

Second Supplement to Memorandum 83-16

Subject: Study L-800 - Probate Administration (General Approach to be Taken in Preparing New Division 3 of California Probate Code--statistics)

The staff pointed out in Memorandum 83-16 that we have no statistics comparing probate time and costs in California with probate time and costs in Uniform Probate Code jurisdictions, to help the Commission reach a decision whether the Uniform Probate Code should be enacted in California. However, we have found that there is a relevant study underway, and there is some fairly recent data for other jurisdictions the Commission may find of interest.

The study underway is a Probate Administration Study supported by the American Bar Endowment and the Ford Foundation and a part of the program of the American Bar Foundation. The study is being conducted by Dean Robert A. Stein of the University of Minnesota Law School. So far the study has collected and published detailed data for Minnesota, a non-Uniform Probate Code state. See, e.g., Stein, Probate Administration Study: Some Emerging Conclusions, 9 Real Prop., Prob. & Tr. J. 596 (1974). The study also has collected detailed data for California, Florida, Maryland, Massachusetts, and Texas, and will shortly start publishing the data. We have requested whatever data they feel free to release to us now in manuscript form, and will provide it to the Commission whenever it becomes available. The information most likely to be immediately available relates to the role of the attorney in the probate process (including fees) and possibly the demography of probate estates (numbers, sizes, locations, assets).

The information relating to attorney fees in probate is of particular interest not only because of public concern about this expense but also because the detailed data from Minnesota show that for that state in 1969 attorney fees were the single largest item of probate administration expense, averaging \$2,029, or three percent of the probate estate and two percent of gross estate (the average personal representative fee was \$1,836). All administrative expenses averaged six percent of the probate estate and four percent of the gross estate. The total cost of attorney fees and administrative expenses was less for smaller estates and more for larger estates, although they constituted a larger proportion

of the smaller estates and a smaller proportion of the larger estates. Well over one-third of attorney time in handling administration was spent satisfying probate court procedures. Interviews with probate attorneys, however, revealed that complaints received from beneficiaries and personal representatives were not so much that probate cost too much as that it took too long. The average probate proceedings took somewhat less than a year and a half, although larger estates took substantially longer to close.

It should be noted, however, that all these figures relate only to the 31 percent of decedents' estates that required probate--a figure similar to that shown by prior probate studies. The staff also cautions that we have only selected a few general figures for mention and that the figures vary with the character of the county of residence of the decedent, the size of the estate, the nature of the personal representative, the size of the law firm, and other variables. The staff is particularly concerned that most of the available figures are averages, which are easily affected by a few abnormal estates, rather than medians, which may be more representative of the "typical" estate. We will pass on whatever detailed comparative statistics for California and other jurisdictions on these and other matters we can get, when available.

All this having been said, the Commission nonetheless should be aware of two other recent empirical studies of probate administration. The more interesting of the two is Kinsey, A Contrast of Trends in Administrative Costs in Decedents' Estates in a Uniform Probate Code State (Idaho) and a Non-Uniform Probate Code State (North Dakota), 50 N.D.L. Rev. 523 (1974). This study reveals that in North Dakota in 1971 the average attorney's fee in a probate estate was \$1,164 and the average personal representative fee was \$1,093. These figures were virtually unchanged in 1972, being \$1,130 for attorneys' fees and \$1,097 personal representative fees. By contrast, 1971 attorney and personal representative fees in Idaho were somewhat higher. The average attorney fee was \$1,441 (3.5 percent of gross estate) and the average personal representative fee was \$1,850; median attorney fees were \$750 (3.15 percent of gross estate) and median personal representative fees were \$860. Idaho adopted the Uniform Probate Code in 1972 and Kinsey found that in 1973 the average attorney fee had declined to \$1,130 (1.8 percent of gross estate) and the average personal representative fee to \$1,616; median

attorney fees were down to \$500 (2.3 percent of gross estate) and median personal representative fees to \$800. During this same period of time the average probate estate had increased from \$39,748 to \$62,723 and the median estate from \$27,708 to \$28,788.

Despite the fact that attorney and personal representative fees in North Dakota, a non-Uniform Probate Code jurisdiction, were the same as or lower than the fees in Idaho under the Uniform Probate Code, North Dakota in 1973 enacted the Uniform Probate Code. We do not have follow-up data for North Dakota's experience under the Code, but we do have follow-up information for Idaho after four years under the Code. See Crapo, The Uniform Probate Code--Does It Really Work?, 1976 B.Y.U.L. Rev. 394 (1976).

Crapo surveyed probate attorneys in Idaho to ascertain their experience under the Code. Of those responding to the survey, about 60 percent felt that the Code reduced their time required to administer a probate estate (40 percent did not) and 68 percent felt the alternative administrative modes available under the Code were beneficial to their clients (32 percent did not). Before enactment of the Code a percentage fee schedule for attorneys was used in Idaho (substantially more liberal than California's fee schedule); after enactment of the Code, 23 percent of responding attorneys billed on a strict hourly basis, 59 percent on a combination of hourly basis and size and complexity of estate, 14 percent on a percentage basis, and four percent on some other basis (e.g., flat fee). Reduced attorney fees were reported by 57.6 percent of the respondents (42.4 percent saw no reduction); of those whose fees were reduced, the average reduction was 30 percent, consistent with the numbers reported by Kinsey. Fees of major institutional personal representatives also are reported to have declined somewhat. When asked, however, whether adoption of the Uniform Probate Code improved the public image of probate attorneys or the public attitude toward probate procedure, 58 percent of the responding attorneys felt it did not (42 percent felt it did).

Again, the staff cautions that we offer these numbers for the general information of the Commission. They may be totally irrelevant to California expenses and costs and to the options available for probate procedure and for nonprobate transfers under California law.

Respectfully submitted,

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