

Memorandum 88-83

Subject: Study L-1058 - Probate Filing Fees (More State Bar Comments & Revised Draft Tentative Recommendation)

This memorandum consolidates material concerning probate filing fees that has been on the agenda for past meetings but not considered. Attached to this memorandum is a revised draft *Tentative Recommendation Relating to Filing Fees in Probate*, which is presented for purposes of discussion. This memorandum supersedes the earlier material on this subject, Memorandum 88-52 and the First Supplement thereto. Some references in the letters attached as exhibits may be confusing since they are directed to earlier memorandums. However, it is important to have all of this material before the Commission so that the record will be complete. It is also instructive as to the intricate nature of this issue and how difficult it is to arrive at certainty.

The following exhibits are attached to this memorandum:

1. Report of State Bar Study Team No. 1, dated October 18, 1988. Two suggested drafts are attached to this report.
2. Report of State Bar Study Team No. 1, dated September 2, 1988.
3. Letter from Phyllis Cardoza on behalf of the Legislative Committee of Probate, Trust and Estate Planning Section of the Beverly Hills Bar Association, dated August 31, 1988.
4. Letter from William V. Schmidt, dated April 27, 1988. Attached to this letter is a letter and proposed draft from Lawrence T. Jackson, Chief of Court Services Division, Los Angeles County Clerk's Office.
5. Letter from William W. Johnson, Probate Examiner, dated April 15, 1988.
6. Selected filing fee statutes from the Government Code.

Background

Legislation enacted in 1988 on Commission recommendation made some technical revisions in the statutes governing probate filing fees. 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. Last year 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" in probate follows this pattern. See Gov't Code § 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 and needed time to conduct the study. We have received several reports from State Bar Study Team No. 1 and several proposed drafts. These reports and others are attached for the sake of completeness.

Drafting and Policy Issues

A change in the approach in drafting the probate filing fee provisions raises several issues, which are discussed below and in the notes following sections in the draft statute.

The existing probate filing fee statute lists the particular petitions that are charged the higher filing fee. (Gov't Code §§ 26827, 26827.4.) Commentators agree that it would be preferable to adopt a more general first paper fee, like that applicable in civil actions generally. However, it is not necessarily a simple task to describe what we mean by "first papers." The next issue is whether first papers in the nature of a petition should be charged a higher fee than first opposition papers.

The draft tentative recommendation is an amalgamation of drafts proposed by the State Bar Team in reaction to earlier staff drafts. (See the drafts attached to the State Bar Team report in Exhibits 1 and 4.) The staff suggests adoption of a two-tier first paper scheme where the higher first paper filing fee is charged for the first petition or other paper requiring a hearing filed by a person in a proceeding. A lower fee, as in civil actions, is charged for the first opposition paper filed by a person in a proceeding. First paper fees would not apply to papers that consent to an action or do not require a hearing,

such as disclaimers, creditors' claims, and other items. Phrased differently, a filing that constitutes an appearance of a person would be subject to an appropriate first paper filing 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.

Meaning of "Proceeding"

Memorandum 88-52 raised the issue of what is included in a "proceeding" under existing law. We assume that all matters arising in connection with a decedent's estate from opening to closing are one proceeding. We assume that all matters arising during the existence of a guardianship or conservatorship are within one proceeding. On the other hand, each trust petition would seem to start a new proceeding. The memorandum questioned the logic of this state of affairs, but we did not attempt to make sense of it.

The State Bar Team states that "proceeding" needs to be defined or further clarified as "all petitions and matters filed with the County Clerk bearing the number and the name of that particular proceeding." This language would make more specific what we have assumed to be a proceeding under the Probate Code. The draft statute adopts this suggestion, but with some reservations. It does not confront the policy issue as to why trust proceedings are treated in one way and probate, guardianship, and conservatorship proceedings in another.

Amount of Fee for Opposition Paper

Both bar groups recommend setting a lower fee for a person's first opposition paper. They support this suggestion by the argument that the file already exists and so processing costs are lower, and that a lower fee is consistent with civil practice. Compare Gov't Code § 26820.4 (\$86 first paper fee in civil case) with Gov't Code § 26826 (\$63 fee for defendant, intervenor, respondent, or adverse party). (These sections are set out in Exhibit 6.) The State Bar Team recognizes that this approach "could have serious revenue considerations and might therefore be objectionable to the County

Clerks." (See Exhibit 2, p. 3.)

The two-tier first paper scheme would, on the face of it, result in a reduction of revenue. However, the staff believes that revenue may increase because fees would be charged for some opposition papers that are not subject to fees under existing law.

The two-tier approach to first paper fees is proposed in the staff draft. If the Commission wants to recommend a unitary first paper fee, the provisions of draft Sections 26827 and 26827.2 can be combined.

Eliminate Subsequent Paper Fee?

The State Bar Team suggests that collection of the \$14 subsequent paper fee is more burdensome than beneficial and would eliminate the subsequent paper fee provided by Government Code Section 26827.4. (See Exhibit 1, p. 7; Exhibit 2, p. 4.) If necessary to maintain revenues, the Team suggests increasing the first paper fee and eliminate subsequent paper filing fees. The staff believes that the draft statute would probably increase total revenue, due to the imposition of fees on all first papers filed in opposition. Thus, it might be appropriate to eliminate the subsequent filing fees. It should be noted, however, that there is a \$14 filing fee for a notice of motion, or other subsequent paper requiring a hearing, in civil actions generally (subject to a number of exceptions). See Gov't Code § 26830. What does the Commission wish to do?

Exceptions to Subsequent Paper Fees

Assuming the retention of subsequent paper fees, the exceptions to the fee should be reviewed on policy grounds. 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 5. The State Bar Team supports this position. See Exhibit 1, p. 7; Exhibit 2, p. 4.)

As to draft Section 26827.4, the State Bar Team has recommended

that no filing fee be charged for matters listed in Probate Code Section 10501, whether or not the personal representative has independent administration authority. (See Exhibit 2, p. 4.) Phrased differently, the State Bar Team would not charge a fee for any subsequent paper that the personal representative is required by law to file with the court.

Policy

Again it might be worth considering the underlying philosophy (if it can be so dignified) of the filing fee statutes. As discussed in Memorandum 88-52, fees could be based on the work of the court clerk in opening a new file or adding a name or paper to a file. Fees might also reflect the cost to the court system when a paper is the sort that "requires a hearing."

Another approach would focus on the parties and what they seek or stand to lose in the procedure. This scheme would charge each person who appears an initial fee for entering the judicial process. The combatants, the petitioners and respondents, would pay the big fees. Those playing lesser roles, the spectators and fellow travelers, would pay a token fee or nothing. This approach is reflected in the draft statute.

A third approach would assess fees for a number of activities that are considered to be significant, on a more or less ad hoc basis. Hence, commencing a proceeding and opposing a petition are subject to a significant fee. But the same fee is charged for a petition or opposition regardless of whether one person files it or several persons join in it. This is apparently the approach of existing law.

Cutting across all of these approaches would be any overriding policies of reducing or excusing fees for certain types of papers.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

10/19/1988 13:35 FROM RUTAN & TUCKER

TO

14159696953 P.02

6/213/BSD/58

R E P O R T

TO: JAMES V. QUILLINAN
IRWIN D. GOLDRING
STERLING L. ROSS, JR.
VALERIE J. MERRITT
CHARLES A. COLLIER, JR.
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT, STUDY TEAM NO. 1

DATE: October 18, 1988

SUBJECT: FIRST SUPPLEMENT TO LRC MEMORANDUM 88-52
(Filing Fees in Probate)

Study Team No. 1 held a telephone conference on October 17, 1988. Richard S. Kinyon, Sterling L. Ross, Jr., Lynn P. Hart, Michael V. Vollmer and William V. Schmidt participated. Charles A. Collier, Jr. and Michael Desmarais did not participate. We have the following comments:

First Paper

Study Team No. 1 still favors the "First Paper" concept. Generally, we approve the language for proposed 26827(a) as set forth near the bottom of page 1 of this First Supplement to Memorandum 88-52. We like the first portion of the first sentence which states that a first paper means "the first petition filed by a person in a proceeding." We have more concern with the second portion of the first sentence, and the words "the first paper filed by a person in opposition to a petition." Dick Kinyon suggests that the word "a" before the word "petition" should be changed to "any". In his mind,

6/213/BSO/58

this would more strongly indicate that once the person has paid a filing fee by filing a paper in opposition to any petition, such person would no longer be required to file a filing fee when filing a first paper in opposition to another petition.

We are also concerned with the words "in opposition." We continue to favor words such as "in response to", rather than "in opposition to". For example, when a personal representative files a petition for instructions, a few interested parties may wish to file proposals on how the court should instruct the personal representative. These proposals would not necessarily be "in opposition" to the petition for instructions, but they certainly would be "in response to" such a petition. Most of our members felt that such proposals would be substantial in nature and would justify a filing fee. On the other hand, once the words "in opposition to" are expanded to "in response to", then it seems to us to become advisable, if not necessary, to make an exception to those papers which consent to the proposed action in a petition or which waive notice of the hearing date of such petition, as such consent and waiver are both "in response to". Some members of our team were not sure how a particular court clerk might interpret the words "in opposition to". If it was interpreted broadly to mean "in response to", then the consent and waiver exceptions should be set forth.

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There was a little confusion in the minds of the members of our team in regard to the draft of Section 26827(a). This section not only appears near the bottom of page 1 of the First Supplement, but it also appears at the bottom of page 3, continuing over to the top of page 4. We were unclear whether or not the general concepts of the draft as it appeared at the bottom of page 1 were intended to be incorporated in the draft beginning at the bottom of page 3 if the two-tier approach was to be used.

In the event that the language appearing on page 1 is to remain as part of the section, we suggest that it be modified as follows:

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 in response to a petition. "First paper" does not include a paper that (1) does not require a hearing, (2) consents to the proposed action by another, or (3) waives notice or other rights.

In the event that the language of the section as shown at the bottom of page 1 is not to be retained, but to be incorporated in the two-tier filing fee system proposed by the draft at the bottom of page 3, then I refer the commission and staff to Attachment A and Attachment B to this report, which is the work of Sterling L. Ross, Jr. and Michael V. Vollmer, respectively. Each of them volunteered to put their thoughts in writing and send them to me, which is appreciated. Please note that they are similar but not identical. It was the attempt of each of them to incorporate

6/213/BSO/58

the general thinking of our Study Team into a draft of those two government code sections set forth at the bottom of page 3 and the top of page 4 of this First Supplement and which together present a two-tier filing fee system.

One last point. We would like to point out that a contest of a will is a document which requires a hearing and for which a filing fee has always been charged. Since it is not a petition or a paper which is filed in response to or in opposition to a petition, it would not be covered under the draft of Section 26827(a) set forth near the bottom of page 1. This is one reason why both Ross and Vollmer have proposed the language "first petition or other paper requiring a hearing" in their proposed drafts. A contest of a will obviously requires a hearing. There may be other papers or documents which are not petitions but which require a hearing, although we cannot think of any at this time.

Meaning of "Proceeding"

The fourth sentence of this section of the memorandum states that each trust petition would seem to start a new proceeding. It is not clear to our team that this is necessarily true. This might well depend upon the practice of the County Clerk. We are not sure that every County Clerk would give each trust petition a new number and require that a new file be opened, particularly if the person preparing the new trust petition used the number and caption of the

6/213/BSO/58

former trust proceeding. The staff says that it is concerned that defining the word "proceeding" may be too rigid, and that it may be best left undefined. We are more concerned in eliminating any possible ambiguity and in eliminating different interpretations among County Clerk offices. We, therefore, continue to favor a definition of the word "proceeding". The exact words of the definition are not important to us. We are only concerned with the general concept that all petitions and papers filed with the County Clerk bearing the same number and name are considered to be in the same "proceeding", whether the proceeding is probate, guardianship, conservatorship, or trust.

Papers that "Require a Hearing"

Our team earlier suggested that the concept of a paper that "does not require a hearing" be eliminated or clarified. After reading this First Supplement, we have changed our minds and we favor this concept. We think that it is helpful as the staff has used it.

Amount of Fee for Opposition Paper

Our Study Team continues to favor the two-tier approach, although our discussion brought forth two concepts of this two-tier approach. One concept would be that the first paper, (almost always a petition) which is filed in a proceeding and which requires the opening of a new file,

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should be charged a first-tier filing fee, and all subsequent papers filed should be charged a second-tier, or lower, filing fee. This concept is consistent with the policy of charging more for the first paper, which creates greater work and cost to the court when the file is first opened. Phyllis Cardoza in her letter to August 31, 1988 expresses concern for this greater cost.

The second general concept of the two-tier filing fee approach is that all petitions or "moving" papers should be charged a first-tier filing fee, and all papers responding to such petition should be charged a second-tier filing fee. This second concept is consistent with the feeling that a "proceeding" may well consist of several smaller "proceedings", or "disputes" and that the initiator of each smaller proceeding or dispute should pay a higher filing fee than those responding thereto. This approach seems to be embodied by the staff by its use of the words "on behalf of a respondent or adverse party" under proposed new Government Code Section 26827.2.

The staff and commission need to decide which of these two general concepts of the two-tier approach should be followed. I favor the simplicity of the first concept, but I realize that it would result in less revenue. If the first concept is adopted, then the words "on behalf of a respondent or adverse party" need to be reconsidered in the draft of proposed Government Code Section 26827.2.

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Other members of our team favor the second concept to the two-tier filing fee approach. This approach would create more revenue and draw a distinction between those who initiate an action by filing a petition and those that respond to that action.

Eliminate Subsequent Paper Fee?

We continue to favor the complete elimination of any filing fee for a subsequent paper for the sake of simplicity of administration and uniformity among the counties.

If the subsequent paper filing fee is not completely eliminated, we strongly recommend that it be applied in the same manner whether the personal representative is administering the estate or is not administering the estate under the Independent Administration of Estates Act.

In Orange County, for example, the personal representative who is administering the estate under the Independent Administration of Estates Act is not charged a filing fee for those actions set forth in probate code section 10501, whereas the personal representative who is not so administering the estate is charged a filing fee for the actions set forth in probate code section 10501. This discriminates against the personal representative who does not have the power to so administer the estate. No one who I spoke to at that court seems to know the reason or policy for this treatment.

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This is the same problem pointed out by Probate Examiner, Bill Johnson, of the Sacramento Superior Court when he stated that counties apply Government Code Section 26827.4 differently.

Respectfully submitted,

STUDY TEAM NO. 1

By: William V. Schmidt/dk
William V. Schmidt
Captain

ATTACHMENT A
Suggested Changes to Memorandum 88-52
By Sterling L. Ross, Jr.

The State Bar Team recommends the following draft to replace Section 26827 in the draft statute attached to Memorandum 88-52:

Government Code § 26827(added). Probate First Paper Fee

26827(a) The total fee for filing the first petition or other paper requiring a hearing in a proceeding under the Probate Code, or for papers transmitted from another court on the transfer of a probate proceeding, whether filed 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 fees shall not exceed sixty-one dollars (\$61).

(b) As used in this Section and Section 26827.2, the term "proceeding" refers to all petitions and matters filed with the county clerk bearing the same action number.

Government Code § 26827.2(added). Probate Response Document Fee

26827.2(a) The total fee for filing the first document in response to a petition or other paper requiring a hearing in a proceeding under the Probate Code, whether filed 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 sixty-three dollars (\$63).

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

(b) As used in this Section, the term "document" shall exclude disclaimers, consents, and other papers which state no substantial opposition to a petition or other paper requiring a hearing.

(c) This Section shall not apply to persons who have previously paid a fee in the same proceeding pursuant to Section 26827.

Government Code § 26827.4 is repealed in its entirety.

Comment

The State Bar team has adopted the alternative draft proposed by staff with several minor revisions.

We agree with staff that the phrase "requires a hearing" ought to be retained.

In place of the term "first paper" we recommend the phrase "first petition or other paper requiring a hearing." This language distinguishes filings which require a higher fee from those filings which are responsive in nature and require the lower fee. We feel that the use of the term "first paper" to describe both first tier and second tier filings was confusing.

OCT 18 '88 11:29 ROBB AND ROSS

PAGE.05

The filings which require the lower fee (i.e., second tier filings) are described in Section 26827.2 as the "first document in response to a petition or other paper requiring a hearing." Documents which state no substantial opposition, such as consents and disclaimers, are excluded from the requirement of a fee.

We have added "papers transmitted from another court on the transfer of a probate proceeding" to the filings which require a higher fee under Section 26827, tracking the similar civil provisions in Government Code § 26820.4.

a:slr\stbrteam

6/213/BSO/60

ATTACHMENT B

Suggested Changes to Memorandum 88-52

By Michael V. Vollmer

I recommend that the following changes be implemented in connection with Memorandum 88-52:

Government Code Section 26827 (added). Probate
Petitioner's First Paper Fee.

26827. The total fee for filing the first petition or other paper that requires a hearing in a proceeding under the Probate Code on behalf of a petitioner, whether filed 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).

Once a petitioner pays a first paper fee under this section, then no additional respondent's first paper fee shall be required under Section 26827.2 upon any later filing by petitioner as a respondent or adverse party.

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Government Code Section 26827.2 (added). Probate
Respondent's First Paper Fee.

26827.2 The total fee for filing the first paper under the Probate Code on behalf of a respondent or adverse party, whether filed 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 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).

Once a petitioner pays a first paper fee under this section, then no additional respondent's first paper fee shall be required under Section 26827.2 upon any later filing by petitioner as a respondent or adverse party.

"First paper" does not include (i) a consent to action or relief requested in a proceeding, or (ii) a paper that does not require a hearing. Once a respondent or adverse party pays a first paper fee under this section, then no additional petitioner's first paper fee shall be required under Section 26827 upon any later filing by respondent as a petitioner.

EXHIBIT 2

09/02/1988 16:48 FROM PUTAN & TUCKER

TO

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R E P O R T

CA LAW REV. COMM'N

SEP 06 1988

RECEIVED

TO: JAMES V. QUILLINAN
D. KEITH BILTER
IRWIN D. GOLDRING
JAMES D. DEVINE
JAMES C. OPEL
CHARLES A. COLLIER, JR.
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT, STUDY TEAM NO. 1

DATE: September 2, 1988

SUBJECT: IRC MEMORANDUM 88-52 (Filing Fees in Probate)

Study Team No. 1 held a telephone conference on September 1, 1988. Charles A. Collier, Jr., Richard S. Kinyon, Sterling L. Ross, Jr., Lynn P. Hart, and William V. Schmidt participated. Michael V. Vollmer did not participate. We have the following comments:

This subject matter is not an easy one with which to work. Our experience is that many fine minds have struggled with it over a period of time and seem to continue to struggle with it. The easy answer that at first seems to be apparent becomes a more difficult one as we dig deeper into the subject matter. However, we feel that we are making progress.

We have the following comments in connection with the proposed Government Code Section 26827:

In Subsection (a), the word "proceeding" is used. The meaning of this word is also discussed on page 3 of the Memorandum. Study Team No. 1 feels that the word "proceeding" should include not only a probate proceeding but also a conservatorship and a guardianship proceeding. We also feel that any paper which is filed with the County Clerk bearing the



number and the name of the decedent, conservatee or ward, is a paper which should be considered to be filed in that same proceeding. A will contest or a petition to determine title would not be a new proceeding because it would bear the same name and case number, and be filed by the County Clerk in the same probate file as any other paper filed therein. The Staff may wish to consider defining the word "proceeding" in the statute or in a comment thereto; however, our Study Team was unanimous in its support of the general concept of a single probate, conservatorship, or guardianship proceeding as one which includes and embraces all petitions and matters filed with the County Clerk bearing the number and name of that particular proceeding.

We support the "first paper" concept. We believe it is a good idea to define a "first paper" as the first petition filed by a person, but we are concerned about the use of the word "appearance." If the word "appearance" is used, it should be defined. We feel that it means different things to various people, and one of our objectives here is to achieve simplicity and uniformity throughout the State of California.

We are also concerned about the second sentence in Subsection (a) which states that the first paper does not include a paper that does not require a hearing. It seems to us, for example, that an objection to a petition does not technically require a hearing (it is the petition which requires a hearing), but an objection to a petition has traditionally been considered as a paper for which a filing fee is, and should be, charged.

We feel that it might make sense to define a "first paper" as the first petition or other document which requires a court hearing, or one which responds to a first paper which requires a court hearing, with the exception of consenting thereto. Our

Study Team also felt that although a filing fee should be required from the person who files a "first paper" requiring a court hearing as well as from the person who files a "first paper" responding to the original paper, that the filing fee for the responsive "first paper" should be less than the filing fee for the initiating "first paper." The concept here is the same as the concept on the Civil side. Normally, a person who files a complaint is charged a higher filing fee than a person who files an answer in response thereto. We realize that the introduction of this concept could have serious revenue considerations and might therefore be objectionable to the County Clerks. We further realize that this concept of a lesser filing fee for a first paper which is responsive in nature is something that has heretofore not been given serious consideration by the County Clerks. Nevertheless, we set it forth for the consideration of the Staff and the Commission.

In summary, we feel that the word "proceeding" needs to be defined or further clarified, that the word "appearance" should be eliminated unless it can be clearly defined and clarified, that the statement that a first paper does not include a paper that does not require a hearing should either be eliminated or clarified because an objection to a petition does not technically require a hearing, and that consideration be given to defining a "first paper" as one which means the first petition or other document which requires a court hearing filed by a person in a proceeding or the first paper filed by a person in response to such petition or document other than a paper which merely consents thereto. Hopefully, this would include all of those petitions, objections and other matters for which most people feel a filing fee should be charged and would eliminate all of those papers for which most people feel a filing fee

should not be charged, such as those set forth in the second paragraph of the Comment to Government Code Section 26827.

In regard to proposed Government Code Section 26827.4, our Study Team had two primary thoughts. One was that there should be no filing fee charged for those matters set forth in Probate Code Section 10501, whether or not the petitioner held the power to administer under The Independent Administration of Estates Act. We share the concern expressed by William W. Johnson, Probate Examiner in Sacramento County, as stated in his letter of April 15, 1988. We believe that various counties are interpreting this Government Code Section in different ways. We believe that all personal representatives should be treated the same way whether or not they have independent powers, and that no filing fee should be required for any petition for which petitioner is required by law to file with the court.

Our second thought in regard to Government Code Section 26827.4 is that this Section necessarily causes more work and sometimes confusion to both County Clerks as well as attorneys and their staff. We wonder whether the extra revenue is really worth it. In the interest of simplicity and conformity, and ease of administration, all of which, we feel, are worthwhile objectives, we would like to see consideration given to the imposition of a slightly higher filing fee for the first paper filed by any party, and the complete elimination of any filing fee on any subsequent paper filed by the same party.

Respectfully submitted,

STUDY TEAM NO. 1

By:

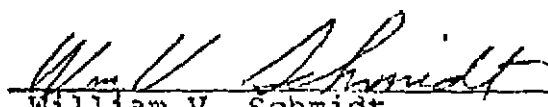

William V. Schmidt,
Captain

EXHIBIT 3

Phyllis Cardoza
Independent Legal Assistant

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(213) 879-4174
(213) 208-6087

August 31, 1988

CA LAW REV. COMM'N

SEP 02 1988

RECEIVED

Stan G. Ulrich, Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Study L-1058, Filing Fees in Probate
Memorandum 88-52 dated 8-2-88

Dear Stan,


I am writing on behalf of the Legislative Committee of the Probate, Trust, & Estate Planning Section of the Beverly Hills Bar Association.

We have the following comment(s) about the above study:

1. We agree with the staff recommendation that the highest filing fee be charged for the first petition filed by a person.
2. However, we suggest that the fee for a first paper filed in opposition to a petition (in your language, a filing that constitutes an appearance of a person) be lower than the initial fee because this paper does not require opening a new file. Thus, the person filing the paper should not bear the cost of the setup on the computer, the new docket sheet, etc. occasioned by the opening petition in the probate matter.

This plan would accord with present practice in civil court.

Sincerely,


PHYLLIS CARDOZA

PC:pk

cc: James J. Stewart, Esq. (attendee at 9/8 - 9/9/88 meeting of LRC)
Kenneth G. Petrulis, Esq., Chair, Legislative Committee
David E. Lich, Esq., Chair-Elect, Legislative Committee
Melinda J. Toohey, Esq., Chair, Probate Section, BHBA

EXHIBIT 4

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

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ANNE K. HILKER, *Los Angeles*
WILLIAM L. HOISINGTON, *San Francisco*
BEATRICE LAIDLEY-LAWSON, *Los Angeles*
JAY ROSS MacMAHON, *San Rafael*
VALERIE J. MERRITT, *Los Angeles*
BARBARA J. MILLER, *Oakland*
BRUCE S. ROSS, *Los Angeles*
STERLING L. ROSS, JR., *Mill Valley*
ANN E. STODDEN, *Los Angeles*
JANET L. WRIGHT, *Fresno*

Reply to:

William V. Schmidt
611 Anton Boulevard, Suite 1400
Costa Mesa, California 92626

(714) 641-5100

April 27, 1988

CA LAW REV. COMM'N

MAY 02 1988

RECEIVED

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:

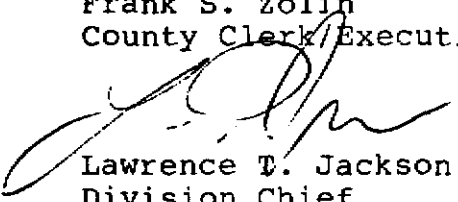
Attached please find my proposed revisions to Government Code Section 26827 which incorporates the changes suggested by both you and Barbara Miller with the exception of Ms. Miller's exclusion of petitions to determine heirship from the fee requirement. As we discussed over the phone it was our feeling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

EXHIBIT 5

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,

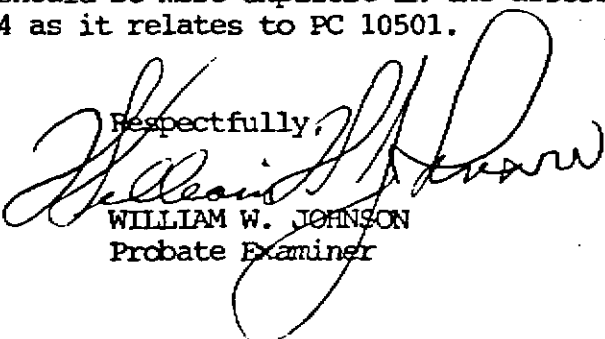

WILLIAM W. JOHNSON
Probate Examiner

EXHIBIT 6

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.

#L-1058

su346
11/14/88

TENTATIVE RECOMMENDATION
relating to
FILING FEES IN PROBATE

The general provisions in the Government Code setting filing fees in probate proceedings are unclear.¹ The existing provisions attempt to describe each type of petition subject to the higher initial filing fee.² This approach can make it necessary to amend the fee provision when probate procedures are amended, renumbered, or supplemented. There is also a risk that a specific petition may be omitted from the list.

The Commission recommends adoption of the two-tier "first paper" approach reflected in the sections governing filing fees in civil actions generally.³ This scheme charges the higher first paper fee (up to \$86) for petitions or other papers requiring a hearing and a lower first paper fee (up to \$63) for papers filed in opposition. A person would be required to pay no more than one first paper fee. The first paper filing fee would not apply to papers that are filed to consent to an action or that do not require a hearing, such as disclaimers, creditors' claims, requests for notice, 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

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; the subsequent paper fee is \$14. Gov't Code §§ 26827, 26827.4.

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

proceeding under the Probate Code and paid the \$86 fee is charged the \$14 fee for subsequent filings in that proceeding.⁴

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 amend and renumber Section 26827.1 of, to add Section 26827.2 to, and to repeal and add Sections 26827 and 26827.4 of, 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 petition fee

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

26827. (a) The total fee for filing the first petition or other paper requiring a hearing in a proceeding under the Probate Code, or for papers transmitted from another court on the transfer of a proceeding, whether filed separately or jointly, is the sum fixed by resolution pursuant to Section 68090, which may not exceed the following amounts:

(1) Eighty-six dollars (\$86) in any county where a fee is collected for the court reporter fund.

(2) Sixty-one dollars (\$61) in any county where a fee is not collected for the court reporter fund.

(b) Only one filing fee may be charged a person under this section in a particular proceeding. If a person has paid a filing fee under Section 26827.2 in the proceeding, no fee may be charged under this section.

(c) For purposes of this section, all papers filed with the clerk bearing the same action number are part of the same proceeding.

Comment. Section 26827 provides a general rule concerning first petition filing fees under the Probate Code and supersedes former Section 26827. Subdivision (a) is drawn from the rule governing civil actions generally in Section 26820.4. The general rule provided in this section does not change the fees that were charged for the specific petitions listed under prior law. The language relating to separate or joint filings is new and is consistent with Section 26826.

Subdivision (b) makes clear that a person is required to pay only one first petition filing fee in a proceeding and that the petition fee may not be charged if a first opposition paper fee has been paid under Section 26827.2. However, a subsequent paper fee may be charged under Section 26827.4.

See also Sections 26827.2 (first opposition paper filing fee), 26827.4 (subsequent paper fee in probate), 26827.5 (payment of fees by public administrator or State Department of Mental Health).

Note. This section and draft Section 26827.2 propose the two-tier first paper filing fee scheme. This approach was suggested by the Legislative Committee of the Probate, Trust and Estate Planning Section of the Beverly Hills Bar Association. (See Exhibit 3.) It is also supported by the State Bar Team. (See Exhibit 1, pp. 5-6.) As noted in the cover memorandum, this reflects the scheme applicable to civil actions generally under Government Code Sections 26820.4 and 26826.

One potentially serious consequence of this scheme is that a personal representative who is appointed on the petition of another person would not have paid a fee and so would have to pay another first petition fee later in administration, such as when the personal representative petitions for approval of accounts. This cost would be

borne by the estate. We assume that normally the person appointed as personal representative is the one who petitions for probate in the first place, so the double fee would not be a common situation. This results from the draft's focus on persons, rather than on petitions.

Under the rule stated in subdivision (b), it is possible for a person to save \$23 on filing fees if the first paper filed is an opposition paper under Section 26827.2. The savings is the difference between the \$86 first petition fee and the \$63 first opposition paper fee. Normally this will not occur, but if it is a problem, subdivision (b) could also provide as follows: "If a person has paid a filing fee under Section 26827.2 in the proceeding, the person filing a first petition or other paper subject to the fee provided by this section may be charged only the difference between the fee under Section 26827.2 and the fee under this section."

A frequent concern arising in correspondence with the State Bar Team is the interpretation of proposed general language. We want to avoid varying interpretations by different counties. The language causing the most concern in the current draft is "paper requiring a hearing." Rather than relying on each clerk's office to interpret this language, it might be useful to direct the Judicial Council to prepare a list of petitions and other papers requiring a hearing under the Probate Code.

Government Code § 26827.1 (amended and renumbered). Los Angeles County fee for preparation of order or decree

SEC. 3. Section 26827.1 of the Government Code is amended and renumbered to read:

~~26827.1.~~ **26827.9.** In any county in which the population is 4,000,000 or more, as determined by the 1970 Federal Decennial Census, whenever the court directs that an order ~~or decree~~ in a probate proceeding be prepared by the clerk, the fee for preparing such the order ~~or decree~~ shall be the amount necessary to defray the costs of preparation, as determined by the county clerk on an annual basis, but shall not exceed fifty dollars (\$50). The fee so paid shall be an expense of administration.

Comment. Section 26827.1 is renumbered as Section 26827.1 to make room for several related filing fee provisions. This section is also revised to eliminate the reference to "decree" which is unnecessary since the Probate Code no longer uses this term and to make other technical changes.

Government Code § 26827.2 (added). Probate opposition paper fee

SEC. 4. Section 26827.2 is added to the Government Code, to read:

26827.2. (a) The total fee for filing the first paper in response to a petition or other paper requiring a hearing in a petition under

the Probate Code, whether filed separately or jointly, is the sum fixed by resolution pursuant to Section 68090, which may not exceed the following amounts:

(1) Eighty-six dollars (\$63) in any county where a fee is collected for the court reporter fund.

(2) Sixty-one dollars (\$35) in any county where a fee is not collected for the court reporter fund.

(b) The filing of a paper that does not require a hearing or that is only a consent to an action or relief requested in a proceeding is not subject to the fee provided by this section.

(c) Only one filing fee may be charged a person under this section in a particular proceeding. If a person has paid a filing fee under Section 26827 in the proceeding, no fee may be charged under this section.

(d) For purposes of this section, all papers filed with the clerk bearing the same action number are part of the same proceeding.

Comment. Section 26827.2 provides the fee applicable to first responsive papers. Subdivision (a) is drawn from the rule governing civil actions generally in Section 26826.

Under subdivision (b), a paper that does not constitute an appearance, such as a paper filed for record or notice, is not subject to the first opposition paper fee, even though the paper is literally the first one filed by that person. Thus, for example, the 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.

Subdivision (c) makes clear that a person is required to pay only one first opposition paper filing fee in a proceeding and that the opposition paper fee may not be charged if a first petition fee has been paid under Section 26827. However, a subsequent paper fee may be charged under Section 26827.4.

See also Section 26827.5 (payment of fees by public administrator or State Department of Mental Health).

Note. This section and draft Section 26827 reflect a two-tier first paper fee scheme like that applicable to civil filings generally. See the note following draft Section 26827.

As in the case of draft Section 26827, the specific fees could be incorporated from the general civil provision in Section 26826.

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

SEC. 5. 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. 6. 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 hearing and that is filed by a person who has paid the fee required by Section 26827 or 26827.2.

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

(c) Papers required by the following provisions are exempt from 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 26827.2, a paper filed in response to a paper exempt from the fee provided by subdivision (b) is subject to a filing fee of fourteen dollars (\$14).

(e) For purposes of this section, all papers filed with the clerk bearing the same action number are part of the same proceeding.

Comment. Section 26827.4 supersedes former Section 26827.4. 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 responsive papers notwithstanding that the paper would otherwise be subject to the fee provided by Section 26827.2.

Note. The State Bar Team recommends dropping all subsequent paper fees. (See Exhibit 1, p. 7; Exhibit 2, p. 4.) The Team argues that the fee is more trouble than it is worth and that it causes unnecessary confusion.

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 Exhibit 5.) The State Bar Team makes the same point. (See Exhibit 1, p. 7; Exhibit 2, p. 4.)

If the subsequent fee is continued, the Commission should consider whether the exceptions in subdivision (c) should be continued. Is it unreasonable to require these petitioners to pay a \$14 fee?

Subdivision (d) affords a substantial saving 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 \$49 (the difference between the \$63 first opposition 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 Team drafts, does not continue this provision. We do not think it is necessary in light of the definition of "subsequent paper" in this section.