

First Supplement to Memorandum 87-74

Subject: Study L-1011 - Opening Estate Administration (Fee for
Depositing Will With Court Clerk)

Section 8200 (page 15) of the Draft of the Recommendation attached to Memorandum 87-74 deals with the filing of the decedent's will. The section requires the person having custody of the will to "deposit" the will with the clerk of the superior court within 30 days after having knowledge of the death of the testator.

Attached as Exhibit 1 is a letter from Stephen I. Zetterberg calling to the Commission's attention the fact that the clerk of the Superior Court in the East District of Los Angeles County will not accept the delivery of a will without a "filing fee" of \$2.25. Mr. Zetterberg questions whether a filing fee is required and appropriate in this case.

Existing law (Section 320) uses the word "delivered"; Section 8200 uses the word "deposit." "Deposit" sounds more like "filed" than "delivered," and it may be that the Commission's intent is to require that a fee be paid for delivery of the will to the clerk of court.

The staff is aware that Santa Clara County does not charge of filing fee if a will is "delivered" to the clerk of court under existing law. The letter from Mr. Zetterberg identifies other counties that do not charge a fee if the will is delivered to the clerk of court. The Executive Committee of the State Bar Estate Planning, Trust and Probate Section no doubt can advise the Commission on whether not charging a fee is the general practice of court clerks outside of Los Angeles County.

The charging of a fee for complying with a statutory duty to "deliver" a will to the clerk of court does not appear to be justified. There is no benefit to the person who delivers the will. Why should that person be required to pay a fee? Is the duty to deliver the will complied with when the will is delivered? Does the return of the will for failure to pay a fee mean that the duty to deliver the will was not complied with?

The staff recommends that the word "deliver" be restored to subdivision (1)(a) of Section 8200, and that the Comment state that no fee is required to be paid if the will is delivered pursuant to this provision. Perhaps a statement that no fee is required should be added to the text of the section with a statement in the Comment that this provision continues the generally followed practice under prior law.

Mr. Zetterberg's letter also reports that the Los Angeles County Bar Association has proposed legislation to the Legislature to set up a repository for old wills where lawyers/custodians hold wills of lost (but not known dead) testators. Does the Commission wish the staff to look into such a proposal. The staff in the past has presented a procedure for deposit of wills with a state office, but the proposal was not developed because it was opposed by a private organization then engaged in the same function. We understand that organization has since gone out of business.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

ZETTERBERG & PERSIMMON

STEPHEN I. ZETTERBERG
FUNGLAN PERSIMMON

ATTORNEYS AT LAW
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TELEPHONE
(714) 621-2971

October 6, 1987

CA LAW REV. COMM'N

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RECEIVED

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

Attn: John H. DeMouly, Executive Director

Dear Members of the Law Review Commission:

I invite your attention to a problem which has arisen relative to Probate Code § 320. This section reads as follows:

"The custodian of a will, within thirty days after being informed that the maker thereof is dead, must deliver the same to the clerk of the superior court having jurisdiction of the estate, or to the executor named therein. Failure to do so makes such person responsible for all damages sustained by anyone injured thereby."

For years this law office has been depositing wills with the clerk of the superior court having jurisdiction. Recently we have delivered one such will to the clerk of the Superior Court in San Bernardino County and received appropriate receipt for such delivery. Recently we delivered wills to the clerk of the Superior Court in the East District of Los Angeles County. He refused to accept the wills without a "filing fee" of \$2.25. He cites Government Code § 26820.

I attach a copy of my letter of September 4, 1987, to the clerk, with my long-hand "p.s." on the bottom, and a copy of clerk Frank S. Zolin's reply dated September 16, 1986. Thereafter I wrote a letter to the Los Angeles Bar Association on September 23, 1987, a copy of which I enclose, and received a letter dated September 29, 1987, therefrom, a copy of which I also enclose.

You have different counties following different procedures. To my recollection, Los Angeles County formerly did not charge for receiving delivery of such wills. § 320 speaks in terms of "delivery", and the county clerk responds in terms of "filing".

California Law Revision Commission
October 6, 1987
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As noted in my hand-written p.s. to Frank Zolin, under Probate Code § 320 there is no option; the law requires that wills be delivered to the county clerk. To charge a filing fee would defeat the obvious purpose of the law, and discourage delivery of wills for safekeeping. Perhaps the phrase "no charge" shall be made by the clerk of the superior court for filing or indexing wills so delivered.

Marshal Oldman, Chair of the Los Angeles Bar Probate and Trust Section, gave me some background of current budgetar issues in Los Angeles and referred me to Christensen v. Superior Court, 193 Cal.App.3d 139 (4th Dist., Div. 3, June 30, 1987). He also reported that the Los Angeles Bar Association had proposed legislation to the legislature to set up a repository for old wills where lawyers/custodians hold wills of lost (but not known dead) testators.

Very truly yours,

ZETTERBERG & PERSIMMON


Stephen I. Zetterberg

SIZ:ba
Enclosures

cc: Ann E. Stodden, Chair and Probate Commissioner
Los Angeles County

Marshal A. Oldman, Chair
Probate and Trust Law Section
Los Angeles County Bar Association.

file

ZETTERBERG & PERSIMMON

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September 4, 1987

Clerk
Superior Court of Los Angeles County
State of California
400 Civic Center Plaza
Pomona, CA 91766

Dear Sir:

We have twice recently sent original wills, but not to be offered for probate, to your office pursuant to the requirements of Probate Code 320. These documents have been returned to us for a "filing fee" of \$2.25 each.

The requirement of a filing fee for complying with the Code is new to us, and such a requirement seems at odds with the plain requirements of Probate Code 320.

Kindly advise us on what basis and with what authority a filing fee is now being required.

Very truly yours,

ZETTERBERG & PERSIMMON

Stephen I. Zetterberg
Stephen I. Zetterberg

SIZ:ba

→ Dear Frank Zolin - I question the power to charge for a duty imposed on custodian (or finder?) of a will to file same per Pr. C. 320. There is no option - the law requires that it be filed, and to charge a filing fee therefore would defeat the obvious purpose of the law. S.B. County (among others) does not charge, nor has T.O. County previously. Please set this right. Thank you to Steve Zetterberg

LOS ANGELES COUNTY CLERK
AND
EXECUTIVE OFFICER OF THE SUPERIOR COURT

SEP 18

FRANK S. ZOLIN
COUNTY CLERK/EXECUTIVE OFFICER

111 NORTH HILL STREET
MAILING ADDRESS, P.O. BOX 151
LOS ANGELES, CALIFORNIA 90053

(213) 974-5401

RAUL A. ACOSTA
ASSISTANT COUNTY CLERK

ERIC D. WEBBER
ASSISTANT EXECUTIVE OFFICER

September 16, 1987

Zetterberg & Persimmon
Attorneys at Law
319 Harvard Ave.
Claremont, CA 91711

Dear Mr. Zetterberg:

Thank you for your letter of September 4, 1987 regarding the fee collected for filing a will for safekeeping.

I appreciate your concern about paying a fee for a required act. The County Clerk, however, is also required to provide certain services and to collect fees for them (see Government Code Section 26820).

The specific authority for the fee collected upon the presentation of a will for safekeeping is Government Code Section 26850. This code sets the fee "for filing and indexing all papers for which a charge is not elsewhere provided,...". The fee of \$2.25 set by this code section provides only a partial offset of the costs incurred in filing, indexing and storing safekeeping wills.

If you should have further questions or comments on this issue, please contact George Cosand, Chief of the Civil Processing Division. He may be reached at (213) 974-5231.

Very truly yours,



Frank S. Zolin
County Clerk/Executive Officer

FSZ:RAA:GC:pb

STEPHEN I. ZETTERBERG
FUNGLAN PERSIMMON

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CLAREMONT, CALIFORNIA 91711

TELEPHONE
(714) 821-2971

September 23, 1987

Los Angeles County Bar Association
617 S. Olive Street
P. O. Box 55020
Los Angeles, CA 90055

Gentlemen:

For years we have been delivering unused wills to the county clerk for safekeeping. Now, suddenly, the county clerk has rejected wills so delivered unless accompanied by a fee of \$2.25. The San Bernardino County Clerk makes no charge for receiving such wills.

Probate Code § 320 provides as follows:

"The custodian of a will, within thirty days after being informed that the maker thereof is dead, must deliver the same to the clerk of the superior court having jurisdiction of the estate, or to the executor named therein. . . ."

I wrote the county clerk about this. A copy of my letter is attached. The county clerk replied with his letter of September 16, 1987, a copy of which I enclose. He claims he is following Government Code § 26850.

In the first place, delivery of wills is not a "filing." It is a code requirement that the custodian "deliver" the will. In the second place, the requirements of § 320 are not discretionary.

In most cases, the wills are "delivered" because there are no assets. There are usually also insufficient funds to pay the \$2.25. The net result is that the imposition, ex cathedra, by the county clerk of this charge, will defeat the purpose of § 320.

Los Angeles County Bar Association
September 23, 1987
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Is the County Bar Association doing anything about this?
Will it?

Thanking you, I remain

Very truly yours,

ZETTERBERG & PERSIMMON


Stephen I. Zetterberg

SIZ:ba
Enclosures

c.c. to P.V. Bar Assn (Eastern Bar)

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September 29, 1987

MEMORANDUM

TO: Marshal A. Oldman, Chair,
Probate and Trust Law Section

FROM: Gracie Lee *gml*
Assistant to the Executive Director

RE: Los Angeles County Fees for Safekeeping Wills
Pursuant to Probate Code Section 320

Richard Walch requests that your Section review the enclosed letters from Stephen Zetterberg concerning the above-captioned matter. Please send your written comments to his attention at the earliest opportunity after your meeting, including your opinion as to whether the Association should take a position on this issue.

Thank you for your help.

/gml

Enclosures

cc: ~~Stephen L. Zetterberg~~
Richard Walch (w/encls.)
Joseph Kornowski (w/encls.)
Dan Niebrugge