

Memorandum 89-14

Subject: Study L-1058 - Probate Filing Fees (Comments on Draft Tentative Recommendation)

At the December 1988 meeting, the Commission began consideration of the draft *Tentative Recommendation Relating to Filing Fees in Probate*. However, the Commission decided to postpone further consideration of the draft so that we could solicit the comments of court clerks throughout the state. After consideration of these comments, the Commission should decide whether to distribute the tentative recommendation generally for comment.

The staff revised the draft tentative recommendation to incorporate the suggestions of Team #1 of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section as decided at the December meeting. This revised draft, with an explanatory cover letter, was mailed to the county clerk in each of the 58 counties on December 8. To date we have received five letters, copies of which are attached. In summary, the reactions are as follows:

1. Candace J. Grubbs, Butte County Clerk, agrees with the proposal: "It appears from our review the draft statute will clear up some of the confusion surrounding various fees related to probate actions and will be easier to understand by all involved parties." (Exhibit 3, at exhibit p. 11.)
2. Kathleen Moran, Colusa County Clerk, writes that "it is a good idea to try to conform the fee schedules in California counties; however, not if it means reducing fees." (Exhibit 4, at exhibit pp. 12-15.)
3. John R. Hodges, San Benito County Clerk, supports the draft and says that the "amount seems reasonable as many probate files must be maintained in our active inventory for the purpose of annual hearings." (Exhibit 2, at exhibit p. 10.)
4. Warren Slocum, San Mateo County Clerk, supports most of the draft, with one reservation concerning papers filed with the same action number, as discussed in the note following draft Section 26827.2. (Exhibit 5, at exhibit p. 16.)

5. Bruce C. Bolinger, Nevada County Clerk, opposes the draft "because it appears to me that it would have a negative impact on the amount of revenue generated for the counties by the filing fees involved." (Exhibit 6, at exhibit pp. 17-18.)

Also attached to this memorandum for background is the most recent letter from Study Team #1 of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section. (See Exhibit 1, at exhibit pp. 1-10.) The attached draft recommendation is in line with the positions taken in Team #1's letter.

Several other revisions are made in the attached draft statute to deal with matters that were raised by the clerks' letters and otherwise since the Commission last considered the draft. The draft now includes conforming changes in related sections. This deals with some problems raised by Bruce C. Bolinger, Nevada County Clerk, and should remove most, if not all, of the reasons for his opposition. (See Exhibit 6, at exhibit pp. 17-18.)

Adverse Party Filing Fees

The major thrust of the draft statute is to revise the probate filing fees to be more consistent with the filing fee statutes governing civil actions generally. Accordingly, the draft proposes a two-tier first paper fee, with a higher fee applicable to the first petitioner and a lower fee applicable to opposition papers. Upon examining the filing fee schedules of all of the counties, however, we find that this brave new proposal reflects existing practice in at least 54 of the 58 counties. (For a summary of filing fees, see Exhibit 7, at exhibit pp. 19-21; see also the Colusa County filing fee schedule, at exhibit p. 13.) It is also possible that the four counties whose probate filing fee schedules do not list a separate adverse party filing fee would in practice charge the standard fee for adverse parties.

Typically, the schedules cite Government Code Section 26826 as authority for the adverse party fee, though some cite Section 26827.4. The practice of charging each adverse party a filing fee is based on the language in Section 26826 that the "total fee for filing the first paper in the action on behalf of any . . . adverse party, whether separately or jointly" Forty counties list a higher fee for

the first adverse party and a lower fee for each additional adverse party joining in the petition. The differences between the two fees ranges from \$1 (Stanislaus and Yuba Counties) up to \$40 (in Butte County). Some counties do not provide a separate fee for joint adverse parties. Others assess the same fee for each adverse party, regardless of whether they join. Thus each adverse party would pay \$105.25 in Santa Barbara County or \$75 in San Mateo County.

The staff (and the State Bar Team, as far as we know) has been proceeding on the assumption that the general civil fees, such as those applicable to adverse parties under Section 26826, do not apply in probate. We assumed that only the special probate fees would be charged in probate proceedings. This conclusion is supported by at least one authority which omits reference to Section 26826, 26830, or other civil filing fee provisions in discussing probate: "Probate filing fees are covered in Govt C §§26827-26829, and miscellaneous costs, including photocopying, certification, and authentication are covered in Govt C §§26831-26839." Gould, *First Steps in Handling a Decedent's Estate*, in 1 California Decedent Estate Practice § 2.21 (Cal. Cont. Ed. Bar, rev. ed. July 1987); see also 4 B. Witkin, *California Procedure Pleading* § 15(3), at 59 (3d ed. 1985) (separately discussing subsequent paper fees in civil actions and probate proceedings).

Adverse party fees are not the only general filing fees applied in probate. Government Code Section 26830 is cited as authority for charging a \$14 fee for a notice of motion for new trial in probate, listed in the probate filing fee schedules of ten counties.

"Whether Separately or Jointly"

Petitioners covered by Government Code Section 26827 are treated differently from adverse parties in most counties. A petition for letters, compromise of a minor's claim, or will contest is charged one filing fee, whereas adverse parties are charged a per person filing fee in most counties. The adverse party fee is lower than the first petition fee in every county that charges both. Parties who join in petitions for letters are not charged separate fees, apparently because the language "whether separately or jointly" does not appear in Section 26827.

The staff does not understand the policy reflected in these sections. Why should a person who joins in a response to a petition be treated differently from a person who joins in a plaintiff's petition? It is even stranger under existing law when we consider that a will contest is an adverse type of petition, yet it is treated with petitions for letters under Section 26827, meaning that persons joining in the contest are not charged separate adverse party filing fees. However, a person joining in a petition opposing a petition for letters would be charged a separate fee. (To the staff, this points up the inappropriateness of applying the general adverse party fee of Section 26826 in probate proceedings.)

Additional Study

Bruce C. Bolinger, Nevada County Clerk, suggests that we survey all of the counties to see what they are charging, what special fees are charged, and the proportions of the fees going into the county's general fund. (See Exhibit 6, at exhibit p. 17.) He argues that the recommendation should not be proposed to the Legislature until we determine the effect it would have on county revenues.

We have surveyed the filing fee schedules from each county, but the impact on each county can not be determined very easily, and not with the resources available to the Commission. The staff wrote to each county clerks in an effort to get their reaction to the draft statute. In the six weeks since the draft recommendation was mailed, however, we have received only five written replies and one telephone call. We have doubts that the far more complex study envisioned by Mr. Bolinger would receive any better response.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

Memo 89-14

213\99999-93\88-83 11/28/88

EXHIBIT 1

Study L-1058

CA LAW REV. COMM'N

NOV 28 1988

RECEIVED

REPORT

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

DATE: November 28, 1988

RE: LRC MEMORANDUM 88-83
(Filing Fees in Probate -- Tentative Recommendation)

In view of the Thanksgiving holidays, Study Team #1 had difficulty in arranging for a conference call. Finally, on the afternoon of November 23, Michael V. Vollmer and William V. Schmidt conferred. All other members of the team did not participate. We have the following comments to the tentative recommendation which appears on the white pages at the end of Memorandum 88-83:

Probate First Petition Fee - Sec. 26827 and Probate Opposition Paper Fee - Sec. 26827.2

We are very pleased with both of these sections. We feel that they will be sound law and will provide clear guidance to County Clerks, which will result in a consistent application throughout the state.

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We are pleased with the First Paper approach as it follows the general approach used in civil actions. We are also pleased with the two-tier approach as it also follows the approach used in civil actions. We feel that the hard work by several people over a period of months has finally paid off and that we have now been able to adopt a first-paper and two-tier approach system which now has the necessary modifications which allows it to be applied to filing fees in probate.

We only have minor typing areas to point out. First, the phrase "in a petition under the Probate Code" as it appears in subdivision (a) of Sec. 26827.2, should read "in a proceeding under the Probate Code." This then parallels the language in subdivision (a) of Sec. 26827. Also, in subdivisions (1) and (2) of subdivision (a) of Sec. 26827.2, the words "Eighty-six" should be "Sixty-three," and the words "Sixty-one" should be "Thirty-Five." We believe that these incorrect amounts were inadvertently carried over from Sec. 26827.

Subsequent Paper Fee - Sec. 26827.4

In view of the comments and questions contained in the Note of the Staff and the further fact that we were pleased with Sections 26827 and 26827.2, our Study Team dug more deeply into the question of the subsequent paper fee. After trying to analyze it and the policy behind it from different

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approaches, we have come up with the comments, conclusions and recommendations set forth below, as well as a proposed revised Section, which is attached to the end of this Memorandum as Attachment #1.

1. In looking at the definition of a "subsequent paper" as found in subdivision (a), it was clear that the term included a petition or other initiating paper, but it was not absolutely clear that the term included a responsive paper, such as an objection. After analyzing and reviewing, we felt that the term should include both initiating and responding papers, and we have, therefore, modified subdivision (a) to include not only the language, but the concept for the first paper found in subdivision (a) of Sections 26827 and 26827.2. We feel very good about carrying over the first paper concept into the subsequent paper provisions, as it adds continuity and consistency to the entire probate filing fee system.

2. As you can see from the attachment, we would recommend no change in subdivision (b). We feel that subdivision is fine as it is.

3. We would modify the first portion of subdivision (c) so that its language follows the concept of subdivision (a) without any possible ambiguity. We were concerned with the language "Papers required by any of the following provisions." It could be argued that the only papers required by the

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following provisions would be the petition or initiating paper and that a responsive paper such as an objection is not required by the following provisions. To eliminate this possible ambiguity, we prefer to revise this language.

4. We are once again very concerned about the problem mentioned in the second paragraph of the Note to the section. It makes no sense whatsoever to us that petitions under Probate Code Section 10501 are exempt if the petition is filed by a personal representative with Independent Administration authority, but not exempt when the same petition is filed by a personal representative without such authority. Furthermore, we think it is unfair. It may well be argued that the language of the existing section does not make this distinction, but there is no question whatsoever that some counties, including Orange County, are making this distinction. We agree with William W. Johnson, Probate Examiner, Sacramento County. We feel that there should be consistency throughout the state and the language of the statute should be so clear and free of any possible ambiguity that there will be such consistency. We, therefore, recommend adding the following words to subdivision (1) of subdivision (c): "whether or not the personal representative has been granted authority to administer the estate under the Independent Administration of Estates Act." We have no pride of authorship in these particular words. The

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staff may very well improve upon them. We are only concerned that there be a clear, unambiguous statement somewhere in the statute which accomplishes the result which we seek.

5. We would delete in its entirety subdivision (d), even though we realize that its deletion would result in a higher filing fee. In the fourth paragraph of its Note, the staff states that it is unclear on the purpose of the provision which affords a substantial savings to objectors. We are also unclear. The staff then asks 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 fee and the \$14 fee)? We know of no such policy and we feel that such a result would be a bad one. We would also state the policy question in a slightly different manner. We would ask what policy supports the concept that a person (such as a beneficiary objecting to a final account) who has not theretofore paid a filing fee under either Section 26827 or 26827.2 should be able to pay only a \$14 filing fee instead of the normal \$63 filing fee, merely because he is filing a response or objection to a subsequent paper filed by another, rather than to a first paper filed by another. Again, we are aware of no such policy. We feel that a beneficiary who for the first time appears to object to an accounting or a petition for distribution should pay the full \$63 filing fee under

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Section 26827.2. We feel that this concept is consistent with what many clerks are now doing and what many clerks feel is fair and proper.

6. In view of the fact that under our proposal, a subsequent paper includes a responsive paper and that no filing fee should be charged for a responsive paper which consists merely of a consent or a waiver, we feel that language similar to the language found in subdivision (b) of Section 26827.2 should be added to this section. In the attachment we have added it as a new subdivision (d). Obviously, it could be placed elsewhere if the commission and staff prefers.

SUMMARY OF OUR POSITION REGARDING SECTION 26827.4.

1. A "subsequent paper" should include a responsive subsequent paper as well as an initiating or subsequent paper such as a petition. This carries over the first paper concept and seemingly adds continuity and consistency.

2. If the initiating (petition) subsequent paper is exempt, the responding subsequent paper in the same proceeding should be exempt. However, if the initiating subsequent paper is not exempt, the responding subsequent paper should be not exempt, unless it consists of merely a consent or a waiver thereto. This approach seems both simple and fair. It should

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be easy to administer and clear enough to attain consistency among the counties.

3. A subsequent paper in a proceeding required by Section 10501 should be exempt whether or not the personal representative has the power to administer under the Independent Administration of Estates Act.

ILLUSTRATION OF THE APPLICATION OF THE PROPOSED STATUTE BY HYPOTHETICAL EXAMPLES.

The revised, proposed Section 26827.4 attached hereto would have the following results. Assume that a personal representative who has already paid his first paper filing fee under Section 26827 files a subsequent petition to settle an account, which is an action which requires court supervision under Section 10501. He pays no subsequent paper filing fee because of the Section 10501 exemption. Assume further that a beneficiary who has never made an appearance in the proceeding and who has not paid a filing fee under either Section 26827 or 26827.2 files an objection to the account. Since this is his first appearance, he pays the \$63 first paper filing fee under Section 26827.2. (This, of course, assumes that subdivision (d) in the Tentative Recommendation is deleted.) Three months later, the same personal representative files a petition for a preliminary distribution and again the beneficiary files an objection. Neither would pay a subsequent paper filing fee, as

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each had paid his first paper filing fee and a petition for preliminary distribution is an action which requires court supervision under Section 10501. Two months later, the personal representative files a petition for instruction and the beneficiary once again files an objection. Each pays a subsequent paper filing fee as a petition for instruction is not a proceeding which is exempt from the subsequent paper filing fee. Changing the facts slightly, assume that the beneficiary did not file an objection to the petition for instruction but only filed his consent to such petition or a waiver of notice. In such a case, the personal representative would pay a subsequent paper filing fee, but the beneficiary would not be required to do so.

Please note that under our proposal all of the results above would be exactly the same whether or not the personal representative has the authority to administer the estate under the Independent Administration of Estates Act.

Hopefully, the commission and the staff will agree to the modifications we suggest for Section 26827.4. If so, we are

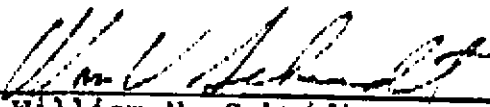
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for the first time satisfied that we have a sound, fair and workable probate filing fee system.

Respectfully submitted,

STUDY TEAM NO. 1

By:



William V. Schmidt
Captain

JOHN R. HODGES
Clerk, Auditor and Recorder
Phone (408)637-3786

440 Fifth Street
Room 206, Courthouse
Hollister, California 95023

COUNTY OF SAN BENITO

December 14, 1988

CA LAW REV. COMM'N
DEC 20 1988
RECEIVED

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto CA 94303-4739

Dear Mr. Ulrich,

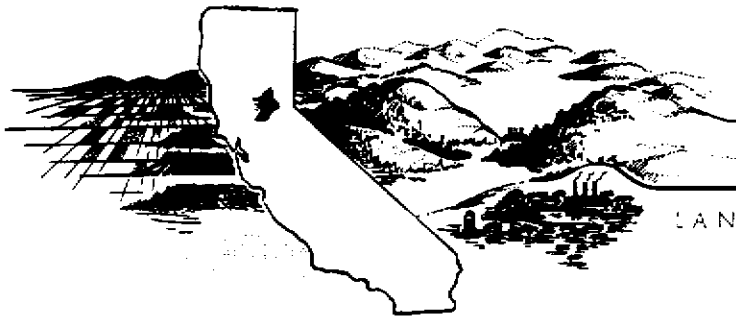
I support the clarification of fees charged in probate cases as stated in your tentative recommendation relating to filing fees. A subsequent paper fee of \$14 is consistent with subsequent paper fees in civil actions. The amount seems reasonable as many probate files must be maintained in our active inventory for the purposes of annual hearings.

Thank you this opportunity to comment. If I can be of further assistance, please free to call on me.

Respectfully,

John R. Hodges

JOHN R. HODGES, COUNTY CLERK



Butte County

LAND OF NATURAL WEALTH AND BEAUTY

CANDACE J. GRUBBS

COUNTY CLERK - RECORDER

ADMINISTRATION BUILDING - 25 COUNTY CENTER DRIVE
OROVILLE, CALIFORNIA 95965-3375

Telephone: 538-7551

Assistant Recorder, Gwen Ferland
Assistant Registrar of Voters, Laura A. Cassidy

538-7691
538-7761

December 19, 1988

CA LAW REV. COMM'N

DEC 20 1988

RECEIVED

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

Dear Mr. Ulrich:

This is in follow-up to your December 8, 1988 letter regarding revisions of the statutes governing filing fees in proceedings under the Probate Code.

Please be advised we are in agreement with the draft statute as presented. It appears from our review the draft statute will clear up some of the confusion surrounding various fees related to probate actions and will be easier to understand by all involved parties.

Please do not hesitate to contact me if you wish any further information.

Sincerely,

Candace J. Grubbs
County Clerk-Recorder

CJG/rld

DEC 27 1988

RECEIVED

CLERK - RECORDER
COUNTY of COLUSAKATHLEEN MORAN
Clerk - Recorder

SUE STAFFORD
Assistant Clerk - RecorderCOUNTY COURTHOUSE
546 JAY STREET
COLUSA, CALIFORNIA
95932
(916) 458-4660

December 21, 1988

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

Dear Mr. Ulrich:

I have reviewed your correspondence of December 8, 1988 and accompanying Tentative Recommendation relating to Filing Fees in Probate. This letter is to formally state that the Colusa County Clerk's Office would oppose this recommendation. As of January 1, 1989, our fee for filing a first petition will be \$78.00. Filing a second or subsequent petition will also be \$78.00. Filing a petition to contest a will or codicil will be \$78.00, etc. I have enclosed a full copy of these fees. Any reduction in our fees would have a drastic impact on this office. Our County, as is the same with many others, is experiencing a fiscal crisis and we rely on the fees collected through this office.

Thank you for soliciting opinions of Clerk's. I think it is a good idea to try to conform the fee schedules in California counties; however, not if it means reducing the fees.

Sincerely,

Kathleen Moran
County Clerk-Recorder
County of Colusa

enc.

km

COLUSA CO.

Rule 1 (c) CPC	Authority	Total	Clerk	Law Library	Judges Retire Fund	Micro-graphics
27. Filing APPEAL from SUPERIOR Court. FEE PAYABLE TO COURT OF APPEAL	68926.1 GC	50.00	50.00			
28. DEPOSIT upon filing a Notice of APPEAL (Deposit forfeited in the event of abandonment or dismissal of appeal prior to filing record in reviewing court)	26838 GC	14.00	14.00			
29. Appeals - CLERK'S TRANSCRIPTS: 60 cents per page (30 cents per page for each additional copy)-Clerk's CHRONOLOGICAL INDEX: 20 cents per page for entire case file	16373 VC	1.50	1.50			
30. CERTIFICATE REQUIRED on notice of motion or dismissal of APPEAL to reviewing court	409 CCP	1.75	1.75			
31. CERTIFICATE of Facts Re UNSATISFIED JUDGMENT						
32. Certificate of Notice of Pendency of Action						

The changes noted below will be effective as of January 1, 1989. Colusa County does not have a Court Reporter or a Court Reporter Fund.

TYPE OF SERVICE	Authority	Total	Clerk	Law Library	Judges Retire Fund	Micro-graphics
1. Filing FIRST PETITION for letters of administration, special letters of administration, letters testamentary, letters of guardianship, letters of conservatorship, for compromise of minor's claim and for first account of testamentary trustee	26827 GC	78.00	62.00	\$12.00	\$3.00	\$1.00
2. Filing a second or SUBSEQUENT petition by a person other than the original petitioner (EXCEPT to amend a petition)	26827 GC	78.00	62.00	12.00	3.00	1.00
3. Filing a petition to CONTEST a Will or Codicil	26827 GC	78.00	62.00	12.00	3.00	1.00
4. Filing a first paper on behalf of any ADVERSE PARTY	26828 GC	44.00	28.00	12.00	3.00	1.00
NOTE: Includes Petition for family allowances, etc., when widow is not the original petitioner		42.00	25.00			
4a. Each ADDITIONAL party appearing jointly	26828 GC	39.00	27.00			
5. PUBLIC BODY or officer, same as No. 2 of Civil Actions	6103 GC	NO FEE				
6. NATIONAL GOVERNMENT, same as No. 3 of Civil Actions	26857 GC	NO FEE				
7. Filing a SUBSEQUENT paper which requires a court hearing except for papers required by Section 591.2 Probate Code, Accountings under Section 1120 Probate Code, or Division 4 (commencing with Section 1400) Probate Code (this does not apply to petitions filed in No. 2 above)	26827.4 GC	14.00	14.00			

TYPE OF SERVICE	Authority	Total	Clerk	Law Library	Judges Retire Fund	Micro-graphics
9. Filing a Notice of Motion for a NEW TRIAL	26830 GC	14.00	14.00			
10. Filing a non-probated Will or Codicil TRANSFER of a conservatorship or guardianship (PLUS Filing Fee of the county to which case is transferred. SEPARATE CHECKS REQUIRED)	26850 GC	2.25	2.25			
11. Filing by the Public Administrator of an application provided for in 1143 Prob. Code	2216 ProbC	14.00	14.00			
12. Affidavit procedure for real property of small value. (Effective 7-1-87)	1144 Prob. C	35.00	35.00			

FAMILY LAW FILING FEES

TYPE OF SERVICE	Authority	Total	Clerk	Law Library	Judges Retire Fund	Micro-graphics
1. Filing FIRST PAPER for petition for dissolution, legal separation or nullity (includes fee for entering judgment)	26858 GC	\$63.00	\$63.00	\$12.00	\$3.00	\$1.00
2. Family Law TRANSFER from another court	26840.3 GC	63.00	62.00	12.00	3.00	1.00
3. Filing joint petition for SUMMARY dissolution of marriage	26840.3 GC	78.00	62.00	12.00	3.00	1.00
4. Filing FIRST PAPER on behalf of any respondent or adverse party except disclaimer as used in this section, the word "paper" does not include a stipulation for the appointment of a temporary judge, or of a court investigator or the declaration of a spouse filed in an order to show cause proceeding or a marital settlement agreement which is signed by a defaulted respondent and intended for incorporation in a proposed decree of dissolution of marriage	26882 GC	47.00	26.00	12.00	3.00	1.00
4a. MILITARY PERSONNEL -- for filing Respondent's appearance, stipulation and waiver of rights under Soldier's and Sailor's Civil Relief Act of 1940 and action for dissolution of marriage if uncontested	26857.5 GC	NO FEE				
5. Filing a MOTION, order to show cause, or other proceeding seeking to modify or enforce CUSTODY or VISITATION rights	26863 GC	14.00	14.00			
6. Filing notice of MOTION, or any other paper requiring a hearing subsequent to the first paper other than specified in item 4 above	26830 GC	14.00	14.00			

RESOLUTION NO. 88-114

BOARD OF SUPERVISORS
COUNTY OF COLUSA
CALIFORNIA

A RESOLUTION AMENDING RESOLUTION NO. 86-94 - INCREASING FEES FOR
CERTAIN FILINGS IN THE SUPERIOR COURT OF THE COUNTY OF COLUSA

WHEREAS, Section 68090 of the Government Code authorizes the Board of Supervisors to establish, within certain limits, the fees for certain filings in the Superior Court; and

WHEREAS, by Resolution Number 80-106 said fees were established; and

WHEREAS, Sections 26820.8 of the Government Code states the maximum amounts set forth in Sections 26820.4, 26826, and 26827 as to certain fees shall be deemed adjusted to reflect changes in the value of the dollar based on the percent change in the California Consumer Price Index, not to exceed 3% per year; and

WHEREAS, an increase in the current fees is required to adequately cover the costs of services provided;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Colusa County, pursuant to Sections 26820.8 and 68090 of the Government Code, that the fees as set forth in Resolution Number 80-106 for filings in the Superior Court of Colusa County are hereby amended as follows:

1. 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 of seventy-eight dollars (\$78.00); provided, however, that any fee established pursuant to Section 26840.3 of the Government Code for the maintenance of a Conciliation Court shall be in addition to this sum.

2. 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 of letters conservatorship, a petition for compromise of minor's claim, or a petition to contest any will or codicil, shall be the sum of seventy-eight dollars (\$78.00). The sum of seventy-eight dollars (\$78.00) 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 official capacity is the petitioner, he shall be required to pay the fee only out of the assets of the estate coming into his possession.

3. The total fee for filing the first paper is an action on behalf of any defendant, intervenor, respondent or adverse party, filing separately except for the purpose of making disclaimer, shall be the sum of forty-four dollars (\$44.00), plus thirty dollars (\$30.00) for each defendant, intervenor, respondent or adverse party filing jointly.

BE IT FURTHER RESOLVED that the fees set forth in this Resolution shall become effective on January 1, 1989 and shall remain in full force and effect until changed by Resolution adopted pursuant to Section 68090 of the Government Code.

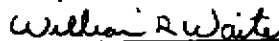
BE IT FURTHER RESOLVED that this Resolution shall not become effective until January 1, 1989.

PASSED AND ADOPTED at a Regular Meeting of the Board of Supervisors this 29th day of November, 1988 by the following vote:

AYES: Supervisors Kay K. Nordyke, Howard Foster, David G. Womble and William R. Waite.


NOES: None.

ABSENT: Supervisor James S. Kalfsbeek



William R. Waite, Chairman of the
Board of Supervisors

ATTEST:



Kathleen Moran, County Clerk and
Ex-Officio Clerk to the Board
of Supervisors

OFFICE OF THE COUNTY CLERK-RECORDER
and Administrative Clerk of the Superior Court



WARREN SLOCUM
COUNTY CLERK-RECORDER

COUNTY OF SAN MATEO

HALL OF JUSTICE AND RECORDS · REDWOOD CITY · CALIFORNIA 94063-0964

CA LAW REV. COMM'N

DEC 27 1988

RECEIVED
CLERK DIVISION
BARBARA SCHWOERER
ASSISTANT CLERK

(415) 363-4711

December 22, 1988

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

Dear Mr. Ulrich:

Thank you for inviting us to comment on proposed revisions of the statutes which govern filing fees in Probate matters. We have several comments which follow:

1. We support the proposal to charge a higher initial filing fee and a lower fee for first papers which are filed in opposition.
2. The \$14.00 fee for papers which require a hearing is currently charged to petitioners who do not have authorization to administer under the Independent Administration of Estates Act. The proposal to charge the fee to all, unless an exemption under Section 10501 of the Probate Code applied, would save our clerk's research time.
3. Pursuant to Section 26827.2 of the Government Code, Section 4(d) "all papers filed with the Clerk bearing the same action number are part of the proceeding". This is our policy, except that if a new petitioner files an action under the same case number, we charge a filing fee because they have never paid one. This also applies to will contest proceedings. We do not support the total concept of this proposal.

If you have any questions regarding these comments, please do not hesitate to contact me.

Sincerely,

Warren Slocum
County Clerk-Recorder

WS:rv



COUNTY OF NEVADA

BRUCE C. BOLINGER

COUNTY CLERK

Nevada County Courthouse, 201 Church St.
P.O. Box 6126, Nevada City, CA 95959-6126
(916) 265-1293

CA LAW REV. COMMISSION

JAN 09 1989

R E C E I V E D

January 6, 1989

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

Dear Mr. Ulrich:

This letter is in response to your letter of Dec. 8, 1988 concerning the California Law Revision Commission's draft revision of the Government Code sections governing probate filing fees. As presently worded, I would have to oppose it because it appears to me that it would have a negative impact on the amount of revenue generated for the counties by the filing fees involved. The erratic course of Trial Court Funding over the last few years gives me no confidence in the state as a source of financial support for the justice system. I feel that we cannot afford to let any existing source of revenue be diminished. My specific concerns appear below.

First of all, I think that any change of this sort requires a survey of all the counties to determine exactly what fees they are now charging and the proportions of those fees going into the county's general fund (as opposed to funds for judges' retirement, court reporters, the law library, and micrographics). The survey should take into account whether a county's fee is in the higher category of fees due to there being a court reporter fee, or in the lower category where there is no court reporter fee. The results of the survey need to be part of an analysis which also takes into account the effect on revenue of the changes that the draft would make as to which filings are subject to which fees, particularly the creation of the new Sec. 26827.2. The explanation accompanying the draft language makes no reference to the financial impact of the proposed changes.

Proposed Sec. 26827 and Sec. 26827.2 both retain the language, "is the sum fixed by resolution pursuant to Section 68090." Sec. 68090 only authorizes a board of supervisors to adopt a resolution setting the fees. It doesn't authorize an increase in fees to take into account cost of living increases. The authority for such increases lies in Sec. 26820.8 but the staff draft does not amend 26820.8 to reflect the proposed addition of new Sec. 26827.2. In other words, unless Sec. 26820.8 is amended to add new 26827.2 to the list of sections cited in it, there will be no authority for biennial cost of living increases in the fees charged for filings under 26827.2.

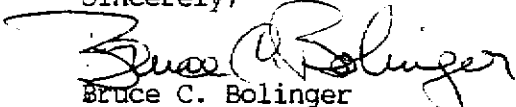
Existing Sec. 26827 is worded in such a way that, on its face, it

Mr. Stan Ulrich (cont.)

sets maximum amounts of fees (\$86 and \$61) that can be charged. What with the inflationary fee increases adopted over the last several years under Sec. 26820.8, the actual fees being charged exceed those amounts in some, if not most, counties. Proposed new Section 26827 would reenact the \$86 and \$61 amounts. If the proposed legislation is successful in its present form, I am concerned that, by virtue of being the Legislature's last word on the subject, the language of 26827 might be interpreted as forcing counties to roll back fees that exceed those amounts. I would feel more comfortable if language were to be added to the proposed legislation—uncodified legislative intent language might suffice—to make clear that the enactment of the new 26827 is not intended to require any county to lower any existing probate fees subject to it and that the fees can continue to be increased pursuant to 26820.8.

Finally, Secs. 68090 and 68090.5 also need to be amended to reflect the new 26827.2.

Sincerely,


Bruce C. Bolinger
Nevada County Clerk-Recorder

CC: Don Swanson

PROBATE FILING FEES (1988)

COUNTY	First Petition for Letters etc GC \$26827(a)	Later Petition for Letters etc GC \$26827(b)	First Adverse Party [GC \$26826]	Joint Adverse Party [GC \$26826]	Subsequent Paper GC \$26827.4	Objections to Exempt Papers GC \$26827.4	Fact of Death to Terminate JT
Alameda	\$111.00	\$111.00	\$83.00	\$72.50	\$14.00		
Alpine	\$71.00	\$71.00	\$43.00	\$30.00	\$14.00		\$71.00
Amador	\$74.00	\$74.00	\$42.00	\$30.00	\$14.00		
Butte	\$119.00	\$119.00	\$90.00	\$50.00	\$14.00	\$14.00	\$119.00
Calaveras	\$70.00	\$70.00	\$40.00	\$28.00			\$70.00
Colusa	\$74.00	\$74.00	\$42.00	\$29.00	\$14.00		
Contra Costa	\$114.00	\$114.00	\$84.00	\$66.00	\$14.00		
Del Norte	\$75.00	\$75.00	\$40.00		\$14.00	\$14.00	\$75.00
El Dorado	\$107.00	\$107.00	\$78.00	\$56.00	\$14.00		\$107.00
Fresno	\$105.00	\$105.00	\$78.00	\$78.00	\$14.00	\$14.00	
Glenn	\$99.00	\$99.00	\$67.00	\$55.00	\$14.00	\$14.00	
Humboldt	\$78.00	\$78.00	\$47.00	\$35.00	\$14.00	\$14.00	\$78.00
Imperial	\$104.00	\$104.00	\$76.00	\$57.00	\$14.00		
Inyo	\$75.00	\$75.00	\$44.00	\$33.00	\$14.00		
Kern	\$126.00	\$126.00	\$98.00	\$66.00	\$14.00		
Kings	\$76.00	\$76.00	\$45.00	\$33.00	\$14.00		\$76.00
Lake	\$108.00	\$108.00	\$78.00	\$46.00	\$14.00		
Lassen	\$69.00	\$69.00			\$14.00		
Los Angeles	\$108.00	\$108.00	\$79.00	\$61.00	\$14.00		
Madera	\$76.00	\$76.00	\$44.00	\$32.00	\$14.00		\$76.00
Marin	\$117.00	\$117.00	\$89.00	\$62.50	\$14.00		
Mariposa	\$73.00	\$73.00	\$42.00		\$14.00		
Mendocino	\$107.00	\$107.00	\$78.00		\$14.00		
Merced	\$96.00	\$96.00	\$70.00		\$14.00		
Modoc	\$74.00	\$74.00	\$42.00	\$30.00	\$14.00		\$74.00
Mono	\$83.00	\$83.00	\$59.00	\$52.00	\$17.00		\$80.00
Monterey	\$108.00	\$108.00	\$79.50		\$14.00		\$108.00
Napa	\$93.00	\$93.00	\$68.00	\$48.00			
Nevada	\$104.00	\$104.00	\$78.00	\$78.00	\$14.00		

PROBATE FILING FEES (1988)

COUNTY	First Petition for Letters etc GC \$26827(a)	Later Petition for Letters etc GC \$26827(b)	First Adverse Party [GC \$26826]	Joint Adverse Party [GC \$26826]	Subsequent Paper GC \$26827.4	Objections to Exempt Papers GC \$26827.4	Fact of Death to Terminate JT
Orange	\$108.00	\$108.00	\$78.00	\$78.00	\$14.00		
Placer	\$105.00	\$105.00	\$76.00	\$39.00	\$14.00		
Plumas	\$64.00	\$64.00	\$38.00	\$25.00	\$14.00		\$64.00
Riverside	\$108.00	\$108.00	\$79.00	\$79.00	\$14.00	\$14.00	\$108.00
Sacramento	\$112.00	\$112.00	\$84.00	\$61.00	\$14.00	\$14.00	
San Benito	\$98.00	\$98.00	\$68.00	\$46.00	\$14.00		
San Bernardino	\$109.00	\$109.00			\$14.00		
San Diego	\$108.00	\$108.00	\$78.00	\$78.00	\$14.00		
San Francisco	\$133.00	\$133.00	\$105.00	\$74.00	\$14.00		
San Joaquin	\$72.00	\$72.00	\$42.00	\$38.00	\$14.00	\$14.00	\$72.00
San Luis Obispo	\$105.00	\$105.00	\$76.00	\$49.00	\$14.00		
San Mateo	\$102.00	\$102.00	\$75.00	\$75.00	\$14.00		\$102.00
Santa Barbara	\$133.25	\$133.25	\$105.25	\$105.25	\$0.00		
Santa Clara	\$108.00	\$108.00	\$78.00	\$56.50	\$14.00		\$108.00
Santa Cruz	\$112.00	\$112.00	\$83.00	\$59.00	\$14.00		\$112.00
Shasta	\$111.00	\$111.00	\$82.00	\$56.00	\$14.00	\$14.00	\$111.00
Sierra	\$80.00	\$80.00	\$48.00	\$36.00	\$14.00	\$14.00	
Siskiyou	\$74.00	\$74.00			\$14.00		
Solano	\$104.00	\$104.00	\$78.00	\$78.00			
Sonoma	\$110.00	\$110.00	\$81.00	\$81.00	\$14.00		
Stanislaus	\$74.00	\$74.00	\$42.00	\$41.00	\$14.00		
Sutter	\$77.00	\$77.00	\$44.00	\$37.00	\$14.00	\$14.00	
Tehama	\$101.00	\$101.00			\$0.00		\$101.00
Trinity	\$73.00	\$73.00	\$41.00	\$28.00	\$14.00		\$73.00
Tulare	\$101.00	\$101.00	\$69.00	\$37.00	\$14.00		\$101.00
Tuolumne	\$86.00	\$86.00	\$54.00	\$39.00	\$14.00		
Ventura	\$135.00	\$135.00	\$105.00	\$85.00	\$14.00	\$14.00	
Yolo	\$85.00	\$85.00	\$53.00	\$42.00	\$14.00		
Yuba	\$74.00	\$74.00	\$42.00	\$41.00	\$14.00		

1988 COUNTY PROBATE FILING FEE RANKINGS

Counties Arranged by First Petition Filing Fee

COUNTY	1st Petition
Plumas	\$64.00
Lassen	\$69.00
Calaveras	\$70.00
Alpine	\$71.00
San Joaquin	\$72.00
Mariposa	\$73.00
Trinity	\$73.00
Amador	\$74.00
Colusa	\$74.00
Modoc	\$74.00
Siskiyou	\$74.00
Stanislaus	\$74.00
Yuba	\$74.00
Del Norte	\$75.00
Inyo	\$75.00
Kings	\$76.00
Madera	\$76.00
Sutter	\$77.00
Humboldt	\$78.00
Sierra	\$80.00
Mono	\$83.00
Yolo	\$85.00
Tuolumne	\$86.00
Napa	\$93.00
Merced	\$96.00
San Benito	\$98.00
Glenn	\$99.00
Tehama	\$101.00
Tulare	\$101.00
San Mateo	\$102.00
Imperial	\$104.00
Nevada	\$104.00
Solano	\$104.00
Fresno	\$105.00
Placer	\$105.00
San Luis Obispo	\$105.00
El Dorado	\$107.00
Mendocino	\$107.00
Lake	\$108.00
Los Angeles	\$108.00
Monterey	\$108.00
Orange	\$108.00
Riverside	\$108.00
San Diego	\$108.00
Santa Clara	\$108.00
San Bernardino	\$109.00
Sonoma	\$110.00
Alameda	\$111.00
Shasta	\$111.00
Sacramento	\$112.00
Santa Cruz	\$112.00
Contra Costa	\$114.00
Marin	\$117.00
Butte	\$119.00
Kern	\$126.00
San Francisco	\$133.00
Santa Barbara	\$133.25
Ventura	\$135.00

Counties Arranged by First Adverse Party Filing Fee

COUNTY	1st Party	Joint
Plumas	\$38.00	\$25.00
Calaveras	\$40.00	\$28.00
Del Norte	\$40.00	
Trinity	\$41.00	\$28.00
Amador	\$42.00	\$30.00
Colusa	\$42.00	\$29.00
Mariposa	\$42.00	
Modoc	\$42.00	\$30.00
San Joaquin	\$42.00	\$38.00
Stanislaus	\$42.00	\$41.00
Yuba	\$42.00	\$41.00
Alpine	\$43.00	\$30.00
Inyo	\$44.00	\$33.00
Madera	\$44.00	\$32.00
Sutter	\$44.00	\$37.00
Kings	\$45.00	\$33.00
Humboldt	\$47.00	\$35.00
Sierra	\$48.00	\$36.00
Yolo	\$53.00	\$42.00
Tuolumne	\$54.00	\$39.00
Mono	\$59.00	\$52.00
Glenn	\$67.00	\$55.00
Napa	\$68.00	\$48.00
San Benito	\$68.00	\$46.00
Tulare	\$69.00	\$37.00
Merced	\$70.00	
San Mateo	\$75.00	\$75.00
Imperial	\$76.00	\$57.00
Placer	\$76.00	\$39.00
San Luis Obispo	\$76.00	\$49.00
El Dorado	\$78.00	\$56.00
Fresno	\$78.00	\$78.00
Lake	\$78.00	\$46.00
Mendocino	\$78.00	
Nevada	\$78.00	\$78.00
Orange	\$78.00	\$78.00
San Diego	\$78.00	\$78.00
Santa Clara	\$78.00	\$56.50
Solano	\$78.00	\$78.00
Los Angeles	\$79.00	\$61.00
Riverside	\$79.00	\$79.00
Monterey	\$79.50	
Sonoma	\$81.00	\$81.00
Shasta	\$82.00	\$56.00
Alameda	\$83.00	\$72.50
Santa Cruz	\$83.00	\$39.00
Contra Costa	\$84.00	\$66.00
Sacramento	\$84.00	\$61.00
Marin	\$89.00	\$62.50
Butte	\$90.00	\$30.00
Kern	\$98.00	\$66.00
San Francisco	\$105.00	\$74.00
Ventura	\$105.00	\$85.00
Santa Barbara	\$105.25	\$105.25
Lassen		
San Bernardino		
Siskiyou		
Tehama		

Counties Arranged by Joint Adverse Party Filing Fee

COUNTY	1st Party	Joint
Plumas	\$38.00	\$25.00
Calaveras	\$40.00	\$28.00
Trinity	\$41.00	\$28.00
Colusa	\$42.00	\$29.00
Alpine	\$43.00	\$30.00
Amador	\$42.00	\$30.00
Modoc	\$42.00	\$30.00
Madera	\$44.00	\$32.00
Inyo	\$44.00	\$33.00
Kings	\$45.00	\$33.00
Humboldt	\$47.00	\$35.00
Sierra	\$48.00	\$36.00
Sutter	\$44.00	\$37.00
Tulare	\$69.00	\$37.00
San Joaquin	\$42.00	\$38.00
Placer	\$76.00	\$39.00
Tuolumne	\$54.00	\$39.00
Stanislaus	\$42.00	\$41.00
Yuba	\$42.00	\$41.00
Yolo	\$53.00	\$42.00
Lake	\$78.00	\$46.00
San Benito	\$68.00	\$46.00
Napa	\$68.00	\$48.00
San Luis Obispo	\$76.00	\$49.00
Butte	\$90.00	\$50.00
Mono	\$59.00	\$52.00
Glenn	\$67.00	\$55.00
El Dorado	\$78.00	\$56.00
Shasta	\$82.00	\$56.00
Santa Clara	\$78.00	\$56.50
Imperial	\$76.00	\$57.00
Santa Cruz	\$83.00	\$59.00
Los Angeles	\$79.00	\$61.00
Sacramento	\$84.00	\$61.00
Marin	\$89.00	\$62.50
Contra Costa	\$84.00	\$66.00
Kern	\$98.00	\$66.00
Alameda	\$83.00	\$72.50
San Francisco	\$105.00	\$74.00
Fresno	\$78.00	\$78.00
Nevada	\$78.00	\$78.00
Orange	\$78.00	\$78.00
San Diego	\$78.00	\$78.00
Solano	\$78.00	\$78.00
Riverside	\$79.00	\$79.00
Sonoma	\$81.00	\$81.00
Ventura	\$105.00	\$85.00
Santa Barbara	\$105.25	\$105.25
Del Norte		\$40.00
Mariposa		\$42.00
Merced		\$70.00
Mendocino		\$78.00
Monterey		\$79.50
Lassen		
San Bernardino		
Siskiyou		
Tehama		

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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. A lack of clarity leads to a variety of interpretations in the different counties.³ The Commission is also informed that the subsequent paper filing fee is variously interpreted in different counties⁴ and many counties apply general civil filing fees when a special probate fee is not specified.⁵

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. Subject to a number of adjustments and special add-on fees, the first petition filing fee in superior court is \$86 in counties with a court reporter fund; the subsequent paper fee is \$14. Gov't Code §§ 26827, 26827.4.

3. See B. Ross & H. Moore, Jr., California Practice Guide: Probate §§ 1:41.1, 3:551 (Rutter Group 1988).

4. 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.

5. For example, the fee provided by Government Code Section 26826 for papers on behalf of any defendant, intervenor, respondent, or adverse party, whether filing separately or jointly, is applied by most counties to probate proceedings. See superior court fee schedules in Los Angeles Daily Journal Court Rules Service *passim* (looseleaf 1988).

The Commission recommends adoption of the two-tier "first paper" approach reflected in the sections governing filing fees in civil actions generally.⁶ This scheme charges the higher first paper fee (up to \$86)⁷ for petitions or other papers requiring a hearing and a lower first paper fee (up to \$63)⁸ for papers filed in opposition. A party 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 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.⁹ Hence, a party who has appeared in a proceeding under the Probate Code and paid the \$86 petition fee or the \$63

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

7. The "maximum" fee is subject to a biennial adjustment based on the California Consumer Price Index. See Gov't Code § 26820.8. The "total fee" for the purposes of these sections is defined to include the clerk's fee, a law library fee, and amounts for the Judges' Retirement Fund and the Court Reporter Fund. See Gov't Code § 26820.6. Other fees may be added to the "total fee," such as a fee for automation and conversion of court records. See Gov't Code §§ 26820.6, 26863. In 1988, the fees for filing a petition for letters ranged from \$64 in Plumas County to \$135 in Ventura County. See Los Angeles Daily Journal Court Rules Service (1988).

8. *Id.*

9. 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.

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.

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

An act to amend Sections 26820.6, 26820.8, 26821, 26822.3, 26827.5, 68090, 68090.5, and 68090.7 of, 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 § 26820.6 (amended). "Total fee" defined

SECTION 1. Section 26820.6 of the Government Code is amended to read:

26820.6. The term "total fee" as used in Sections 26820.4, 26826, and 26827, and 26827.2, includes the clerk's fee, the amount allocated to the Judges' Retirement Fund pursuant to Section 26822.3, any amount allocated to the Court Reporter Fund, and the law library fee pursuant to Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the Business and Professions Code. The fees authorized for the maintenance of the conciliation court pursuant to Sections 26840.3 and 26840.4, and for the automation and conversion of court records pursuant to Section 26863, may be included in the total fee, or may be in addition thereto, as determined by the board of supervisors pursuant to Section 68090.

Comment. Section 26820.6 is amended to refer to Section 26827.2 which provides the fee for opposition papers in probate proceedings and replaces former Section 26827(b). This amendment is consistent with the treatment of civil fees generally by Sections 26820.4 and 26826.

Government Code § 26820.8 (amended). Inflation and deflation adjustments

SEC. 2. Section 26820.8 of the Government Code is amended to read:

26820.8. The maximum amounts set forth in Sections 26820.4, 26826, and 26827, and 26827.2, shall be deemed adjusted, effective January 1, 1983, and on January 1 of each odd-numbered year thereafter, to reflect changes in the value of the dollar. Such adjustments shall be made by multiplying the base amounts by the percent change in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations with the result rounded to the nearest dollar; however, any adjustment for any two-year period shall not exceed 6 percent per biennium.

Comment. Section 26820.8 is amended to refer to Section 26827.2 which provides the fee for opposition papers in probate proceedings and replaces former Section 26827(b). This amendment is consistent with the treatment of civil fees generally by Sections 26820.4 and 26826.

Government Code § 26821 (amended). Clerk's fee for first paper

SEC. 3. Section 26821 of the Government Code is amended to read:

26821. As part of the fees collected pursuant to Sections 26820.4, 26826, and 26827, and 26827.2, a clerk's fee for filing the first paper, fixed in accordance with Section 68090, shall be collected.

Comment. Section 26821 is amended to refer to Section 26827.2 which provides the fee for opposition papers in probate proceedings and replaces former Section 26827(b). This amendment is consistent with the treatment of civil fees generally by Sections 26820.4 and 26826.

Government Code § 26822.3 (amended). Additional fee for Judges' Retirement Fund

SEC. 4. Section 26822.3 of the Government Code is amended to read:

26822.3. As part of the fees collected pursuant to Sections 26820.4, 26826, and 26827, and 26827.2, a fee of three dollars (\$3) shall be collected.

The funds shall be transmitted at the end of each month to the State Controller for payment into the Judges' Retirement Fund.

Comment. Section 26822.3 is amended to refer to Section 26827.2 which provides the fee for opposition papers in probate proceedings and replaces former Section 26827(b). This amendment is consistent with the treatment of civil fees generally by Sections 26820.4 and 26826.

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

SEC. 5. 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. 6. 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).

Note. Warren Slocum, San Mateo County Clerk, supports defining a proceeding in terms of the case number, except to the extent that it conflicts with their policy of imposing a filing fee on a new petitioner in the same proceeding. Mr. Slocum says "we charge a filing fee because they have never paid one." (See Exhibit 5, at exhibits p. 16.) This is actually the approach of the draft statute. Each petitioner's first petition is subject to the higher first paper fee as the cost of admission to the proceeding. The main exception is that a person who has paid the lower first paper fee applicable to opposition papers under draft Section 26827.2 is saved the difference between the two fees.

Another area of doubt concerns the language "whether filed separately or jointly." The staff had assumed that this meant one fee is charged for the paper, no matter how many persons join in it. However, the county clerks do not look at it that way, as discussed in Memorandum 89-14. The apparent effect of this language in this section would be to levy a fee on each person who joins in the petition that is subject to this section. Accordingly, the offending language is indicated in strike-out at this time.

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

SEC. 7. 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. 8. 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).

Note. Warren Slocum, San Mateo County Clerk, supports the two-tier first paper fee provided in this section. (See Exhibit 5, at exhibits p. 16.)

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

SEC. 9. 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. 10. 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) Papers filed in the following proceedings are exempt from the subsequent paper filing fee:

(1) Proceedings described in subdivision (a) of 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) Proceedings required by 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).

Note. The reference to subdivision (a) of Section 10501 has been added to paragraph (1) of subdivision (c). The exemption provided by this provision then would apply to the following matters, in the language of Section 10501:

- (1) Allowance of the personal representative's commissions.
- (2) Allowance of attorney's fees.
- (3) Settlement of accountings.
- (4) Preliminary and final distributions and discharge.
- (5) Sale of property of the estate to the personal representative or to the attorney for the personal

representative.

(6) Exchange of property of the estate for property of the personal representative or for property of the attorney for the personal representative.

(7) Grant of an option to purchase property of the estate to the personal representative or to the attorney for the personal representative.

(8) Allow, pay, or compromise a claim of the personal representative, or the attorney for the personal representative, against the estate.

(9) Compromise or settle a claim, action, or proceeding by the estate against the personal representative or against the attorney for the personal representative.

(10) Extend, renew, or modify the terms of a debt or other obligation of the personal representative, or the attorney for the personal representative, owing to or in favor of the decedent or the estate.

The policy is to exempt the fee where the statute requires a petition by a personal representative with independent administration authority. In 1981, Government Code Section 26827.4 was amended to exempt fees for "papers for proceedings required by" Probate Code Section 591.2 (the predecessor of Section 10501). At that time, Section 591.2 referred to the following:

(a) Sale or exchange of real property whether sold individually or as a unit with personal property.

(b) Allowance of executor's and administrator's commissions and attorney's fees.

(c) Settlement of accountings.

(d) Preliminary and final distributions and discharge.

(e) Granting options to purchase real property.

Section 10501 expanded the power of the personal representative under IAEA to the extent of permitting arms length sales of real property without court approval. Since Section 10501 is structured differently from former Section 591.2, it does not suffice simply to substitute the reference to the new section for the old. The specific reference to subdivision (a) should also be included in the urgency clean-up bill.

John R. Hodges, San Benito County Clerk, writes that a \$14 subsequent paper fee "seems reasonable as many probate files must be maintained in our active inventory for the purposes of annual hearings." (See Exhibit 2, at exhibits p. 10.)

Warren Slocum, San Mateo County Clerk, writes that this section, applying to personal representatives whether or not they have IAEA authority, "would save our clerk's research time." (See Exhibit 5, at exhibits p. 16.) With the refinement of the reference to subdivision (a) of Section 10501, it will be necessary for the clerks to determine, for example, whether a petition for approval of a sale of property is described in subdivision (a) (i.e., whether it is not an arm's length transaction). Perhaps the exemption for subsequent paper fees should apply only to allowance of commissions and attorney's fees, settlement of accounts, and preliminary and final distributions and discharge. Thus, self-interested sales, exchanges, options, and debt compromises and extensions, would be subject to a fee. What does the Commission wish to do?

Government Code § 26827.5 (amended). Payment of fees by public administrator of State Department of Mental Health

SEC. 11. Section 26827.5 of the Government Code is amended 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, 26827.2, 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 amended to refer to Section 26827.2 which provides the fee for opposition papers in probate proceedings and replaces former Section 26827(b). This amendment is consistent with the treatment of civil fees generally by Sections 26820.4 and 26826.

Government Code § 68090 (amended). Resolution fixing total filing fees

SEC. 12. Section 68090 of the Government Code is amended to read:

68090. The board of supervisors may, within the 90 days preceding January 1, 1981, and within the 90 days preceding January 1 of each odd-numbered year thereafter, by resolution, fix the amounts to be charged as total filing fees in the courts within the county pursuant to Sections 26820.4, 26826, 26827, 26827.2, 72055, and 72056, and establish the components thereof, for the succeeding two-year period. A copy of each such resolution shall be forwarded promptly to the Judicial Council. If no resolution is adopted pursuant to this section, the fees shall continue in the amounts previously authorized.

Comment. Section 68090 is amended to refer to Section 26827.2 which provides the fee for opposition papers in probate proceedings and replaces former Section 26827(b). This amendment is consistent with the treatment of civil fees generally by Sections 26820.4 and 26826.

Government Code § 68090.5 (amended). Reporter's filing fee

SEC. 13. Section 68090.5 of the Government Code is amended to read:

68090.5. In each court where statute requires payment of a reporter's filing fee, the fee shall be included within the applicable total filing fees established pursuant to Section 68090. The reporter's fee shall be in addition to the clerk's fee, law library fee, and judges' retirement fee, and the total of all such fees shall

not exceed the limits fixed by Sections 26820.4, 26826, 26827, 26827.2, 72055, and 72056. The reporter's fee shall apply to the following filings in each civil action and proceeding:

(a) The first paper and papers transmitted from another court, as specified in Sections 26820.4 and 72055.

(b) The first paper on behalf of an adverse party, as specified in Sections 26826 and 72056.

(c) A petition or other paper in a probate, guardianship, or conservatorship matter, as specified by ~~Section~~ Sections 26827 and 26827.2.

The fee shall not apply to adoptions or to appeals from an inferior court.

Except as otherwise specified by law, all fees collected under the provisions of this section shall be transmitted to the county treasurer in the same manner as filing fees collected by the clerk of the court. The reporter's filing fee shall be included with other fees when costs are awarded or taxed.

Comment. Section 68090.5 is amended to refer to Section 26827.2 which provides the fee for opposition papers in probate proceedings and replaces former Section 26827(b). This amendment is consistent with the treatment of civil fees generally by Sections 26820.4 and 26826.

Government Code § 68090.7 (amended). Reporter's filing fee

SEC. 14. Section 68090.7 of the Government Code is amended to read:

68090.7. The board of supervisors of any county, as specified in Sections 26863 and 72054 may provide for a fee of one dollar (\$1) in addition to, and may exceed the limits fixed by, Sections 26820.4, 26826, 26827, 26827.2, 72055, and 72056, for the following filings in each civil action and proceeding:

(a) The first paper and papers transmitted from another court, as specified in Sections 26820.4 and 72055.

(b) The first paper on behalf of an adverse party, as specified in Sections 26826 and 72056.

(c) A petition or other paper in a probate, guardianship, or conservatorship matter, as specified by ~~Section~~ Sections 26827 and 26827.2.

The fee shall not apply to adoptions, appeals from an inferior court, or motions.

Except as otherwise specified by law, all fees collected under this section shall be transmitted to the county treasurer and an amount equal thereto shall be used exclusively to pay the costs of automating the county clerk's and municipal and justice court recordkeeping system of the conversion of the court's document system to micrographics or both.

Comment. Section 68090.7 is amended to refer to Section 26827.2 which provides the fee for opposition papers in probate proceedings and replaces former Section 26827(b). This amendment is consistent with the treatment of civil fees generally by Sections 26820.4 and 26826.