

Fourth Supplement to Memorandum 89-3

Subject: Study L-1036/1055 - Compensation of Estate Attorney and
Personal Representative

Exhibit 1 (reverse side of this page) is a late arriving letter from Robert K. Maize, Jr., Santa Rosa lawyer, who recommends that the Commission eliminate the statutory percentage, provide that the fee agreement be in writing, and have the attorneys fees actually paid subject to court approval and order, with perhaps a provision for approving the attorney's fee agreement upon the initiation of the probate action. He agrees that there should be a disclosure that the fee is negotiable and that a written fee contract should be required.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Compensation of Estate Attorney

Ladies/Gentlemen:

I have had a chance to review the tentative recommendations regarding compensation of the estate attorney. I agree that a disclosure should be made through the representatives that the fee is negotiable and that a written fee agreement would be advantageous to the attorney and the client.

However, I find some basic tension in the discussion of the proposals. The statutory percentage for fees is justified as not being excessive by comparison to the fees in other comparable estates, and there is little discussion of the value of the services rendered or the skill and experience of the attorney handling the estate; then the discussion justifies a reduction of requests for fee for extraordinary services by determination that "the percentage fee for ordinary services is adequate compensation for all legal services provided" as if the fee for ordinary services was excessive.

I do not have any recommendations as to how to resolve this tension except to perhaps eliminate the statutory percentage, provide that the fee agreement be in writing and have the attorneys fees actually paid subject to court approval and order, with perhaps a provision for approving the attorney's fee agreement upon the initiation of the probate action.

Very truly yours,

ROBERT K. MAIZE, JR.,
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By:


ROBERT K. MAIZE, JR.

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