

Clerk of Court, Fees Of. Fees, of Clerk of Court. Administrator De Bonis Non, Fee on Appointment Of. Administrator, Fees for Petition. Executor, Fee for Petition.

Where an administrator has been appointed in an estate and by reason of his death or removal another administrator has been appointed, the clerk of court is not entitled to charge an additional fee of five dollars for filing the second petition.

Where letters of administration have been issued and the fee paid, and a will is discovered and filed, together with petition for probate of the will, the clerk should charge a fee for filing the petition for probate of the will.

June 2, 1911.

Hon. C. E. Kumpe,  
State Examiner,  
Helena, Montana.

Dear Sir:

I acknowledge receipt of your letter of the 29th ult., in which you request my official opinion upon the following propositions

1. "Mr. A. Short, public administrator of Deer Lodge county, has recently died. Since his death there have been several petitions filed in the office of the clerk of the court by different parties for letters of administration in estates represented by Mr. Short. Should the clerk of court charge the additional five dollars for filing petition, in accordance with the provisions of Section 3170, Revised Codes of 1907?"

2. "Where a petition for letters of administration had been filed for which a fee of five dollars had been charged and later on a will was found and filed together with petition for the probate of the will, should the clerk charge a fee for petition for probate of will and also the order for admitting will to probate?"

With reference to your first inquiry, the provisions of Sections 7480 provides the procedure to be had where the executor or administrator of an estate dies or becomes incapable, in which event provision is made:

"The court or judge must issue letters of administration \* \* \* \* \* to the widow or next of kin or others, in the same order and manner as is directed in relation to original letters of administration. The administrator so appointed must give bond in the like penalty, with like sureties and conditions as hereinbefore required of administrators, and shall have a like power and authority."

It is my opinion that where the estate has paid the fees for the filing of a petition for letters of administration and through the death of the administrator it becomes necessary that another administrator be appointed by the court, which appointment is undoubtedly made by virtue of the provisions of Section 7480 above quoted, that the court is not entitled to charge an additional fee for the filing of the petition, the case being the one case upon the records of his office and there being no necessity for opening up another case—the second administrator simply continuing the administration from where the deceased administrator left off.

However, where more than one petition is filed, in the first instance, each petition is a separate and distinct case and would be entered separately, and in that event it is my opinion that under the provisions of Sec. 3170 the clerk must charge for each petition the sum of five dollars.

With reference to your second inquiry, it is my opinion that where letters of administration have issued and a will has been found and duly proved and allowed by the court subsequent to the issuance of letters of administration that the clerk should charge the fee of five dollars for the filing of the petition for the probate of the will and an additional five dollars at the time the will is admitted to probate. Sec. 7477, Revised Codes of 1907, provides:

"If after granting letters of administration on the ground of intestacy, a will of the decedent is duly proved and allowed by the court or judge, the letters of administration must be revoked, and the power of the administrator ceases, and he must render an account of his administration within such time as the court or judge shall direct."

It seems to be clear that the provisions of the section above quoted contemplate the opening of a new case upon the production of the will and contemplates that the administration theretofore had should be closed and for that reason the fee provided by section 3170 for the petition for the probate of the will and for the order admitting the will to probate would apply, and this, notwithstanding the fact that before the discovery of the will a petition for letters of administration had been filed, letters issued, and the fee paid therefor.

Yours very truly,

LBERT J. GALEN,  
Attorney General.