



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 24, 2019

Title

Rules and Forms: Graduated Filing Fee in
Estate Administration Proceedings

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 7.550;
repeal rule 7.151

Recommended by

Probate and Mental Health Advisory
Committee
Hon. John H. Sugiyama, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2020

Date of Report

September 6, 2019

Contact

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Executive Summary

The Probate and Mental Health Advisory Committee recommends that the Judicial Council amend one rule and repeal one rule of the California Rules of Court to remove references to a graduated filing fee in estate administration proceedings. The statute that imposed a graduated filing fee in estate administration proceedings based on the value of the estate was held unconstitutional in 2008. The council repealed two other rules implementing the graduated filing fee scheme, effective January 1, 2015, but did not repeal or amend the rules addressed in this proposal.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend California Rules of Court, rule 7.550 to repeal subdivision (b)(10), which requires the report mandated by Probate Code section 10954(c)(1) when an account is waived to include the information required by former rule 7.552(a) and (b); and
2. Repeal rule 7.151.

The text of the amended and repealed rules is attached at pages 5–6.

Relevant Previous Council Action

The Judicial Council adopted rules 7.151, 7.550(b)(10), and 7.552 of the California Rules of Court, effective January 1, 2004, to implement the legislative establishment of a graduated filing fee in estate administration proceedings.¹

Effective March 1, 2008, the Judicial Council adopted rule 7.553 and amended rules 7.151 and 7.552 in response to further legislative direction.

Effective January 1, 2015, the Judicial Council repealed rules 7.552 and 7.553, but did not repeal, or consider repealing, the rules in this proposal.

Analysis/Rationale

The Probate and Mental Health Advisory Committee recommends repealing rule 7.151 and amending rule 7.550 to repeal paragraph 10 of subdivision (b) of that rule to complete the repeal of all rules that implemented the graduated estate administration filing fee declared unconstitutional in *Estate of Claeysens* (2008) 161 Cal.App.4th 465 (*Burkey*).

In 2003, the Legislature amended former Government Code section 26827 to impose a graduated filing fee on first petitions in estate administration proceedings.² The filing fee was based on the value of the estate: the greater the value, the higher the fee.³ Later that year, the Legislature further amended section 26827(d) to require a subsequent petitioner who had not been required to pay the graduated filing fee but was appointed as personal representative to reimburse the original petitioner the difference between the value-based fee and the basic fee.⁴

In response to these statutory amendments, the Judicial Council adopted rules 7.151, 7.550(b)(10), and 7.552 to provide mechanisms for adjusting the graduated filing fee in decedents' estates proceedings and for a successful subsequent petitioner to reimburse an unsuccessful original petitioner.⁵

¹ Unless otherwise specified, all subsequent references to rules are to the California Rules of Court.

² Assem. Bill 1759 (Stats. 2003, ch. 159, § 9) (amending former Gov. Code, § 26827 to establish graduated filing fee).

³ See former Gov. Code, § 26827(a)(1)–(9), as amended by Stats. 2003, ch. 159, § 9.

⁴ Assem. Bill 296 (Stats. 2003, ch. 757, § 4) (amending former Gov. Code § 26827(d)).

⁵ Judicial Council of Cal., Advisory Com. Rep., *Probate Rules Concerning Mandatory Adjustments to the Graduated Filing Fee in Probate Proceedings* (Nov. 3, 2003) (recommending adoption of rules 7.550(b)(10) and 7.552); Judicial Council of Cal., Advisory Com. Rep., *Probate Rule Concerning Reimbursement of Graduated Filing Fee Paid by Unsuccessful Petitioner* (Nov. 3, 2003) (recommending adoption of rule 7.151).

Effective July 19, 2005, Government Code section 26827 was amended and renumbered as section 70650. (Assem. Bill 145; Stats. 2005, ch. 75, § 61.) In response, the Judicial Council adopted rule 7.553 and amended rules 7.151 and 7.552.⁶

Since California voters approved Proposition 6 in 1982, section 13301 of the Revenue and Taxation Code has—except for authorizing recoupment of certain federal estate tax credits attributable to California property—prohibited the State of California from taxing decedents’ estates; that is, gifts, inheritances, and other transfers that occur because of a person’s death.⁷ On March 27, 2008, the California Court of Appeal determined that the statutory graduated filing fee operated as an ad valorem tax on decedents’ estates. (*Burkey, supra*, 161 Cal.App.4th at pp. 468, 472.) Because Proposition 6 did not authorize the Legislature to repeal or amend its ban on estate taxes without voter approval, the court held the statutory graduated filing fee unconstitutional under article II, section 10(c) of the California Constitution. (*Id.*, at p. 473.)

In response to *Burkey*, the Legislature amended Government Code section 70650, effective January 1, 2009, to repeal the graduated filing fee in trust and estate administration proceedings and replace it with a single uniform filing fee.⁸

Effective January 1, 2015, the Judicial Council repealed rules 7.552 and 7.553, but did not repeal, or consider repealing, the rules in the current proposal.⁹ Adopting this recommendation completes the repeal process.

Policy implications

The recommended amendment and repeal promote at least two Judicial Council policy objectives—modernization of the rules of court and promotion of access to the courts—by eliminating misleading rules.

Comments

The proposed recommendation was circulated for public comment to the regular list of persons interested in probate and mental health proposals from April 12 to June 10, 2019, as part of the regular spring comment cycle. Three trial courts and the Orange County Bar Association submitted comments. All commenters agreed with the proposal as circulated.¹⁰

⁶ Judicial Council of Cal., Advisory Com. Rep., *Probate: Collection of the Graduated Filing Fee in Decedents’ Estates* (Jan. 16, 2008).

⁷ Rev. & Tax. Code, § 13301. Section 13301 was repealed and added by Proposition 6, a voter initiative (Prop. 6, §§ 1, 3 (approved June 8, 1982; eff. June 8, 1982)), and reenacted in identical language by Stats. 1982, ch. 1535, § 15.

⁸ Assem. Bill 171 (Stats. 2008, ch. 310).

⁹ Judicial Council of Cal., *Rules and Forms: Miscellaneous Technical Changes* (Sept. 15, 2014), p. 2. That report does not indicate why the council did not repeal rules 7.552 and 7.553 until 2015, or why it did not then also repeal rule 7.151 and amend rule 7.550(b) to delete paragraph (10).

¹⁰ A chart with the full text of the comments received and the committee’s responses is attached at pages 7–8.

Alternatives considered

The committee did not consider any alternatives to the recommended action because the underlying statutory authority for the provisions was held unconstitutional in 2008. The statutes were amended, effective January 1, 2009, to repeal the unconstitutional fees that the rules implemented.

Fiscal and Operational Impacts

This proposal should not have any fiscal or operational impact on courts or litigants. The trial courts have not had authority to charge a graduated filing fee in estate administration proceedings since January 1, 2009.

Attachments and Links

1. Cal. Rules of Court, rules 7.151 and 7.550, at pages 5–6
2. Chart of spring 2019 comments and committee responses, at pages 7–8

Rule 7.550 of the California Rules of Court is amended and rule 7.151 is repealed, effective January 1, 2020, to read:

1 **Rule 7.151. Reimbursement of graduated filing fee by successful subsequent**
2 **petitioner**

3
4 **(a) Duty to reimburse**

5
6 ~~In decedents' estates commenced on or after August 18, 2003, and before January~~
7 ~~1, 2008, a general personal representative appointed on a *Petition for Probate*~~
8 ~~(form DE-111) that was not the first filed petition for appointment of a general~~
9 ~~personal representative in the proceeding must reimburse the unsuccessful~~
10 ~~petitioner on the first filed petition for a portion of the filing fee paid by the~~
11 ~~unsuccessful petitioner.~~

12
13 **(b) Amount of reimbursement**

14
15 The reimbursement required under this rule is in the amount of:

- 16
17 (1) ~~The filing fee paid by the unsuccessful petitioner in excess of the filing fee~~
18 ~~that would have been payable on that date for a *Petition for Probate* filed to~~
19 ~~commence administration of an estate valued at less than \$250,000, less~~
20
21 (2) ~~The unpaid amount of any costs or sanctions awarded against the~~
22 ~~unsuccessful petitioner in favor of the party that sought the personal~~
23 ~~representative's appointment in the proceeding.~~

24
25 **(c) When reimbursement payable**

26
27 The personal representative must make the reimbursement payment required under
28 this rule in cash and in full no later than the date the *Inventory and Appraisal* (form
29 DE-160/GC-040) is due under Probate Code section 8800(b), including additional
30 time allowed by the court under that provision.

31
32 **(d) Payment from estate funds**

33
34 The reimbursement payment under this rule is an authorized expense of
35 administration and may be made from estate funds without a prior court order.

36
37 **(e) Receipt from unsuccessful petitioner**

38
39 The unsuccessful petitioner must give a signed receipt for the reimbursement
40 payment made under this rule.

41

1 **(f) ~~Personal representative's right to claim refund~~**

2
3 A personal representative that is required to but fails to make the reimbursement
4 payment under this rule may not claim a refund of the difference between the
5 estimated filing fee and the corrected filing fee under rule 7.552(e).
6

7 **(g) ~~Petitioner on dismissed *Petition for Probate*~~**

8
9 A petitioner that is eligible to receive a refund of filing fee for a dismissed *Petition*
10 *for Probate* under rule 7.552(d) is not an unsuccessful petitioner within the
11 meaning of this rule.
12
13

14 **Rule 7.550. Effect of waiver of account**

15
16 **(a) * * ***

17
18 **(b) Information required in report on waiver of account**

19
20 The report required when an account has been waived must list the information
21 required by law, including information as to:

22
23 (1)–(9) * * *

24
25 (10) ~~For decedent's estate proceedings commenced on or after August 18, 2003,~~
26 ~~the information required by rule 7.552(a) and (b).~~

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All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Deirdre Kelly, President Newport Beach	A	The OCBA believes that this proposal appropriately addresses its stated purpose.	The committee appreciates the bar association’s comment. No further response is necessary.
2.	Superior Court of Riverside County by Susan Ryan, Chief Deputy, Legal Services	A	Riverside Superior Court is in support of this legislation clean up as there is no longer the graduating filing fee that is applicable to estate administration proceedings.	The committee appreciates the court’s comment. No further response is necessary.
3.	Superior Court of San Bernardino County by Executive Office	A	<p><i>Does the proposal appropriately address the stated purpose?</i> Yes.</p> <p><i>Would the proposal provide a cost savings? If so, please quantify.</i> N/A</p> <p><i>What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.</i> N/A</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.</p>	The committee appreciates the court’s comments. No further response is necessary.
4.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<p><i>Does the proposal appropriately address the stated purpose?</i> Yes.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i></p>	The committee appreciates the court’s comments. No further response is necessary.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Response
			<p>No.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <p>No.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Yes.</p> <p><i>How well would this proposal work in courts of different sizes?</i></p> <p>The proposal should work adequately, no matter the size of the court.</p> <p>No additional comments.</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated