

Memorandum 88-52

Subject: Study L-1058 - Filing Fees in Probate

BACKGROUND

Legislation enacted this year on Commission recommendation made some technical revisions in the statutes governing filing fees in probate. See AB 2779, 1988 Cal. Stat. ch. 113, §§ 8-10 (operative July 1, 1988). The Commission did not attempt a comprehensive examination of filing fees, although it was recognized that the statutes are unclear, incomplete, and subject to varying interpretations. The staff suggested considering adoption of the rule applicable to filing fees in civil actions and proceedings generally under Government Code Section 26820.4, which provides a higher fee for "first papers." Any different fees for first papers in probate would then be listed as exceptions to this general rule. The fee for "subsequent papers" follows this pattern as to probate matters in Government Code Section 26827.4.

Comprehensive revision was premature in 1987 since more important matters were before the Commission. In addition, the State Bar expressed interest in studying the question. We have received the report of the State Bar Committee; it is attached as Exhibit 1. Thus it is appropriate to reopen the question of further revision of the filing fee provisions. (The relevant sections, as amended by AB 2779, are set out in Exhibit 3.)

STATE BAR REPORT

The State Bar Committee settled on the first paper approach which would charge the higher filing fee for the first paper filed by a party in a proceeding. (See Exhibit 1.) This fee would not be applied to the following filings:

- (1) Creditor claims.
- (2) Request for special notice.

- (3) Waiver of notice.
- (4) Waiver of account.
- (5) Consent to distribution.
- (6) Declination to act as fiduciary.

The State Bar Committee also considered the following as possible exceptions to a first paper filing fee:

- (1) Disclaimer.
- (2) Receipt of distribution.
- (3) Consent to any type of procedural action.
- (4) Evidence of subscribing witness to a will.
- (5) Acceptance of trusteeship.
- (6) Statement of interest in heirship proceeding (perhaps).

The State Bar Committee recognized the problem of attempting to describe each paper excepted from the general rule and suggested searching for a generic description for exempt filings. The draft prepared by the court clerks working with the State Bar Committee is set out in Exhibit 1. It should be noted that the amendments reflected in this draft are based on the statutes as they stood before amendment by AB 2779.

DRAFTING AND POLICY ISSUES

A change in the approach in drafting the probate filing fee provisions raises several issues, which are discussed below. The draft statute takes a conservative approach that preserves most of the substance of the existing statute, while adopting the first paper approach of civil papers generally, in place of the list of specific petitions. Hence, the following discussion raises some issues and notes some possible drafting approaches that are not reflected in the draft.

Meaning of "First Paper"

The staff believes that a major problem in this area is that the term "first paper" is not clear. Thus, it is difficult to know what should be listed as an exception to the first paper fee. For instance, some of the papers the State Bar Committee would list as exceptions do not seem to be first papers at all. The defects inherent in the "first

paper" concept are magnified when we attempt to invent an informative description of "subsequent papers," since any such term assumes that we know what a "first paper" is. A particular paper should be listed as an exception only if it would otherwise be included in the first paper category.

Meaning of "Proceeding"

Under existing law, the meaning of "first paper" is further clouded when it is followed by "filed in the proceeding" or "filed by a respondent or adverse party." See, e.g., Gov't Code § 26826. The phrase "in the proceeding" raises the issue of what is a proceeding. In the probate context, is the entire set of matters that may arise with regard to the particular decedent's estate one proceeding? Or is a will contest or a petition to determine title under Probate Code Section 9860 a new proceeding?

If all matters concerning a decedent's estate are one proceeding, why aren't all matters concerning a trust estate one proceeding? (We note that certain testamentary trusts seem to enjoy the "one proceeding" status of probate estates.) Perhaps the differing treatment results from the court's retention of jurisdiction over the matter or the fact that administration of a trust may last for many years while probate administration should not. If this is the deciding factor, is a conservatorship extending over decades one proceeding? From a policy standpoint, should the taxpayers be subsidizing this arrangement?

The draft statute proceeds on the assumption that, with regard to a decedent's estate or a guardianship or conservatorship, "proceeding" is used in the broad sense to include all matters arising in the course of administration of the particular estate. On the other hand, except for certain testamentary trusts that, for certain historical or sentimental reasons, are excused from further filing fees, trust petitioners are required to pay a new fee for each matter that arises during the course of trust administration.

Fee for Creation of File or Appearance

The staff wonders whether it would be fruitful to apply the initial higher fee to any filing that requires creation of a new court

file. This type of functional approach could replace the theoretical approach that depends on "first papers" filed in a "proceeding" by a party. If the first paper in a proceeding is one that requires a new file, it follows that a subsequent paper is one that relates to an existing file. This makes sense because the first paper fee is set at approximately six times the subsequent paper fee, presumably to compensate for the additional cost of setting up a new file. (The statutory amounts are \$86 and \$14, subject to inflation and deflation adjustments under Government Code Section 26820.8.) One problem with this approach is that it relies on filing practices which may vary from county to county and from time to time. It might also result in a reduction of income from fees. We have not attempted to implement this approach.

Exceptions to Subsequent Paper Fees

Exceptions to the general rules should be reviewed on policy grounds. Why are some types of petitions that may properly be described as "first papers" excluded from any filing fee? Why are subsequent papers under the guardianship and conservatorship law exempt? Why are petitions for trustee accountings for a limited number of testamentary trusts exempt? Why are petitions under Probate Code Section 10501 exempt when the petition is made by a personal representative with independent administration authority, but not when the same petition is filed by another personal representative? (In this connection, see the letter from William W. Johnson, Probate Examiner, Sacramento County, attached as Exhibit 2.)

Staff Recommendation

The staff suggests adoption of a scheme where the higher filing fee is charged for the first petition filed by a person or the first paper filed in opposition to a petition. Use of "petition" instead of "paper" should avoid the need to exclude a host of papers that are not petitions, such as disclaimers, creditors' claims, and other items listed above.

Phrased differently, a filing that constitutes an appearance of a person would be subject to the higher fee. Once the first fee has been

paid, the party's later filings would be subject to the lower subsequent paper fee (unless the fee is excused on policy grounds). Only one fee would be charged parties who join in a filing, as provided for papers filed in response in civil actions generally. See Gov't Code § 26826.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

Staff DraftTENTATIVE RECOMMENDATION
relating to
FILING FEES IN PROBATE

The general provisions in the Government Code setting filing fees in probate proceedings are .¹ The existing provisions attempt to describe each type of filing fee. ² This *yellow punched* subject to the higher initial filing fee. ² This is necessary to amend the fee provision when probate proceedings are renumbered, or supplemented. There is also a provision that a petition may be omitted from the list.

The Commission's adoption of the "first paper" approach reflected in the provisions governing filing fees in civil actions generally.³ The general rule would be that the higher fee is charged for the first petition filed by a person in a probate proceeding or the first paper filed to appear in response or opposition to a petition. Applying the first paper filing fee to petitions or papers in opposition to a petition excludes papers such as disclaimers, creditors' claims, and similar items.

Subsequent papers are defined in the proposed legislation as papers requiring a court hearing that are filed by persons who have already paid a first paper fee. Hence, a party who has appeared in a proceeding under the Probate Code and paid the \$86 fee is charged the \$14 fee for subsequent filings in that proceeding.⁴

1. See Gov't Code §§ 26827, 26827.4. Technical revisions were made on Commission recommendation in the 1988 legislative session. See 1988 Cal. Stat. ch. 113, §§ 8-10, amending Gov't Code §§ 26827 & 26827.4 and adding Gov't Code § 26827.5. This legislation was in an urgency measure and was needed to correct section references and make other minor changes. The Commission did not attempt a comprehensive examination of these provisions at that time.

2. The first petition filing fee in superior court is \$86 as opposed to the subsequent paper fee of \$14. Gov't Code §§ 26827, 26827.4.

3. See Gov't Code §§ 26820.4, 26826(a).

4. The exceptions to the subsequent paper filing fee provided by Government Code Section 26827.4 are continued in the proposed legislation.

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to repeal and add Sections 26827 and 26827.4 to the Government Code, relating to filing fees in probate proceedings.

The people of the State of California do enact as follows:

Government Code § 26827 (repealed). Probate first paper fee

SECTION 1. Section 26827 of the Government Code is repealed.

~~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 13151 of the Probate Code, a petition pursuant to Section 13650 of the Probate Code (except as provided in Section 13652 of the Probate Code), or a petition to contest any will or codicil, 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 of a type described in subdivision (a) in the same proceeding by a person other than the original petitioner.~~

Comment. Section 26827 is superseded by new Section 26827. See the Comment to new Section 26827.

Government Code § 26827 (added). Probate first paper fee

SEC. 2. Section 26827 is added to the Government Code, to read:

26827. (a) As used in this section, "first paper" means the first petition filed by a person in a proceeding or the first paper filed by a person to make an appearance in the proceeding. "First paper" does not include a paper that does not require a hearing.

(b) The total fee for filing the first paper by each party in a proceeding under the Probate Code, whether separately or jointly, 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).

Comment. Section 26827 provides a general rule concerning first paper filing fees under the Probate Code and supersedes former Section 26827. This section is drawn from the rule governing civil actions generally in Sections 26820.4 and 26826(a). The general rule provided in this section does not change the fees that were charged for the specific petitions listed under prior law. However, the general language avoids the need to amend the statute whenever a new proceeding is enacted or a statutory reference is changed. The language relating to separate or joint filings is new and is consistent with Section 26826.

Under subdivision (a), a paper that does not constitute an appearance, such as a paper filed for record or notice, is not subject to the first paper fee, even though the paper is literally the first one filed by that person. Thus, for example, the first paper fee is not assessed against a creditor's claim, request for special notice, waiver of notice, waiver of account, consent to distribution, declination to act as fiduciary, disclaimer, and the like.

See also Sections 26827.4 (subsequent paper fee in probate), 26827.5 (payment of fees by public administrator or State Department of Mental Health).

Note. Should probate filing fees be separately stated, as in existing law and the draft, or should they be tied to the general civil fees? The maximum fees are the same under existing law. Both Government Code Sections 26820 and 26827 refer to the county supervisors' authority under Government Code Section 68090.

Government Code § 26827.4 (repealed). Probate subsequent paper fee

SEC. 3. Section 26827.4 of the Government Code is repealed.

~~26827.4. (a) The fee for filing a subsequent paper in a proceeding under the Probate Code which requires a court hearing is~~

~~fourteen dollars (\$14), except for papers for proceedings required by any of the following:~~

~~(1) Section 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 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. Former Section 26827.4 is superseded by a new Section 26827.4. See the Comment to Section 26827.4.

Government Code § 26827.4 (added). Probate subsequent paper fee

SEC. 4. Section 26827.4 is added to the Government Code, to read:

26827.4. (a) As used in this section, a "subsequent paper" is a paper that requires a [court] hearing and that is filed by a person who has paid the fee required by Section 26827.

(b) Except as otherwise provided by statute, the total fee for filing a subsequent paper in a proceeding under the Probate Code, whether separately or jointly, is fourteen dollars (\$14).

(c) Papers required by the following provisions are not subject to the subsequent paper filing fee:

(1) Section 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.

(d) Notwithstanding Section 26827, objections to any papers exempt from the fee imposed by this section are subject to a filing fee of fourteen dollars (\$14).

Comment. Section 26827.4 supersedes former Section 26827.4. The definition of "subsequent paper" in subdivision (a) is new, but is consistent with the definition of "first paper" in Section 26827.

The subsequent paper fee provided in subdivision (b) is the same amount as that provided by former Section 26827.4. The language relating to separate or joint filings is new and is consistent with Section 26826.

Subdivision (c) continues the exceptions to the subsequent paper fee provided by the former section.

Subdivision (d) makes clear that the \$14 fee applies to certain objections notwithstanding that the objection would otherwise fall within the definition of "first paper" in Section 26827.

Note. The word "court" in subdivision (a) seems superfluous. Should it be omitted?

William W. Johnson, Probate Examiner, Sacramento County, has raised the issue of why petitions under Probate Code Section 10501 are exempt when the petition is made by a personal representative with independent administration authority, but not when the same petition is filed by another personal representative. (See the letter in Exhibit 2.)

As noted in the memorandum, the Commission should consider whether the exceptions in subdivision (c) should be continued at all. Is it unreasonable to require these petitioners to pay a \$14 fee?

Subdivision (d) affords an even greater savings to objectors, but the staff is unclear on the purpose of this provision. What policy supports the idea that if the petitioner is saved a \$14 fee, the objector should be saved \$72 (the difference between the \$86 first paper fee and the \$14 fee)? Is it the policy of this statute to encourage objections to petitions under the Independent Administration of Estates Act and the guardianship and conservatorship law? Should this policy be continued?

The last sentence of existing Section 26827.4 provides that the section does not apply to a person (other than the original petitioner) who petitions for letters of administration, special letters of administration, letters testamentary, letters of guardianship, letters of conservatorship, compromise of a minor's claim, and some other items. The staff draft, as well as the State Bar draft, does not continue this provision. We do not think it is necessary in light of the definition of "subsequent paper" in this section.

ESTATE PLANNING, TRUST AND PROBATE LAW SECTION THE STATE BAR OF CALIFORNIA

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Reply to:

William V. Schmidt
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 Costa Mesa, California 92626

(714) 641-5100

April 27, 1988

CALIF. LAW REV. COMM'N

MAY 02 1988

8 8 5 8 1 1 5 8 2

Mr. Nathaniel Sterling
 Assistant Executive Secretary
 California Law Revision Commission
 4000 Middlefield Road, Suite D-2
 Palo Alto, CA 94303-4739

Re: Filing Fees in Probate

Dear Mr. Sterling:

As you perhaps know, the question of filing fees in probate was assigned by our Section to its Probate Administration Committee for a more thorough study. We realize that the pertinent government code sections are currently in Assembly Bill 2779. We understand, however, that the Commission is interested in taking another look at this subject matter in the future.

Please find enclosed herein a copy of a letter dated March 11, 1988 that I received from Frank S. Zolin, County Clerk Executive Officer of the Los Angeles County Superior Court. Attached to that letter are proposed new Government Code Sections 26827, 26827.4 and 26827.5.

We were fortunate to have the help of the clerk's office of three California Superior Courts. Ms. Barbara J. Miller, Probate Commissioner of the Alameda Superior Court served on

Mr. Nathaniel Sterling
April 27, 1988
Page 2


our Committee as well as Ms. Charlotte Hooker from the Probate Division of the Clerk's Office of the Orange County Superior Court. All of them contributed to the work that was ultimately presented by the Clerk's Office of Los Angeles County and which is enclosed herein.

As you can see, the proposal favors the "first paper" concept with six exceptions set forth in subdivision (b). At our recent Section meeting on April 16 and 17 other possible exceptions were brought up. They include a Disclaimer, a Receipt of Distribution, a Consent to any type of procedural action, Evidence of Subscribing Witness to Will, Acceptance of Trusteeship, and perhaps a Statement of Interest in an Heirship proceeding.

When you add these possible exceptions to the six listed in the proposal, it seems worthwhile to consider if they cannot be consolidated, in whole or in part, into a more generic description. It should be noted that none of these exceptions include a petition or any other paper which requires a court hearing; they are in the most part non-adversarial and passive in nature. Hopefully, with some thought you will be able to come up with a better description of those exceptions to the "first paper" concept.

It seems to our Section as well as to the Committee appointed to work on this matter that the "first paper" concept for probate filings is preferable to the current "laundry list" concept. The problem, of course, is in describing the exceptions in such a way that we do not create an even longer "laundry list." I have confidence in the ability of your staff. I think you can do it. Good luck.

Very truly yours,


William V. Schmidt

WVS/ds
Enclosures

cc: Lawrence T. Jackson
Charlotte Hooker
Barbara J. Miller
D. Keith Bilter
Irwin R. Goldring
Ann E. Stodden
Charles A. Collier, Jr.
James V. Quillinan

LOS ANGELES COUNTY CLERK
AND
EXECUTIVE OFFICER OF THE SUPERIOR COURT

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

FRANK S. ZOLIN
COUNTY CLERK/EXECUTIVE OFFICER

March 11, 1988

(213) 974-5201

RAUL A. ACOSTA
ASSISTANT COUNTY CLERK

ERIC D. WEBBER
ASSISTANT EXECUTIVE OFFICER

Mr. William V. Schmidt
Rutan & Tucker
611 Anton Blvd
Suite 1400
Costa Mesa, CA 926281950

Dear Mr. Schmidt:

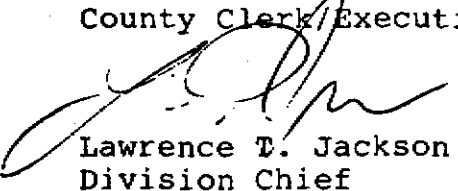
Attached please find my proposed revisions to Government Code Section 26827 which incorporates the changes suggested by both you and Barbara Miller with the exception of Ms. Miller's exclusion of petitions to determine heirship from the fee requirement. As we discussed over the phone it was our feeling that fees should be charged for such petitions.

I am again providing copies of this letter with attachments to other members of the committee and solicit comments from all recipients.

I hope that my efforts in this regard have been helpful.

Very truly yours,

Frank S. Zolin
County Clerk/Executive Officer



Lawrence T. Jackson
Division Chief
Court Services Division

LJ:ph

cc: Irwin R. Goldring
Charles A. Collier, Jr.
Ms. Charlotte Hooker

Attachment

Government Code Section 26827 (amended). Fee for first papers in probate

SEC. . Section 26827 of the Government code is amended to read:
26827. (a) Except as otherwise provided by law, 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,--a--petition for---letters---of---guardianship,---a---petition---for---letters---of conservatorship,--a--petition-for--compromise-of--minor's-claim,--or--a petition-to-contest-any-will-or-codicil shall be paper by any party in a proceeding under the Probate Code 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 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.~~

No filing fee shall be charged if the identity of the first paper filed pursuant to subdivision (a) is any of the following:

- (1) Creditor's Claim
- (2) Request for Special Notice
- (3) Waiver of Notice
- (4) Waiver of Account
- (5) Consent to Distribution
- (6) Declination to Act as Fiduciary

Comment. Section 26827 is revised to conform with the language of 26826. This will avoid the necessity to revise this section each time a new type of proceeding is identified under the Probate Code. Subdivision (b) is stricken due to the fact that its provisions are satisfied by the new wording of subdivision (a) and by new Section 26827.5 proposed below.

Note: Listing all the various probate petitions possible under the code was becoming a confusing and involved process. Petitions and other pleadings which do not require a fee are generally

exempted under the statutes covering those proceedings. This revision should help to resolve the inconsistencies which occur in the assessment of fees due to interpretations of the law in differing jurisdictions. Since this wording appears to have adequate application for civil cases, there is no reason to believe that it may cause severe problems in assessing probate filing fees.

Government Code Section 26827.4 (amended). Fee for subsequent papers in probate

Section. . Section 26827.4 of the Government Code is amended to read:
26827.4 (a) The fee for filing of a subsequent paper by a party who has previously appeared and paid the fee required by Section 26827 and 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) of Section 26827.4 is revised to clarify the distinction between the first paper fee provided for in 26827 and the subsequent hearing fee covered by this section. Subdivision (a) (1) is revised to correct a cross-reference to petitions required under the Independent Administration of Estates Act.

Government Code Section 26827.5 (added). Payment of fees by public administrator or 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 Section 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.

Superior Court of the State of California
County of Sacramento

PROBATE DIVISION
(916) 440-5621

720 NINTH STREET
SACRAMENTO, CALIFORNIA

April 15, 1988

Deb De Bow
Counsel to Judicial Committee
6005 State Capitol
Sacramento, CA 95814

Re: AB2779

Dear Counsel,

AB2779 provides for a \$14.00 fee upon the filing of a subsequent petition with certain exceptions. One exception is the filing of papers required by PC 10501 (formally PC 591.2).

Government Code 26827.4 has been interpreted by one faction that only those personal representatives authorized to administer under the Independent Administration of the Estates Act. (PC 10400) are exempt from the \$14.00 filing fee.

Another faction contends that the reference to PC 10501 in Government Code 26827.4 is merely a designation of those proceedings which are exempt and is not associated per se with the Independent Administration of Estates Act.

The proceedings designated in PC 10501 must be presented to the Court for resolution whether or not the personal representative has authority to administer an estate under PC 10400.

It is not conceivable that the legislature intended to give a monetary advantage, albeit so slight, to one segment of personal representatives over another upon the filing of identical documents.

I feel the intent of the legislature should be more explicit in the assessment of a fee under Government Code 26827.4 as it relates to PC 10501.

Respectfully,

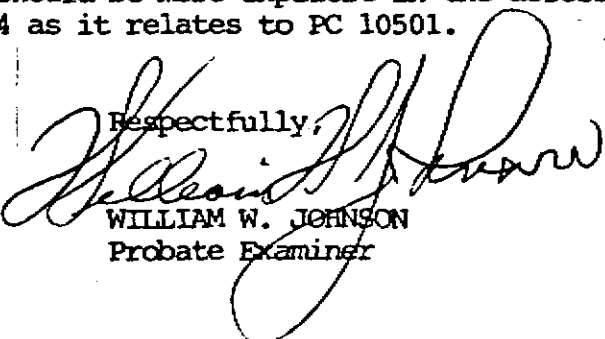

WILLIAM W. JOHNSON
Probate Examiner

EXHIBIT 3

SELECTED FILING FEE STATUTES
(as amended by AB 2779)

Government Code § 26820.4. Civil action first paper fee

26820.4. (a) The total fee for filing of the first paper in a civil action or proceeding in the superior court, except an adoption proceeding, shall be the sum fixed by the board of supervisors 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 fee shall not exceed eighty-six dollars (\$86).

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

This section applies to the initial complaint, petition, or application, and the papers transmitted from another court on the transfer of a civil action or proceeding, but does not include documents filed pursuant to Section 491.150, 704.750, or 708.160 of the Code of Civil Procedure.

(b) [waiver of fees in action against defendant based on felony]

Government Code § 26826. Civil defendant first paper fee

26826. (a) The total fee for filing the first paper in the action on behalf of any defendant, intervenor, respondent, or adverse party, whether separately or jointly, except for the purpose of making disclaimer shall be the sum fixed by resolution adopted 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 sixty-three dollars (\$63).

(2) In any county where a fee is not collected for the court reporter fund, the total fee shall not exceed thirty-five dollars (\$35).

(b) As used in this section the term "paper" does not include any of the following:

(1) A stipulation for the appointment of a temporary judge or of a court investigator, or the report made by the court investigator.

(2) The declaration of a spouse filed in an order to show cause proceeding.

(3) A marital settlement agreement which is signed by a defaulted respondent and intended for incorporation in a proposed decree of dissolution of marriage.

(4) A stipulation regarding the date of termination of the marital status when the court has retained jurisdiction over that date.

(5) A document relating to a stipulated postjudgment modification of child support.

(6) A stipulation to modify a marital settlement agreement which was signed by a defaulted respondent and incorporated in a decree of dissolution if the stipulation is presented by the petitioner.

Government Code § 26827. Probate first paper fee [as amended by 1988
Cal. Stat. ch. 113, § 8, effective July 1, 1988]

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 13151 of the Probate Code, a petition pursuant to Section 13650 of the Probate Code (except as provided in Section 13652 of the Probate Code), or a petition to contest any will or codicil, 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 of a type described in subdivision (a) in the same proceeding by a person other than the original petitioner.

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 (a) also recognizes the exception provided in Probate Code Section 13652, which excuses the fee otherwise applicable to a petition under Section 13650 if probate proceedings are already pending.

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.

Government Code § 26827.4. Probate subsequent paper fee [as amended by 1988 Cal. Stat. ch. 113, § 9, effective July 1, 1988]

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

(1) Section 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 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.

Government Code § 26827.5. Payment of fees by public administrator of State Department of Mental Health [as added by 1988 Cal. Stat. ch. 113, § 10, effective July 1, 1988]

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.