

Memorandum 87-84

Subject: Study L-1058 - Filing Fees in Probate

Commissioner Stodden has notified the staff that there are some defects in the provisions governing filing fees as a result of the recent and current revisions of the Probate Code. This memorandum reviews the situation and suggests amendments to fill the gaps in fee coverage. The staff suggests that this material be included in a probate clean-up bill to be introduced in the 1988 legislative session and to become operative on July 1, 1988, at the same time as AB 708.

Government Code Section 26820.4 governs the first paper filing fees in civil actions and proceedings in the superior court. This general section does not govern certain petitions under the Probate Code. Government Code Section 26827(a), in relevant part, provides the same fees for petitions for letters and for will contests. Section 26827(b) states the clarifying rule that a later petition of the same type by another person is subject to the same fee. This rule does not have an analog in the general civil action and proceedings section.

As an aside, the staff suggests that is worth considering dropping the separate statement of fees in probate proceedings, since the maximum fees are the same. The attempt to list specific types of petitions, as we can see from our current situation, is likely to result in a lack of consistency or incomplete fee provisions. The amendments set out below take the conservative approach by tinkering with the existing scheme without attempting to eliminate the needless detail. But it seems to follow that if a first paper is not listed in Section 26827, the same fee applies to it under the first paper rule of Section 26820.4.

The staff proposes the following amendments to pick up recent or currently pending revisions. The proposed amendments are explained in the comments to the sections.

Government Code § 26827 (technical amendment). Fee for first papers in probate

SEC. . Section 26827 of the Government Code is amended to read:

26827. (a) The total fee for filing the first petition for letters of administration, a petition for special letters of administration, a petition for letters testamentary, a first account of a testamentary trustee of a trust that is subject to the continuing jurisdiction of the court pursuant to Chapter 4 (commencing with Section 17300) of Part 5 of Division 9 of the Probate Code, a petition for letters of guardianship, a petition for letters of conservatorship, a petition for compromise of a minor's claim, a petition pursuant to Section 13150 or 13650 of the Probate Code, or a petition to contest any will or codicil ~~shall be~~, is the sum fixed by resolution pursuant to Section 68090, which shall not exceed the following maximum amounts:

(1) In any county where a fee is collected for the court reporter fund, the total fees shall not exceed eighty-six dollars (\$86).

(2) In any county where a fee is not collected for the court reporter fund, the total fee shall not exceed sixty-one dollars (\$61).

(b) The fee set forth in subdivision (a) shall also be charged for filing any subsequent petition ~~for letters of administration, special letters of administration, letters testamentary, letters of guardianship, letters of conservatorship, or a first account of a testamentary trustee, or a petition to contest any will or codicil~~ of a type described in subdivision (a) in the same proceeding, by a person other than the original petitioner. ~~When the public administrator or an employee of the State Department of Mental Health in his or her official capacity is the petitioner, he or she shall be required to pay the fee only out of the assets of the estate coming into his or her possession.~~

Comment. Subdivision (a) of Section 26827 is revised to clarify the testamentary trust accountings that are subject to this provision. Subdivision (a) is also revised to include petitions under Probate Code Sections 13151 (order determining succession to real property) and 13650 (order determining or confirming property passing or belonging to surviving spouse).

Subdivision (b) is revised to eliminate language repeated from subdivision (a). The provision relating to fees payable by a public administrator or the Department of Mental Health, formerly in subdivision (b), is generalized in Section 26827.5.

Note. Adding the references to Sections 13151 and 13650 does not exhaust the possibilities. For example, there are no specific references to petitions under Probate Code Section 17200 (Trust Law), nor do these fee sections specifically cover Probate Code Sections 200 (proceedings to establish fact of death), 230 (proceedings to determine survival), 6602 (small estate set-aside). There may be other petitions that are not covered by Government Code Sections 26827 or 26827.4. If the general provision governing fees for first papers in civil actions covers these other proceedings, then we must question the need for most of Section 26827 as it is currently drafted. Perhaps it is a folly to attempt to list all the petitions in Section 26827.

The staff wonders whether there is any substantive reason for the failure of existing law to list a petition to compromise a minor's claim in subdivision (b), other than the likelihood that there would not be a subsequent petition by another person. The staff has simplified subdivision (b) by treating all subsequent petitions alike in this section.

Government Code § 26827.4 (technical amendment). Fee for subsequent papers in probate

SEC. . Section 26827.4 of the Government Code is amended to read:

26827.4. (a) The fee for filing of a subsequent paper in a proceeding under the Probate Code which requires a court hearing shall be is fourteen dollars (\$14), except for papers for proceedings required by any of the following:

(1) Section ~~591.2~~ 10501 of the Probate Code.

(2) Accountings of trustees of testamentary trusts that are subject to the continuing jurisdiction of the court pursuant to Chapter 4 (commencing with Section 17300) of Part 5 of Division 9 of the Probate Code.

(3) Division 4 (commencing with Section 1400) of the Probate Code.

(b) Objections to any papers exempt from the fee imposed by this section ~~shall-be~~ are subject to the filing fee of fourteen dollars (\$14). This section does not apply to petitions filed pursuant to subdivision (b) of Section 26827.

Comment. Subdivision (a)(1) of Section 26827.4 is revised to correct a cross-reference to petitions required under the Independent Administration of Estates Act.

Note. This section provides a general rule--a distinction not shared by Section 26827. Like other filing fee provisions, the application of these sections assumes that the distinction between first papers and subsequent papers is clear. This may be clear to those who deal with fees on a daily basis, but it is not clear from the statutes.

Government Code § 26827.5 (added). Payment of fees by public administrator of State Department of Mental Health

SEC. . Section 26827.5 is added to the Government Code, to read:

26827.5. Where the public administrator or an employee of the State Department of Mental Health is the petitioner in an official capacity in a proceeding described in Section 26827 or 26827.4, the fee is payable only out of the assets of the estate coming into the official's possession or control.

Comment. Section 26827.5 is a new provision that generalizes a provision formerly set out in Section 26827(b). This section applies to all filing fees described in Sections 26827 and 26827.4, whereas the former provision appeared to apply only to part of Section 26827. In addition, this section refers to assets under the control of the official.

Respectfully submitted,

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