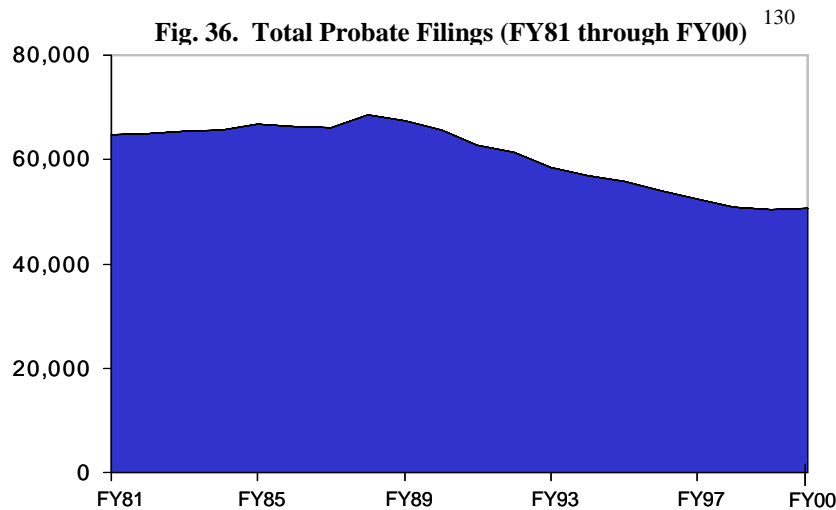


E. PROBATE CASES

Probate cases account for approximately one in five general civil cases¹²⁹ and primarily concern the administration of estates of deceased persons, including will contests, guardianships of minors and their estates, conservatorships of adults and their estates, and administration of trusts. Estate administration and conservatorships generate most of the workload in probate. Other probate case types are typically disposed after one hearing, and some by written affidavit. Examples include petitions for distribution of small estates without administration and petitions for orders regarding health care procedures. Filing data for the individual case types in probate are not collected at the state level at this time.

Between FY81 and FY00, probate filings declined by 14,029 cases (22%). Filings were flat during the first 10 years studied, but steadily declined after FY90 until FY98. Since FY98, filings have been flat.



California probate trends bear little relationship to the national trends. Between 1991 and 2000, total probate filings in a 26-state national sample (California not included) increased 14% while California's filings dropped 19% in the same time period. When state filings in the national sample were adjusted for population, 15 states actually experienced declines in probate filings.¹³¹ The percentage drop in California (-31%), however, was greater than any of the 15 states in the national sample experiencing a drop. The following table (Table 11) displays the percentage change between 1991 and 2000 for each of the 26 courts in the national sample.

¹²⁹ General civil cases include automobile injury, other personal injury, other civil complaints (which does not include other civil petitions), and probate cases. Not included in the general civil category are family law and juvenile dependency cases.

¹³⁰ Filing and disposition data cited or represented are from the Judicial Branch Statistical Information System (JBSIS) unless otherwise noted. For a list of individual case types in a case-type category, see p. iii. Convention for notation of fiscal years is also found on p. iii.

¹³¹ *Examining the Work of State Courts, 2001: A National Perspective From the Court Statistics Project* (National Center for State Courts, 2001) p. 23.

Table 11. Changes in Probate Filings Between 1991 and 2000

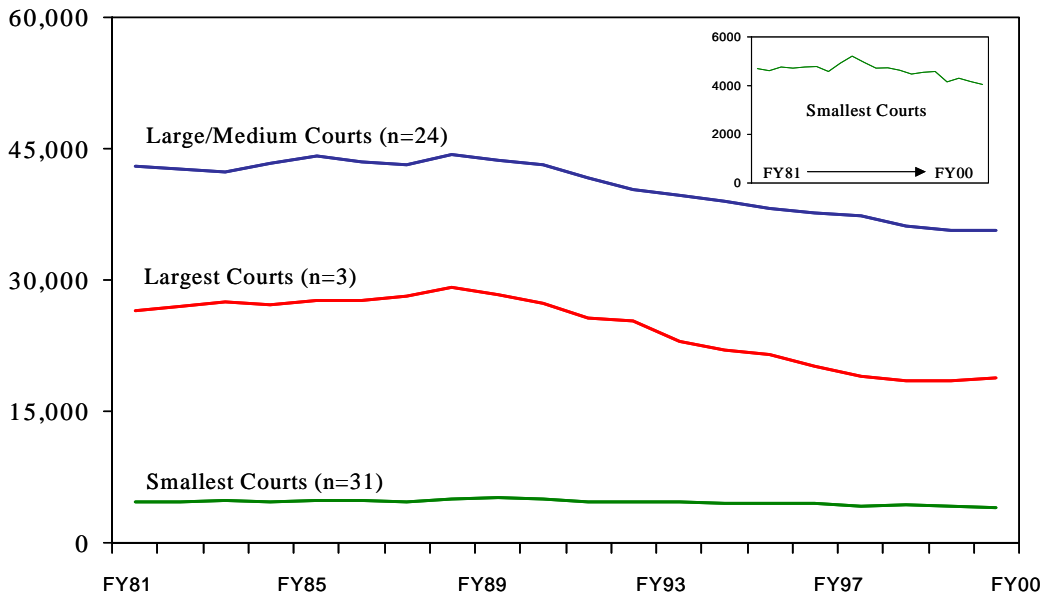
States with Increased Filings	Change in Filings per 100,000 Population	States with Declining Filings	Change in Filings per 100,000 Population
New York	31%	Nebraska	-0.1%
Connecticut	25	Montana	-1
Louisiana	19	Michigan	-3
Delaware	11	Washington	-5
Arkansas	8	Kansas	-10
North Carolina	6	Colorado	-10
Ohio	4	District of Columbia	-11
Vermont	4	Arizona	-12
North Dakota	3	Idaho	-14
New Hampshire	3	Massachusetts	-15
Wisconsin	1	Missouri	-17
		Minnesota	-19
		Iowa	-20
		South Dakota	-25
		Utah	-28

Source: *Examining the Work of State Courts, 2001: A National Perspective from the Court Statistics Project* (National Center for State Courts, 2001).

1. Probate Filings by Court-Size Grouping

Filing patterns for the 31 Smallest courts in California differ from the rest of the state. These courts experienced relatively unstable filings over the 20 years studied for this report. All other court groupings experienced steady declines beginning around FY90, although filings in most of the courts in the Large and Medium Courts court-size grouping stabilized around FY98.

Fig. 37. Probate Filings by Court-Size Grouping (FY81-FY00)



Note: A listing of courts within each court-size grouping can be found on p. iii.

2. Filing Influences

a. Previous Downward Trend of Probate Filings

Not only is California home to the largest elderly population in the country, but its general population is also aging. Between 1990 and 2000, the population age 50 and older grew from 6.6 million to 8.1 million (18%). One of the fastest growing populations in California is persons age 85 and older. Today, 1 in 77 Californians is over age 85.¹³² One might expect that an aging population would result in an increase in probate filings. However, as stated above, filings have declined for most of the 1990s. The unexpected decline may be attributable to the growing use of living trusts and other estate planning measures designed to keep estate filings out of court.¹³³ At the same time, many court professionals interviewed for this study acknowledged an increase in the number of conservatorships, which is consistent with an aging population. Without disaggregate data, it is hard to know what has contributed to the general downward trend or what filing patterns are evolving in each of the individual case types within the “probate” category.

b. Impact of Aging Baby Boomers on Probate Filings in the Future

Although growth in California’s eldest population has not realized significant increases in probate filings to date, the expected surge in growth in this population over the next 20 years may reverse this trend. The first wave of Baby Boomers will turn 60 between 2000 and 2010, resulting in a 32% increase in the elderly population. By 2020, the elderly population will have increased another 38%.¹³⁴ Any growth in filings, however, will probably be due to an increase in conservatorships as the use of living trusts and other estate planning measures will undoubtedly continue.

3. Workload Influences

The recently adopted judicial workload standard for probate cases is about 50% higher than the time measurement for judicial time determined in 1979.¹³⁵ Two explanations may account for this increase.

a. Length of Conservatorships

Modern health care’s ability to prolong life appears to have increased the length of time that conservatorships exist. The workload significance of prolonged conservatorships is an increase in the number of follow-up investigations conducted by court investigators when accountings are due. The law requires an accounting of a conservatorship after the first year, and every two years thereafter. Thus, a conservatorship lasting 5—6 years, which is not uncommon, would

¹³² California Department on Aging, *The Aging Baby Boomers: Influence on the Growth of the Oldest Old* <http://www.aging.state.ca.us/html/stats/oldest_old_narrative.htm>.

¹³³ Although living trusts are designed to circumvent probate, they can be challenged. In addition, actions against trust administrators related to the mishandling of a trust or for fraud can be brought in either civil or probate court. Data on number of actions filed against trusts are not currently collected, but there is anecdotal evidence to suggest these actions are proliferating. Further research is needed.

¹³⁴ *Ibid.*

¹³⁵ Judicial Council of California, *Report on the Weighted Caseload Study in the Superior Courts* (Feb. 29, 1980).

require three accountings. A reinvestigation of the conservatorship is automatic for each accounting subsequent to the original accounting, which means the above 5—6 year conservatorship would incur a minimum of three court investigations. The occurrence of reinvestigations conducted by court investigators illustrates workload not identifiable by a filings count but is nonetheless significant.

b. Impact of Statutes

There are several statutes clearly impacting both judicial and staff workload in the 1990s that are unique to probate cases. A representative selection follows.

1991

- Statute extending notice requirement in conservatorship hearings.

1993

- Statute permitting funds held for minors or incompetents to be paid to a special needs trust, approved and supervised by the court.

1995

- Statute prohibiting public guardians from being appointed a guardian ad litem in probate cases unless the court determines no other qualified person is willing to fill that role.

1998

- Statute directing courts to notify the surety of certain case events in probate cases.

Changes in courtroom proceedings such as those mandating a hearing or a specific finding increase courtroom time and judicial attention. Changes related to notice requirements generally fall to the staff but can take court time if not properly executed. Over time, the cumulative effect of these changes can amount to significant workload increases for both the judiciary and staff.