

8636 Library



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

October 14, 2005

Paul M. Fata, Esquire  
Lee County Attorney  
Post Office Drawer 568  
Bishopville, South Carolina 29010

Dear Mr. Fata:

In a letter to this office you indicated that the probate judge in your county charges a \$150.00 filing fee pursuant to S.C. Code Ann. § 8-21-770(11) for all petitions filed in estates in addition to the estate fee. You have questioned the authority for such fee.

Section 8-21-770 states as follows:

(A) Fees and costs are payable upon the filing of an application or petition. Payment may, in the discretion of the probate judge, be deferred for a period no greater than the time provided by law for filing the inventory and appraisement. Any adjustment of fees and costs collected at the opening of the estate must be effected before or at the time of final settlement.

(B) In estate and conservatorship proceedings, the fee shall be based upon the gross value of the decedent's probate estate or the protected person's estate as shown on the inventory and appraisement as follows:

- (1) Property valuation less than \$5,000.00  
25.00
- (2) Property valuation of \$5,000.00 but less than \$20,000.00  
\$45.00
- (3) Property valuation of \$20,000.00 but less than \$60,000.00  
\$67.50
- (4) Property valuation of \$60,000.00 but less than \$100,000.00  
\$95.00
- (5) Property valuation of \$100,000.00 but less than \$600,000.00  
\$95.00  
plus .15 percent of the property valuation between \$100,000.00  
and \$600,000.00

Mr. Fata  
Page 2  
October 14, 2005

(6) Property valuation of \$600,000.00 or higher amount set forth in (5) above plus one-fourth of one percent of the property valuation above \$600,000.00.

For purposes of this subsection, "decedent's probate estate" means the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy and "protected person's estate" means the protected person's property that vests in a conservator as trustee pursuant to Section 62-5-420.

Subsection (11) of Section 8-21-770 provides that "[f]iling the initial petition in any action or proceeding other than (B) above, same fee as charged for filing civil actions in circuit court."

It is my understanding that the fees set forth by subsection (B) are charged as part of the initial application or petition process. Such is consistent with the statement in subsections (A) and (B) that "[f]ees and costs are payable upon the filing of an application or petition...In estate and conservatorship proceedings, the fee ...(i.e. the fee referenced in subsection (A))...shall be based upon the gross value of the...estate...(as provided in such provision)." (emphasis added). If there is no litigation or other petitions filed, no other fees would be charged. Therefore, the only fee charged in such instance would be based upon the value of the estate. However, whenever there are claims, litigation or other actions against the estate, such as where a creditor would file a claim or the will is contested, another fee is authorized. Such fee is provided by subsection (11) which, again, states that "[f]iling the initial petition in any action or proceeding other than (B) above, same fee as charged for filing civil actions in circuit court." (emphasis added). Such fee would be charged for each occurrence when a petition is filed.

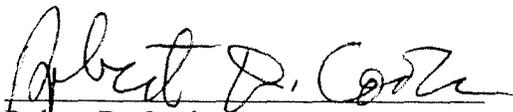
With kind regards, I am,

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General