

STATE OF CALIFORNIA
California Law Revision Commission

Staff Draft

TENTATIVE RECOMMENDATION

relating to

FILING FEES IN PROBATE

December 1988

Note. This draft tentative recommendation has been prepared by the Commission's staff for the purpose of analysis by interested persons so that they may make their views known to the Commission. This discussion draft is not an official Commission recommendation and does not necessarily reflect the substantive proposals the Commission may ultimately make to the Legislature.

COMMENTS ON THIS DRAFT SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN JANUARY 31, 1989.

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TENTATIVE RECOMMENDATION
relating to
FILING FEES IN PROBATE

The general provisions in the Government Code setting filing fees in probate proceedings are unclear.¹ These 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 provisions 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 is also informed that the subsequent paper filing fee is variously interpreted in different counties.³

The Commission recommends adoption of the two-tier "first paper" approach reflected in the sections governing filing fees in civil actions generally.⁴ 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 party would be required to pay no more than one first paper fee. The

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 § 26827.4. There is disagreement on the correct interpretation of subdivision (a)(1) of this section which excuses the subsequent paper filing fee for "papers for proceedings required by . . . Section 10501 of the Probate Code." The Commission is informed that some interpret this exemption to apply only to personal representatives exercising authority under the Independent Administration of Estates Act, while others interpret it to apply to all personal representatives.

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

first paper filing fee would not apply to papers that are filed to consent to an action or relief requested in the proceeding that does not require a hearing, such as a disclaimer, creditor's claim, request for notice, or similar item.

Subsequent papers are defined in the proposed legislation as papers requiring a hearing, or in response to such papers, that are filed by persons who have already paid a first paper fee, subject to several exemptions.⁵ Hence, a party who has appeared in a proceeding under the Probate Code and paid the \$86 petition fee or the \$63 opposition paper fee is charged the \$14 fee for subsequent filings in that proceeding, unless an exemption applies.

The proposed legislation also makes clear that for the purposes of the fee provisions, all paper filed with the clerk bearing the same action number are part of the same proceeding.

5. The exemptions from the subsequent paper filing fee provided by Government Code Section 26827.4 are continued in the proposed legislation, except that the proposed legislation makes clear that the petitions listed in Probate Code Section 10501 are exempt from the fee whether or not the personal representative has independent administration authority. Matters described in Section 10501 include the following: allowance of the personal representative's commissions, allowance of attorney's fees, settlement of accounts, preliminary and final distributions and discharge, and various transactions between the estate and the personal representative or personal representative's attorney.

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, a fee may not 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.

Subdivision (c) clarifies the meaning of a "proceeding" for purposes of this filing fee.

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).

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 26827.9 in connection with revision of 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 proceeding 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) Sixty-three dollars (\$63) in any county where a fee is collected for the court reporter fund.

(2) Thirty-five 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 under the Probate Code 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, a fee may not 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 in the circumstances provided in Section 26827.4.

Subdivision (d) is the same as Section 26827(c).

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

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 new Section 26827.4. See the Comment to new 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 petition or other paper that requires a hearing, or a response thereto, that is filed in a proceeding under the Probate Code 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) A subsequent paper required to be filed in a proceeding

described in the following provisions is exempt from the subsequent paper filing fee:

(1) Section 10501 of the Probate Code, whether or not the personal representative has been granted the authority to administer the estate under the Independent Administration of Estates Act.

(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) A subsequent paper that is only a consent to an action or relief requested in a proceeding under the Probate Code, or is a waiver in connection with such proceeding, is not subject to the subsequent paper fee provided by this section.

(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 exemptions from the subsequent paper filing fee provided by the former section, except that paragraph (1) is revised to make clear that the papers described in Probate Code Section 10501 are exempt from the filing fee whether or not the personal representative has independent administration authority.

Subdivision (d) is consistent with Section 26827.2(b).

Subdivision (e) is the same as Sections 26827(c) and 26827.2(d).