

First Supplement to Memorandum 89-14

Subject: Study L-1058 - Probate Filing Fees (Comments of Santa Clara County Clerk's Office)

Attached to this supplement is a letter from Don Swanson, Assistant County Clerk of Santa Clara County Superior Court, and Chairman of the County Clerks' Association Legislative Committee. Mr. Swanson concludes that the draft statute would result in a loss of revenue. However, the ground for this conclusion appears to be the failure of the earlier draft to pick up the needed reference in the consumer price adjustment section. This is remedied in the revisions set out in the revised draft attached to Memorandum 89-14.

Mr. Swanson also suggests a more comprehensive review of the entire filing fee subject:

- make the filing fees equal everywhere in the state. (I understand that the Judicial Council is supporting legislation introduced this year to do just that)
- possibly have the parties pay just one initial fee and not impose separate fees, such as the "motion" fee
- revamp the automation needs of the Courts fee section (Government Code Section 26863) which is no collected in addition to the initial filing fees.

The staff is sympathetic to the need to reform the entire area. We have, however, felt constrained by the history of our involvement in this matter, which arose out of the need to make some conforming revisions in the filing fee provisions. It has been frustrating attempting to pattern the probate filing fees after the badly drafted general civil filing fees. As those who have worked on this project will surely attest, the bad drafting is just one part of the problem. The filing fee statutes do not provide a consistent approach. Several rational approaches are available, such as charging per paper, per party, per level of involvement, or based on average costs incurred by the court system.

It is heartening to learn that the Judicial Council and the County Clerks Association are working on legislation in this area. Perhaps the time has come when the needed wholesale revision can be accomplished. While in some sense, the Commission would be an ideal body to undertake this revision, filing fees and court financing are highly political matters that would probably turn out to be unprofitable as an area of Commission study. In any event, the Commission does not now have the time and resources to attempt a comprehensive revision which would serve as a focal point for the efforts of the interested parties.

The question before us now is whether the probate filing fee draft should be moved forward or dropped.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

CALIF. LAW REV. COMMISSION

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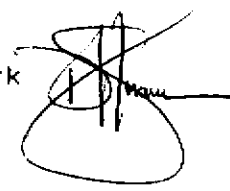
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To: Stan G. Ulrich
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From: Don Swanson, Assistant County Clerk
Santa Clara County Superior Court

Date: January 30, 1989

Re: Filing fees



This is in response to your letter of December 8, 1988 concerning the California Law Revision Commission's draft proposal regarding probate filing fees.

Overall, the concept of civil filing fees results in a filing fee being charged to each party in the action, such fees being paid the first time that a document is filed on behalf of such party.

The proponent of the action (plaintiff or petitioner) pays a higher fee than any other party to the action.

The civil filing structure is two-tiered, with a higher fee in the larger courts and a lesser fee in the smaller courts. The difference is whether or not a fee is collected for the court reporter in that jurisdiction. Some of the smaller courts do not collect this fee as a part of the filing fee and collect it instead as a court reporter is required for a hearing.

Other fees are imposed on a special basis. The most widely known of these fees is the "motion" fee that is imposed when a document is filed that requires a court hearing.

The initial fees are set by statute. The draft proposal identifies the pertinent code sections. It should be noted, however, that the initial fees are modified by another section that allow these initial fees to rise every two years if the California Consumer Price Index goes up past a certain point.

As an example, let's take Government Code Section 26827 which deals with probate fees. That section says, in part,

"The total fee. . . 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 the court reporter fund.
- (2) Sixty-one dollars (\$61) in any county where

a fee is not collected for the court reporter fund.
(emphasis added)

This section can be modified by Government Code Section 26820.8 which allows an increase if the California Consumer Price Index goes up.

The underlined sections are somewhat redundant and misleading. The County Clerks Association, through its Legislative Committee, has prepared proposed legislation which would delete the underlined sections as shown above. This would make the fee the amount determined by Government Code Section 68090, together with Sections 68090.5, 68090.7 and 26863.

As a result of the Trial Court Funding process, the counties have closely watched and calculated the amount or revenue involved, including the revenues brought in by the Superior Courts as filing fees.

This proposal will result in a loss of revenue, and will be viewed as such by the counties.

What really needs to be done is to review and re-structure the whole filing fee situation. Such a review might explore the following kinds of options:

- make the filing fees equal everywhere in the state. (I understand that the Judicial Council is supporting legislation introduced this year to do just that)
- possibly have the parties pay just one initial fee and not impose separate fees, such as the "motion" fee
- revamp the automation needs of the Courts fee section (Government Code Section 26863) which is now collected in addition to the initial filing fees.

Thank you for the opportunity to comment.

cc:

Grace K. Yamakawa, County Clerk/Court Executive Officer
Members, County Clerks' Association Legislative Committee