and great and unfair variances could result."

"A 'reasonable fee' basis would result in much higher fees on small estates, and possibly lower fees on very large estates. This would be another example of 'helping the rich' and 'clobbering the poor.'"

EXCERPTS FROM LETTERS SETTING
FORTH THE WRITER'S VIEWS

Attorney from Walnut Creek:

I think the present statutory fee schedule is the best system available under the circumstances. It equalizes rates among all attorneys throughout the state. It costs more money to practice in an urban area so fees would tend to be higher there and less in a rural area. I think there may be a tendency to "shop" fees in outlying areas. That might not be bad for the consumer if everything else is equal but the level of expertise is usually not as great and the support staff which can be so helpful to a probate attorney would not be available. Also newer and younger practitioners may quote low hourly fees but spend much more time learning how to handle a probate that an expert would not have to spend.

Attorney for Palo Alto:

The present system of statutory fees makes the relationship between the attorney and the personal representative a much clearer and non-controversial relationship. The fees are automatically determined, there is no necessity for "negotiation" which may leave a bad taste in the mouth of one or the other side of the negotiation, but also eliminates the ridiculous necessity of keeping minute time records which themselves constitute a time that must be charged for somewhere with respect to the work done.

I have handled probate matters in Nevada, Texas, Connecticut, and Illinois and am involved in one in Florida at the moment. All of the parties involved have expressed keen appreciation for the fact that California has a statutory fee arrangement and there is no hocus pocus time padding or any other thing which creates friction between the attorney and the client.

The proceeding in Connecticut which I have concluded recently involved attorney's fees to the Connecticut attorney which were probably twice the amount that would have been charged here for a similar situation on a statutory basis.

Attorney from Arcadia:

I believe that the present system should be retained without change.

In my experience I probated an Estate of a lady who died in Los Angeles County but who also had real property in Oregon. The bulk of the work of probating the estate fell upon me, as well as the work of preparing the Federal 706 and all of the accounting. The attorneys in Oregon had a minimal amount of work to do but charged their "reasonable fee" which exceeded by almost twice the statutory fee here in California. My experience also with attorneys in the mid-west who have a "reasonable fee" has been the same.

From the attorneys point of view the time and effort in probating small estates sometimes exceeds that required for larger estates, and while a statutory fee schedule may short-change the attorney in one case, he may make up for it in another.

At least with a statutory schedule the estate planner can give his clients some reasonable expectation of what the charges to probate their estate will be, whereas, if a reasonable fee is adopted, even under the supervision of a probate court, we will begin to hear a chorus of cries from people indirectly related to the probate of an estate that the attorneys "took it all".

While the present system may have imperfections, I believe that it far outweighs the alternative suggested.

Attorney from Anaheim:

I would like to make a strong appeal to leave the system as it is. The questionnaire ignores the position of the client in this whole procedure. At the time of death or serious disability of a member of the family, the survivor, or representative of the family, is in no condition to negotiate fees. Further, as we all know, there is almost no way of knowing the exact amount of fees which would be "reasonable" in a given case. We do very well on some cases, and not so well on others. However, I feel that the fee structure balances out, and the ability of assuring the client that the fees are fixed by law is an important protection to the client.

Probate is not an area in which the client has a choice. If an estate requires Court supervision, it must have court supervision. If a person becomes incompetent, very frequently we must have a conservator. Quite frankly, I would extend a Court imposed fee schedule even in the conservatorship situation. For many years Orange County had an "unspoken" rule that the fees in a conservatorship would be, for the first year, one-half of the statutory probate fee. It worked very well. Now, we have all fees subject to Court approval and the fees charged for the same service vary enormously. I would hate to see that problem and inequity moved to the estate arena. In fact, I favor going back to the old "unspoken" rule relating to conservatorships, and would favor having the fee for the first year, at least, fixed by statute.

Attorney from Santa Barbara:

I am returning your questionnaire as requested with the following thoughts.

I encourage the retention of the existing attorney/representative compensation system. From my point of view and experience, the balance between the potential for excessive compensation from large estates and client certainty favors the existing system.

I have not seen any serious contest of the statutory compensation allowable to an attorney or representative under existing law. Court scrutiny of fee requests seems to focus on the extraordinary fees requested by the attorney, which most often occur as a result of the attorney's failure to present adequate foundation for his or her request in the first place. It seems to me that, should the law be changed as suggested, the result would be an unacceptable increase in fee disagreements.

We are aware that beneath the probate process runs a current of strong emotions which catches the decedent's survivors and beneficiaries in its grasp. Among other things, it is a time for these persons to "get what's coming to them" or to "get what they can."

By allowing the representative to set the attorney's fees by agreement, you create another target for these emotional responses to death and estate administration. I often hear that "the attorneys got too much." Where there is disagreement, the court will be asked to intervene.

Attorney from Sacramento:

Enclosed is the questionnaire regarding probate attorney's fees which I recently received. My practice is limited to probate and estate planning matters, and I have been a member of the Bar since February 1953.

I sincerely urge the Commission to remember that the personal relationship between the executor and the beneficiaries with the attorney is of paramount concern. The present system of statutory fees allows the personal representative, as well as the beneficiaries of the Will, to feel free to discuss all matters pertaining to the estate with the "lawyer for the estate". My own experience is that this is a desirable goal.

A new system may place the attorney in an extremely defensive position of having to justify any fee request that he makes by scrupulous time record keeping. However, all of the parties interested in the estate will not know what the attorney has been doing during the course of administration. I am sure many beneficiaries would prefer that no attorney's fees be charged at all. Most beneficiaries will be discouraged from contacting the lawyer if they know that he is going to charge for every conference, telephone call, preparation of documents and research. Any recommendations requiring document preparation will be viewed with suspicion by executors and beneficiaries.

Often there are no requests for extraordinary fees even though they would be appropriate because attorneys recognize that they have been paid an statutory fee that is fair and reasonable.

No two estates are alike. On a single asset estate with one beneficiary who is also the executor, the statutory fees may be too high. In an estate of exactly the same amount with several different assets, substantial debts, numerous beneficiaries, children of a predeceased spouse, and other complicating factors, the result is an

attorney dearly earning the statutory fee. There is a marked difference in the attorney's burden depending upon the identity and experience of the executor. With a corporate executor, statutory fees may be too high; with an 80 year old widow as executor, I know they are insufficient.

I do not wish to sound as a garrulous old mossback, but the greater bulk of my estate work is on estates of the value of \$100,000 to \$300,000. The occasional estate of a larger amount usually carries with it substantial complexities and numerous special bequests, charitable bequests, and all of the problems with which you are well acquainted. The typical estate that I work on involves the estate of the last surviving parent or of an elderly widow or widower, without children, leaving their property to numerous collateral relatives.

Attorney from Chico:

Because of what we perceive to be the seriousness of your proposal as to attorneys fees, we would like to respond by letter to you, and to as many of the advisors and executive committee members as we could obtain addresses for, since we only received your letter on December 1st. We very emphatically feel that the existing law as to statutory and extraordinary fees for attorneys should be retained. Estate planning and estate administration consists of at least three-fourths of our law practices. We are both also certified public accountants who have worked with regional and national accounting firms in the San Francisco bay area, therefore, we have experienced the estate administration process both as lawyers and as accountants. It has been our experience that probating an estate is one of the few areas that virtually all practicing attorneys handle because many are satisfied to do the most minimal job possible by letting their secretarial staff handle the majority of the paperwork without giving thought to important matters such as estate and income taxation and proper timing and distribution of assets.

We have seen, both as attorneys and as accountants, numerous examples of attorneys charging what we consider to be atrocious fees when there are no statutory guidelines and particularly when there is no court supervision. Waiting for an interested party to the estate to object to the attorney fees as noted in alternatives 2. and 4. of Part 1. of your questionnaire simply won't work as there is little protection to the client for excessive charging of fees by the attorney.

While the present system provides no guarantee of the competence of the attorney within the estate administration area, it at least gives the client a very accurate estimation of the attorneys fees to be charged. Except for larger counties which have separate probate courts, quite often the presiding judge pays little attention to the estate administration except where there are objections filed, which are quite rare.

Most estates under \$100,000.00 are usually handled by an Affidavit procedure, a joint tenancy termination or a spousal set-aside. The majority of the probates handled by our office, which amount to more than 50 in process as of this date, fall within the area of \$100,000.00 to \$1,000,000.00. A 2% statutory attorney fee, discounted by the fact that it is deductible either for estate taxes or income taxes, is a very fair amount both to the attorney and to the eventual beneficiaries of the estate.

As attorneys who are heavily involved in the estate planning area, we encourage you to maintain the current system because of its basic certainty as to amount and, more importantly, for the protection of the client.

Attorney from Tujunga:

As a member of the State Bar Section on Estate Planning, Trust and Probate Law I am taking this opportunity to return the questionnaire recently forwarded to me regarding possible changes in the statutory rules relating to attorneys fees in probate estates.

Approximately 60% to 70% of my practice is in the probate field. The community I practice in (Sunland/Tujunga) is a low to middle class economic area of the City of Los Angeles. I have been in practice approximately 10 years.

I have handled probate estates ranging from as low as \$30,000.00 (where the Affidavit procedure just could not be utilized) on up to \$1,000,000.00. My average estate size is approximately \$150,000.00 and average fee including extraordinary fees is approximately \$3,500.00 to \$4,500.00 per estate. I rarely handle probate estates in excess of \$300,000.00 if only because people with estates of that size generally opt for a living trust.

While it is hard to argue with anything called the "reasonable fee" I must do so here. I do not, however, argue against it for economic reasons. Actually, on a \$300,000.00 estate, I could probably come out with the same fee handling it pursuant to a "reasonable fee" approach with an hourly rate.

My concern is with client relations. Most of my clients are average working people and have no concept of a \$100.00 per hour charge even though my rate is low. They likewise have no concept of the overhead factor in a law firm as well.

As a rule, my clients simply want to know what the ultimate cost to them will be. As someone who has experienced the fields of family law and general litigation (before taking over my present probate practice), I can assure you that the public is very leary

about open ended attorneys fee arrangements where the fee is simply set by an hourly rate and "however many hours it takes to get the job done". The statutory fee presently in place avoids this problem and in the smaller estates roughly approximates the amount of time that is necessary to be spent.

I personally would rather take the losses that sometimes occur on the small estates with a percentage fee than to face a grieving family member and be telling he or she about hourly rates and how much it "might" cost.

Attorney from Santa Barbara:

I am enclosing my completed Questionnaire pertaining to probate fees. I would strongly urge the Commission to retain the current system of statutory fees for a number of reasons

First, it provides an objective standard in all cases, and precludes attorneys from negotiating fees with beneficiaries of a decedent during a period of traumatic times.

Second, assuming attorneys will have to reduce such fee agreements to writing and advise the client of their hourly rate, it would seem that this would cause fear and trepidation, particularly among elderly clients who are unaccustomed to \$150.00 per hour charges. I can envision clients being fearful of contacting and communicating with attorneys for fear of incurring more charges.

Third, without an objective standard there will be endless disputes concerning what is reasonable.

Fourth, under the reasonable fee standard the number of hours and the hourly rate will be the touchstone determining the amount of the fee. This, unfortunately, will reward the inefficient practitioner who takes more time to do a specific task than the practitioner who is organized and knowledgeable, and who can accomplish the same thing in less time. It will also lead to divergent results on a case by case basis.

Fifth, by having a reasonable fee basis law firms will substantially increase their hourly rates, including all charges from accounting to paralegals, from xeroxing to Lexis. With an objective standard such as the statutory fee schedule, the temptation to do creative pricing of services would be eliminated.

After 15 years of practice in the field of probate, I have found that the present system works extremely well and is most protective of beneficiaries, particularly in smaller to medium sized estates.

Attorney from Alameda:

I am writing to let the Estate Planning Trust and Probate Law Section and the Law Revision Commission know my reasons for opposing Alternative 3, reasonable attorney's fees fixed by the court for all services, as the method of determining attorney's fees in a probate estate.

In my experience, this method, which is now used in determining attorney's fees for conservatorship estates and court-supervised trusts, results in significant variations in the fees granted, depending upon the County and the judge or commissioner in the probate department on the day of the hearing.

Compare, for example, San Mateo County Probate Rule 485(b), San Francisco County Probate Rule 13.02, Contra Costa County Probate Rules 830, 831 and 902, and Alameda County Probate Rules 1409 and 1605. I do not believe that any public purpose is served by letting the local court, rather than the state legislature, fix these guidelines.

Greater variations result from the widely varying interpretations of what are "reasonable" attorney's fees made by different judges and commissioners. For example, in Alameda County, in the past six months, I appeared in the matter of a conservatorship estate to protest the allowance of attorneys' fees which for three consecutive years were three times the amount allowed by the Court Rule, and were without any fee declaration. In the same courtroom, also during the last six months, but before a different commissioner, I had a reasonable fee request in a conservatorship estate, which was substantiated by a detailed declaration, reduced without adequate justification by the court.

Due to this kind of uncertainty, this firm is no longer representing any new conservatorship clients, unless the estates are substantial enough to assure that, based on the applicable court guideline, and without relying on a fee declaration, our fees will not be less than our hourly rates.

If California law is changed to give the court discretion to decide what is a "reasonable" fee in all probates, I believe we can expect the same variations and uncertainties we now have for conservatorships. The result will be the same unwillingness to represent clients with smaller estates.

TABLE 3 -- TRENDS IN INHERITANCE TAX ESTIMATES
 Taxable Estates For Which Inheritance Tax Reports Approved, Fiscal Years 1964-65 Through 1974-75

Fiscal Year	Number of taxable estates (1)	Gross estate value (2)		Clear market value (3)		State taxable estate (taxable value) (4)		State taxable estate (taxable value) (5)		Inheritance tax assessed (6)		
		Total (x \$1000)	Average	Total (x \$1000)	Percent of gross estate	Total (x \$1000)	Percent of gross estate	Total (x \$1000)	Percent of gross estate	Total (x \$1000)	Percent of gross estate	
1964-65	26,763	\$2,876,252	\$107,500	\$2,521,140	87.7	\$94,200	\$1,880,833	65.4	\$70,500	\$103,467	3.6	\$3,866
1965-66	29,021	3,259,900	112,300	2,905,840	89.1	100,100	2,140,712	65.7	73,800	122,012	3.7	4,204
1966-67	30,317	3,358,478	110,800	2,969,086	88.4	97,900	2,189,533	65.2	72,200	120,612	3.6	3,978
1967-68	27,018	3,034,664	112,300	2,665,505	87.8	98,700	1,944,455	64.1	72,000	107,497	3.5	3,979
1968-69	32,244	3,735,248	115,800	3,281,905	87.9	101,800	2,393,772	64.1	74,200	146,375	3.9	4,540
1969-70	33,629	4,343,932	129,200	3,793,131	87.3	112,800	2,717,879	62.6	80,800	179,716	4.1	5,344
1970-71	34,095	4,100,220	120,300	3,583,630	87.4	105,100	2,584,771	63.0	75,800	160,728	3.9	4,714
1971-72	"	"	"	"	"	"	"	"	"	"	"	"
1972-73	"	"	"	"	"	"	"	"	"	"	"	"
1973-74	40,048	5,411,254	135,100	4,704,162	86.9	117,500	3,404,946	62.9	85,000	224,112	4.1	5,596
1974-75	40,956	5,550,807	135,000	4,788,236	86.6	116,900	3,448,741	62.4	84,200	217,980	3.9	5,322

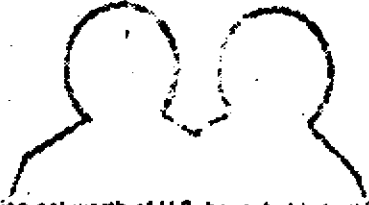
2/ Data not available for fiscal years 1971-72 and 1972-73.

TABLE 17B-- ESTATE VALUES, INHERITANCE TAX ASSESSED BY GROSS ESTATE SIZE
 TAXABLE ESTATES FOR WHICH INHERITANCE TAX REPORTS APPROVED, FISCAL YEAR 1974-75

GROSS ESTATE SIZE	TOTAL, ALL ESTATES		GROSS ESTATE VALUE		CLEAR MARKET VALUE		STATE TAXABLE ESTATE (TAXABLE VALUE)		INHERITANCE TAX ASSESSED		TAX AS % OF GROSS ESTATE
	NUMBER	PERCENT	VALUE	PERCENT	VALUE	PERCENT	VALUE	PERCENT	VALUE	PERCENT	
TOTAL, ALL ESTATES	40,956	100.00	\$5,530,806,900	100.00	\$4,788,236,400	100.00	\$3,448,740,700	100.00	\$217,979,772	100.00	3.94
LESS THAN \$5,000	719	1.77	2,098,200	.05	1,612,200	.01	1,592,900	.05	91,891	.06	4.36
\$ 5,000 - 9,999	1,508	3.68	11,570,200	.21	9,343,200	.20	9,236,000	.27	380,735	.17	3.29
10,000 - 24,999	7,382	18.02	130,536,900	2.36	106,542,600	2.23	104,312,000	3.02	3,401,059	1.56	2.61
25,000 - 49,999	9,799	23.93	354,794,800	6.41	288,701,400	6.03	272,773,100	7.91	9,522,410	4.37	2.68
50,000 - 59,999	2,801	6.84	153,385,000	2.77	126,855,600	2.65	115,624,400	3.35	4,428,406	2.03	2.89
60,000 - 99,999	6,700	16.36	519,083,600	9.39	431,005,300	9.00	373,287,100	10.82	16,143,144	7.41	3.11
100,000 - 199,999	6,128	14.96	858,035,900	15.51	734,629,800	15.34	573,388,200	16.63	28,528,469	13.09	3.32
200,000 - 299,999	2,403	5.87	585,651,800	10.59	518,425,800	10.83	323,873,100	9.39	18,293,304	8.35	3.11
300,000 - 399,999	1,193	2.91	410,878,300	7.43	360,967,400	7.54	217,512,500	6.31	13,240,111	6.07	3.22
400,000 - 499,999	644	1.57	286,765,300	5.18	254,998,900	5.33	150,800,100	4.37	10,224,873	4.69	3.57
500,000 - 599,999	395	.96	215,473,300	3.90	191,129,500	3.99	113,247,200	3.28	8,598,507	3.94	3.99
600,000 - 699,999	271	.66	176,256,600	3.19	156,745,000	3.27	95,700,700	2.77	6,914,506	3.17	3.92
700,000 - 799,999	181	.44	135,572,000	2.45	119,869,400	2.50	70,865,600	2.05	5,741,641	2.63	4.24
800,000 - 899,999	160	.39	135,184,200	2.44	120,800,400	2.52	82,427,500	2.39	6,299,976	2.89	4.66
900,000 - 999,999	86	.21	81,500,500	1.47	71,709,900	1.50	44,155,400	1.28	3,447,819	1.58	4.23
1,000,000-1,999,999	382	.93	516,108,700	9.33	457,874,400	9.56	302,294,100	8.77	26,075,262	11.96	5.05
2,000,000-2,999,999	92	.22	225,475,100	4.08	199,947,700	4.18	141,310,100	4.10	13,560,766	6.22	6.01
3,000,000-3,999,999	44	.11	152,636,900	2.76	131,981,400	2.76	102,686,200	2.98	11,092,126	5.09	7.27
4,000,000-5,999,999	37	.09	178,785,200	3.23	154,657,400	3.23	104,636,300	3.03	9,953,279	4.57	5.57
6,000,000-7,999,999	15	.04	102,797,500	1.86	86,906,600	1.82	68,172,600	1.98	7,715,010	3.54	7.51
8,000,000-9,999,999	7	.02	62,457,500	1.13	51,042,800	1.07	36,875,200	1.07	2,557,019	1.17	4.09
10,000,000 AND OVER	9	.02	235,759,400	4.26	212,489,700	4.44	144,050,400	4.16	11,858,659	5.44	5.03

FAST FACTS

AMERICANS' NET WORTH



Median net worth of U.S. households in thousands

Households with occupants aged 55-64	\$73.6
Households with college-educated occupants	\$60.4
Married-couple households	\$80.1
All households	\$32.6
Households with high school-educated occupants	\$31.8
Female households	\$13.8
Male households	\$ 9.8
Under age 35	\$ 5.7

SOURCE: U.S. Census Bureau

Attorney's Fees on an Estate of
 \$100,000 as Published in December
 1966 Issue of Trusts and Estates
 at Page 1137

A listing of attorney's fees based on a gross estate of \$100,000 of personal property is shown below:

New Mexico	5150
New Jersey	*5000
Alabama	5000
District of Columbia	5000
Kansas	5000
Alaska	4760
Louisiana	4500
Indiana	4325
Colorado	4300
Vermont	4300
New York	4250
Arizona	*4120
Oklahoma	4100
Illinois	4000
Utah	*3800
Pennsylvania	3775
Virginia	3750
Michigan	3663
Massachusetts	3600
Minnesota	3500
Oregon	3480
Montana	3400
No. Carolina	3350
Rhode Island	3350
Arkansas (Median State)	3300
Missouri (Median State)	3300
No. Dakota	3250
So. Dakota	3175
Idaho	3170
Tennessee	3165
Washington	3075
Wisconsin	3050
Kentucky	3030
Mississippi	3025
Maine	3000
Texas	3000
West Virginia	3000
Connecticut	2950
Ohio	2800
Nebraska	2675
California	*2630
Maryland	2600
Florida	*2595
New Hampshire	2500
Wyoming	2350
Hawaii	2310
Nevada	*2120
Iowa	2120
Delaware	2000
South Carolina	1900
Georgia	1800

*attorney fees originally computed incorrectly

Using the data from the December 1966 survey published in Trusts and Estates and assuming that all other states have not changed their fee structure, the current California fees on an estate of \$100,000 have been inserted into the listing to reflect California's current rank among states:

New Mexico	5150
New Jersey	5000
Alabama	5000
District of Columbia	5000
Kansas	5000
Alaska	4760
Louisiana	4500
Indiana	4325
Colorado	4300
Vermont	4300
New York	4250
Arizona	4120
Oklahoma	4100
Illinois	4000
Utah	3800
Pennsylvania	3775
Virginia	3750
Michigan	3663
Massachusetts	3600
Minnesota	3500
Oregon	3480
Montana	3400
North Carolina	3350
Rhode Island	3350
Arkansas (Median State)	3300
Missouri (Median State)	3300
North Dakota	3250
South Dakota	3175
Idaho	3170
Tennessee	3165
California	3150
Washington	3075
Wisconsin	3050
Kentucky	3030
Mississippi	3025
Maine	3000
Texas	3000
West Virginia	3000
Connecticut	2950
Ohio	2800
Nebraska	2675
Maryland	2600
Florida	2595
New Hampshire	2500
Wyoming	2350
Hawaii	2310
Nevada	2120

Iowa	2120
Delaware	2000
South Carolina	1900
Georgia	1800