

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-35

Title	Action Requested
Rules and Forms: Graduated Filing Fee in Estate Administration Proceedings	Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 7.550; repeal rule 7.151	January 1, 2020
Proposed by	Contact
Probate and Mental Health Advisory Committee Hon. John H. Sugiyama, Chair	Corby Sturges, 415-865-4507 Corby.Sturges@jud.ca.gov

Executive Summary and Origin

The Probate and Mental Health Advisory Committee recommends amending one rule of court and repealing one rule of court to remove the remaining references to a graduated filing fee from the probate rules. 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 The Judicial Council repealed two other rules implementing the graduated filing fee scheme, effective January 1, 2015, but did not repeal the rules addressed in this proposal.

Background

In 2003, the Legislature amended former Government Code section 26827 to impose a graduated filing fee on first petitions in estate administration proceedings.¹ The filing fee was based on the value of the estate: the greater the value, the higher the fee.² Later that year, the Legislature further amended section 26827(d) to require a subsequent petitioner who was not 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.³

¹ Assem. Bill 1759 (Stats. 2003, ch. 159, § 9) (amending former Gov. Code, § 26827 to establish graduated filing fee).

² See former Gov. Code, § 26827(a)(1)–(9), as amended by Stats. 2003, ch.159, § 9.

³ Assem. Bill 296 (Stats. 2003, ch. 757, § 4) (amending former Gov. Code § 26827(d)).

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

In response to these statutory amendments, 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 provide mechanisms for adjusting the graduated filing fee in decedents' estates proceedings and for a successful subsequent petitioner to reimburse an unsuccessful original petitioner.⁴

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 to the 2005 amendments, the Judicial Council adopted rule 7.553 and amended rules 7.151 and 7.552, effective March 1, 2008.⁵

Since the voters approved Proposition 6 in 1982, section 13301 of the Revenue and Taxation Code has, with the exception 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.⁶ On March 27, 2008, the Court of Appeal found, in *Estate of Claeysens* (2008) 161 Cal.App.4th 465, 468 (*Burkey*), that the statutory graduated filing fee operated as an ad valorem tax on decedents' estates. (*Id.* at p. 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 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 trusts and estates proceedings and replace it with a single uniform filing fee. The amendment also repealed the provision authorizing the Judicial Council to adopt implementing rules.⁷

Effective January 1, 2015, the Judicial Council repealed rules 7.552 and 7.553, but did not consider repealing the rules in this proposal.⁸

The Proposal

The Probate and Mental Health Advisory Committee recommends amending rule 7.550 of the California Rules of Court to delete paragraph (b)(10). That paragraph requires a report submitted to the court under Probate Code section 10954(c) to include the information required by rule

⁴ 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). Unless otherwise specified, all subsequent references to rules are to the California Rules of Court.

⁵ Judicial Council of Cal., Advisory Com. Rep., *Probate: Collection of the Graduated Filing Fee in Decedents' Estates* (Jan. 16, 2008).

⁶ 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.

⁷ Assem. Bill 171 (Stats. 2008, ch. 310).

⁸ 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).

7.552(a) and (b). Because the Judicial Council repealed rule 7.552, the requirement in rule 7.550(b)(10) has no referent and is therefore superfluous.

The committee also recommends repealing rule 7.151. The graduated filing fee implemented in part by rule 7.151 was repealed, effective January 1, 2009, by AB 171.

Specifically, the committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend rule 7.550 to delete paragraph 7.550(b)(10); and
2. Repeal rule 7.151.

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 delete the unconstitutional provisions as well as the language authorizing the Judicial Council to adopt rules of court.

Fiscal and Operational Impacts

This proposal should have no fiscal or operational impact on courts or litigants. The trial courts have not charged a graduated filing fee in decedents' estates proceedings since January 1, 2009.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 7.151 and 7.550, at pages 4–5

Rule 7.550 of the California Rules of Court would be amended and rule 7.151 would be 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).~~