#L-1036/1055

751jd
12/29/88

Third Supplement to Memorandum 89-3

Subject: Study L-1036/1055 - Compensation of Estate Attorney and Personal Representative

Set out on the reverse side is a letter from Edward O'Mara, a private citizen, urging that the Commission use equity rather than fair market value of property as the basis for computing the attorney fee of the estate attorney. Mr. O'Mara called the Executive Secretary to express his "outrage" about the current rule and followed up his call with the letter.

The statutory fee schedule sets the attorney's fee as a percentage of the "estate accounted for" by the personal representative. Prob. Code § 910 (incorporating provisions of Prob. Code § 901). The "estate accounted for" is based on the full market value of the real and personal property of the estate without subtracting any encumbrances on the property. Prob. Code § 901.

When the staff prepared the Background Study, we noted that one attorney had written to the Commission questioning why encumbrances are not excluded in determining the value of the estate: "The equity in property should be the appraised value thereof. I see no reason why the personal representative's commission or the attorney's fee should be based on a debt owed by the decedent." (Emphasis in original.)

The following example was given in the Background Study. Assume that the decedent owns real property having a market value of $300,000. The property is encumbered by a debt of $200,000 secured by a trust deed on the property. For the purpose of computing the attorney fee using the statutory fee schedule, the value is taken at $300,000, even though the decedent's equity in the property is only $100,000. In addition to the statutory fee computed on the gross value of the property, if the real property is sold during the administration of the estate, the lawyer may be entitled to an additional fee for extraordinary services.

The Commission reviewed this issue when it considered the Background Study and decided not to shift from "full market value" to "equity."

Respectfully submitted,

John H. DeMoully
Executive Secretary

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12/27/88

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CA LAW REV. COMM'N
DEC 29 1988
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Dear Mr De Moully:
Cal. Probate Fees

Re our phone conversation on this subject I think the simplest example is as follows: A & B each have $10,000.- cash.

A makes ~~ten~~ ten - 10,000.- investments putting $1,000.- into each. so has $100,000 estate. (one hundred thousand)

B still has $10,000. estate.

They both die. Now A has a $400.- probate fee and B has a $150.- attorney probate fee. Under the present Calculation on gross asset basis A could have in excess of $9,000.- estate left but there is no way that B could have even one cent.

Now how can that be justified?

That is why I argue it should be a charge on net assets for work performed and not a percentage of Gross assets.

I would certainly like to talk to the powers that be on this matter.

Thank You
E. O'Mara

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