

INVITATION TO COMMENT

Title	Probate: Graduated Filing Fee in Decedents' Estates (amend rules 7.151 and 7.552 of the California Rules of Court and adopt rule 7.552.5; revise form DE-111).
Summary	The proposed amendments to rules 7.151 and 7.552, adoption of rule 7.552.5, and revision of the <i>Petition for Probate</i> (form DE-111) would implement changes made by recent legislation in the way that the graduated filing fee in decedents' estates will be determined and paid in estates commenced after December 31, 2007.
Source	Probate and Mental Health Advisory Committee Hon. Don Edward Green, Chair
Staff	Douglas C. Miller 415.865.7535; douglas.miller@jud.ca.gov
Discussion	<p>A decedent's estate proceeding is commenced by the filing of a <i>Petition for Probate</i> (form DE-111). Government Code section 70650 prescribes a filing fee for commencement of the proceeding based on the value of the estate. Because the fee is payable at commencement of the case and the value of the estate is not known or finally determined until well after that date, the value of the estate must be estimated for filing fee purposes.</p> <p>Government Code section 70650 requires the petitioner who files the first <i>Petition for Probate</i> in the proceeding to pay the graduated filing fee before the assets of the decedent are available for the purpose. In most cases the first petition results in the appointment of a personal representative, the decedent's executor or administrator, who collects the decedent's property and pays the expenses of administration from that property. These payments routinely include reimbursement of the filing fee paid by the successful petitioner when the petition was filed.</p> <p>Sometimes, however, the personal representative of the estate is appointed on a second or subsequent petition. Rule 7.151 of the California Rules of Court deals with that situation. The rule requires the personal representative of the estate to reimburse the unsuccessful first petitioner the amount of the graduated filing fee paid by that petitioner in excess of the minimum amount required by the statute, and prescribes a procedure for the payment.</p>

As noted above, the graduated filing fee is payable based on an estimate of the value of the estate at the time the case is commenced. Sometimes the estimate on which the fee is based is higher or lower than the final appraised value of the estate, determined months after the estimate was made. Rule 7.552 of the California Rules of Court prescribes the procedure that must be followed to finally fix the proper filing fee based on the actual appraised value of the estate and to provide for either a refund if the estimated value of the estate is higher than the appraised value or an additional payment if the estimated value is less than the appraised value.

AB 1248

A new statute effective January 1, 2008, will amend Government Code section 70650 to change the manner in which the graduated filing fee is paid.¹ Section 70650(b) has been changed by AB 1248 to provide that (1) only the minimum fee of \$320 is payable when a *Petition for Probate* is filed; (2) the graduated filing fee is to be determined based on the actual appraised value of the estate; and (3) the graduated filing fee above the minimum will be fully payable by the personal representative of the estate no later than the time the final account and petition for its settlement or a petition for final distribution is filed, without regard to whether the personal representative was appointed on a first-filed or subsequently-filed petition, under rules adopted by the Judicial Council.

Rule 7.151

This rule would be amended to limit its application to estates commenced on or after August 18, 2003, the effective date of the statute that enacted the graduated filing fee,² and before January 1, 2008, the effective date of AB 1248. There will be no need to require reimbursement of the graduated filing fee paid by first-filers by successful subsequent-filers for estates commenced after the latter date because the graduated fee above the minimum will be paid in such estates only by the personal representative. The rule cannot simply be repealed because the reimbursement procedure remains fully

¹ Stats. 2007, ch. 738 (AB 1248), § 30. The amount of the graduated filing fee, last changed in 2005 (Stats. 2005, ch.75, § 61) has not been changed.

² Stats. 2003, ch. 159 (AB 1759), §§ 9, 27

applicable to estates commenced on or after August 18, 2003 and before January 1, 2008. Many of these estates remain open.

Rule 7.552

This rule would be modified to expressly make it applicable only to estates commenced between August 18, 2003 and January 1, 2008 for the same reasons as rule 7.151: Adjustments in the graduated filing fee required by the rule because of inaccurate estimate of an estate's value will be required only for those estates in which the fee above the minimum was payable before the actual appraised value of the estate is known.

Rule 7.552.5

This proposed new rule would address estates commenced after December 31, 2007. The rule would continue to require a statement showing the calculation of the graduated filing fee based on the total appraised value of the estate to be shown in the final account or petition for final distribution. However, unlike current rule 7.552(b)–(d), rule 7.552.5 would no longer require the estimated fee calculations and the refund or additional payment provisions.

Petition for Probate (form DE-111)

The *Petition for Probate* would be revised to delete the current item 3 on page 1, which is the estimated value of the estate for filing fee purposes. Items 4–9 of the current form would be renumbered accordingly.

The text of the proposed amended rules 7.151 and 7.552 and new rule 7.552.5, and a copy of the proposed revised form DE-111 are attached.

Attachments

Rule Proposal

Rules 7.151 and 7.552 of the California Rules of Court would be amended, and rule 7.552.5 would be adopted, effective July 1, 2008, 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
7 January 1, 2008, a general personal representative appointed on a Petition for
8 Probate 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
18 fee that would have been payable on that date for a Petition for Probate
19 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
28 under this rule in cash and in full no later than the date the Inventory and
29 Appraisal 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
36 order.

1 (e) **Receipt from unsuccessful petitioner**

2
3 The unsuccessful petitioner must give ~~it's~~ a signed receipt for the
4 reimbursement payment made under this rule.
5

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

7
8 A personal representative that is required to but fails to make the
9 reimbursement payment under this rule may not claim a refund of the
10 difference between the estimated filing fee and the corrected filing fee under
11 rule 7.552(c).
12

13 (g) **Petitioner on dismissed petition for probate**

14
15 A petitioner that is eligible to receive a refund of filing fee for a dismissed
16 *Petition for Probate* under rule 7.552(d) is not an unsuccessful petitioner
17 within the meaning of this rule.
18

19 **Rule 7.552. Graduated filing fee adjustments for estates commenced on or**
20 **after August 18, 2003 and before January 1, 2008**

21
22 This rule applies to decedents' estate proceedings commenced on or after
23 August 18, 2003 and before January 1, 2008. Rule 7.552.5 applies to
24 decedents' estate proceedings commenced after December 31, 2007.
25

26 (a) **Separate schedule for graduated fee information**

27
28 The final account or report filed in every decedent's estate proceeding
29 commenced on or after August 18, 2003 and before January 1, 2008, must
30 include a separate schedule showing the following information:
31

- 32 (1) The name of each petitioner on the first-filed *Petition for Probate* in the
33 proceeding;
34
35 (2) The date the first-filed *Petition for Probate* was filed in the proceeding;
36
37 (3) The estimated value of the estate shown in item 3, "estimated value of
38 the estate for filing fee purposes," of the first-filed *Petition for Probate*
39 in the proceeding;
40
41 (4) The filing fee paid by or for the petitioner on the first-filed *Petition for*
42 *Probate* in the proceeding;
43

- 1 (5) The following information from the Inventories and Appraisals filed in
2 the proceeding:
3
4 (A) The date each partial, supplemental, final, or corrected Inventory
5 and Appraisal was filed;
6
7 (B) The total appraised value of the assets of the estate shown in each
8 filed partial, supplemental, or final Inventory and Appraisal;
9
10 (C) Changes in the appraised value of the assets of the estate shown in
11 each filed corrected Inventory and Appraisal; and
12
13 (D) The combined total appraised value of the estate shown in all filed
14 partial, supplemental, final, and corrected Inventories and
15 Appraisals;
16
17 (6) A statement of the amount of filing fee that would have been payable
18 under Government Code section ~~26827~~70650, as amended effective on
19 the date the first-filed Petition for Probate was filed in the proceeding,
20 if the total actual appraised value of the estate had been used as the
21 estimated value for filing fee purposes (the “corrected filing fee”);
22
23 (7) Calculation of the difference between the estimated filing fee paid
24 under Government Code section ~~26827~~70650 on filing the first Petition
25 for Probate in the proceeding (the “estimated filing fee”) and the
26 “corrected filing fee,” as determined under (6) and subdivision (e) of
27 this rule; and
28
29 (8) The following information concerning filing fee reimbursement
30 payments made by a personal representative in the proceeding under
31 rule 7.151:
32
33 (A) The amount of each payment;
34
35 (B) The date each payment was made; and
36
37 (C) The name, address, and telephone number of the payee and of any
38 attorney of record for the payee in the proceeding.
39

40 **(b) If estimated filing fee less than corrected filing fee**

41
42 If the estimated filing fee is less than the corrected filing fee, as determined
43 under (a) and (e), the petition filed with the final account or report must

1 allege that the difference between them has been paid to the clerk of the
2 court. A copy of the clerk's receipt for the payment, and, if applicable, a
3 receipt or other evidence satisfactory to the court of payment of the
4 reimbursement required under rule 7.151, must be attached as an exhibit to
5 the account or report.

6
7 **(c) If estimated filing fee more than corrected filing fee**

- 8
9 (1) Subject to the provisions of rule 7.151, if the estimated filing fee is
10 more than the corrected filing fee, as determined under (a) and (e), the
11 personal representative of the decedent's estate is eligible under this
12 subdivision to receive a refund of the difference between them, without
13 interest.
14
15 (2) The personal representative must apply to the court for the refund, in
16 accordance with the court's local rules and practices for such payments.
17
18 (3) Unless authorized to retain a reserve against closing expenses that
19 expressly is to include the court's refund payment after the personal
20 representative's discharge, the personal representative must not apply
21 for a discharge while an application for refund of filing fee under this
22 subdivision is pending and before the court's refund payment is
23 received.
24

25 **(d) Refund on voluntarily dismissed Petition for Probate**

- 26
27 (1) A petitioner that files a Petition for Probate on or after August 18,
28 2003, and voluntarily dismisses the petition at any time within 90 days
29 after it is filed and before an order granting or denying the petition is
30 filed, is eligible under this subdivision to receive a refund, without
31 interest, of all filing fees paid in excess of the filing fees that would
32 have been payable on the original filing date for a petition for probate
33 of an estate valued at less than \$250,000.
34
35 (2) The petitioner on a dismissed Petition for Probate under (1) must apply
36 to the court for the refund, in accordance with the court's local rules
37 and practices for such payments.
38

39 **(e) Additional adjustment in corrected filing fee in insolvent estates**

40
41 If the expenses of administration must be proportionately reduced under
42 Probate Code section 11420 because the property in the estate is insufficient
43 to pay them in full, the court may approve a determination of the corrected

1 filing fee under this rule that reflects the proportionate reduction of those
2 expenses, provided that the corrected filing fee may not be reduced below
3 the minimum fee required by Government Code section ~~268277~~70650 on the
4 date the estimated fee was paid.

5
6 **(f) Sample schedule of graduated fee information**

7
8 The schedule of graduated fee information required under (a) may be
9 substantially as follows:

10 SCHEDULE __

11
12 Graduated Filing Fee Information

- 13
14 1. The first-filed Petition for Probate in this proceeding was filed on
15 [Date] by [name of each petitioner].
16
17 2. The estimated value of the estate for filing fee purposes shown on the
18 first-filed Petition for Probate in this proceeding is \$_____
19
20 3. The filing fee paid by or for the petitioners on the first-filed Petition for
21 Probate in this proceeding was \$_____.

22
23 4. The following Inventories and Appraisals have been filed in this
24 proceeding:

Type	Date Filed	Appraised Value
[Partial no. __]	[09/30/09]	\$
[Partial no. __]		\$
Final		\$
[Supplemental]		\$
[Correcting]		\$ (or \$)_____
Total appraised value of estate:		\$ _____

25
26
27
28
29
30
31
32
33 5. Corrected Filing Fee:

34
35 Total appraised value of estate: \$

36
37 Filing fee as of the date in 1 above, based on
38 total appraised value of estate: \$

39
40 Adjustment to reflect proportional reduction of
41 expenses of administration for insolvent estate
42 under Cal. Rules of Court, rule 7.552(e): (\$ _____)

43 Corrected Filing Fee: \$ _____

1 6. Difference between estimated and corrected filing fee:

2
3 Estimated filing fee from 3 above: \$

4
5 Corrected filing fee from 5 above: (\$ _____)

6 Difference: \$ (or \$) _____

7
8 7. Filing fee reimbursements under rule 7.151:

Payee(s)	Date Paid	Amount
[Name, address, and telephone number of each payee and attorney of record in the proceeding]	[10/25/09]	\$

9
10
11
12
13
14
15 **Rule 7.552.5 Graduated filing fee statements for decedents' estates**
16 **commenced after December 31, 2007**

17
18 This rule applies to decedents' estates commenced after December 31, 2007.

19
20 **(a) Separate schedule for graduated fee information**

21
22 The final account or report or petition for final distribution filed in every
23 decedent's estate proceeding commenced after December 31, 2007, must
24 include a separate schedule showing the following information:

25
26 (1) The date the first-filed *Petition for Probate* was filed in the proceeding;

27
28 (2) The following information from the *Inventories and Appraisals* filed in
29 the proceeding:

30
31 (A) The date each partial, supplemental, final, or corrected *Inventory*
32 *and Appraisal* was filed;

33
34 (B) The total appraised value of the assets of the estate shown in each
35 filed partial, supplemental, or final *Inventory and Appraisal*;

36
37 (C) Changes in the appraised value of the assets of the estate shown in
38 each filed corrected *Inventory and Appraisal*; and

39
40 (D) The combined total appraised value of the estate shown in all filed
41 partial, supplemental, final, and corrected *Inventories and*
42 *Appraisals*.

1 **(b) Adjustment in corrected filing fee in insolvent estates**

2
3 If the expenses of administration must be proportionately reduced under
4 Probate Code section 11420 because the property in the estate is insufficient
5 to pay them in full, the court may approve a determination of the graduated
6 filing fee under this rule that reflects the proportionate reduction of those
7 expenses, provided that the corrected filing fee may not be reduced below
8 the minimum fee required by Government Code section 70650 on the date
9 the estate was commenced.

10
11 **(c) Sample schedule of filing fee information**

12
13 The schedule of graduated fee information required under (a) may be
14 substantially as follows:

15 SCHEDULE

16
17 Graduated Filing Fee Information

18
19 1. The first-filed *Petition for Probate* in this proceeding was filed on
20 [Date] by [name of each petitioner].

21
22 2. The following *Inventories and Appraisals* have been filed in this
23 proceeding:

<u>Type</u>	<u>Date Filed</u>	<u>Appraised Value</u>
<u>[Partial no. ___]</u>	<u>[09/30/09]</u>	<u>\$</u>
<u>[Partial no. ___]</u>		<u>\$</u>
<u>Final</u>		<u>\$</u>
<u>[Supplemental]</u>		<u>\$</u>
<u>[Correcting]</u>		<u>\$ (or \$) _____</u>
<u>Total appraised value of estate:</u>		<u>\$ _____</u>

31
32 3. Graduated Filing Fee:

33
34 Total appraised value of estate: \$ _____

35
36 Filing fee as of the date in 1 above, based on
37 total appraised value of estate: \$ _____

38
39 Adjustment to reflect proportional reduction of
40 expenses of administration for insolvent estate
41 under Cal. Rules of Court, rule 7.552.5(b): (\$ _____)
42 Corrected Filing Fee: \$ _____
43

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY <h2 style="margin: 0;">Draft</h2> <h3 style="margin: 0;">Not Approved by the Judicial Council</h3>		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
ESTATE OF <i>(Name):</i> _____ <div style="text-align: right;">DECEDENT</div>			
PETITION FOR <input type="checkbox"/> Probate of Will and for Letters Testamentary <input type="checkbox"/> Probate of Will and for Letters of Administration with Will Annexed <input type="checkbox"/> Letters of Administration <input type="checkbox"/> Letters of Special Administration <input type="checkbox"/> with general powers <input type="checkbox"/> Authorization to Administer Under the Independent Administration of Estates Act <input type="checkbox"/> with limited authority	CASE NUMBER: HEARING DATE: <table style="width:100%; border: none;"> <tr> <td style="border: none; width: 50%;">DEPT.:</td> <td style="border: none; width: 50%;">TIME:</td> </tr> </table>	DEPT.:	TIME:
DEPT.:	TIME:		

1. Publication will be in *(specify name of newspaper):*
 - a. Publication requested.
 - b. Publication to be arranged.

2. **Petitioner** *(name each):* **requests that**
 - a. decedent's will and codicils, if any, be admitted to probate.
 - b. *(name):*
 be appointed
 - (1) executor
 - (2) administrator with will annexed
 - (3) administrator
 - (4) special administrator with general powers
 and Letters issue upon qualification.
 - c. full limited authority be granted to administer under the Independent Administration of Estates Act.
 - d. (1) bond not be required for the reasons stated in item 4d.
 (2) \$ _____ bond be fixed. The bond will be furnished by an admitted surety insurer or as otherwise provided by law. *(Specify reasons in Attachment 2 if the amount is different from the maximum required by Prob. Code, § 8482.)*
 (3) \$ _____ in deposits in a blocked account be allowed. Receipts will be filed.
 (Specify institution and location): _____

3. a. Decedent died on *(date):* _____ at *(place):* _____
 - (1) a resident of the county named above.
 - (2) a nonresident of California and left an estate in the county named above located at *(specify location permitting publication in the newspaper named in item 1):* _____

b. Street address, city, and county of decedent's residence at time of death *(specify):* _____

ESTATE OF <i>(Name)</i> : <hr style="width:100%;"/>	CASE NUMBER: <hr style="width:100%;"/>
DECEDENT	

3. c. **Character and estimated value of the property of the estate** *(complete in all cases):*

- (1) Personal property: \$ _____
- (2) Annual gross income from
 - (a) real property: \$ _____
 - (b) personal property: \$ _____
- (3) **Subtotal** *(add (1) and (2)):* \$ _____
- (4) Gross fair market value of real property: \$ _____
- (5) (Less) Encumbrances: \$ (_____)
- (6) Net value of real property: \$ _____
- (7) **Total** *(add (3) and (6)):* \$ _____

- d. (1) Will waives bond. Special administrator is the named executor, and the will waives bond.
- (2) All beneficiaries are adults and have waived bond, and the will does not require a bond. *(Affix waiver as Attachment 3d(2).)*
- (3) All heirs at law are adults and have waived bond. *(Affix waiver as Attachment 3d(3).)*
- (4) Sole personal representative is a corporate fiduciary or an exempt government agency.
- e. (1) Decedent died intestate.
- (2) Copy of decedent's will dated: codicil dated *(specify for each):* _____ are affixed as Attachment 3e(2).

(Include typed copies of handwritten documents and English translations of foreign-language documents.)
 The will and all codicils are self-proving (Prob. Code, § 8220).

f. **Appointment of personal representative** *(check all applicable boxes):*

- (1) Appointment of executor or administrator with will annexed:
 - (a) Proposed executor is named as executor in the will and consents to act.
 - (b) No executor is named in the will.
 - (c) Proposed personal representative is a nominee of a person entitled to Letters. *(Affix nomination as Attachment 3f(1)(c).)*
 - (d) Other named executors will not act because of death declination other reasons *(specify):* _____

Continued in Attachment 3f(1)(d).

- (2) Appointment of administrator:
 - (a) Petitioner is a person entitled to Letters. *(If necessary, explain priority in Attachment 3f(2)(a).)*
 - (b) Petitioner is a nominee of a person entitled to Letters. *(Affix nomination as Attachment 3f(2)(b).)*
 - (c) Petitioner is related to the decedent as *(specify):* _____
- (3) Appointment of special administrator requested. *(Specify grounds and requested powers in Attachment 3f(3).)*

- g. Proposed personal representative is a
 - resident of California.
 - nonresident of California *(specify permanent address):* _____

- resident of the United States.
- nonresident of the United States.

ESTATE OF <i>(Name)</i> : _____	CASE NUMBER:
DECEDENT	

8. Name and relationship to decedent Age Address

Continued on Attachment 8.

9. Number of pages attached: _____

Date:

(TYPE OR PRINT NAME OF ATTORNEY)

▶ _____
(SIGNATURE OF ATTORNEY)*

* (Signatures of all petitioners are also required. All petitioners must sign, but the petition may be verified by any one of them (Prob. Code, §§ 1020, 1021; Cal. Rules of Court, rule 7.103).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PETITIONER)

▶ _____
(SIGNATURE OF PETITIONER)

(TYPE OR PRINT NAME OF PETITIONER)

▶ _____
(SIGNATURE OF PETITIONER)

Signatures of additional petitioners follow last attachment.

Item W08-04 Response Form

Title: Probate: Graduated Filing Fee in Decedents' Estates (amend rules 7.151 and 7.552 of the California Rules of Court and adopt rule 7.552.5; revise form DE-111)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

Please write or fax or [respond using the Internet](#) to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102

Fax: (415) 865-7664 **Attention:** Camilla Kieliger

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/commentform.htm>

DEADLINE FOR COMMENT: 5:00 p.m., Friday, January 25, 2008
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*