

8/13/76

Memorandum 76-74

Subject: New Topics

A few new topics have been suggested since the Commission last considered whether any new topics should be recommended for addition to its agenda. The new topics are discussed below.

Living Probate

A letter recently published in the American Bar Association Journal suggests that provision be made to give all persons of testamentary age the option of probating a will during the lifetime of the testator. See Exhibit I (pink) for the letter. This suggestion may have sufficient merit to justify a Commission study.

Discovery

Edwin B. Warren, Los Angeles lawyer, wrote suggesting a study of certain aspects of medical malpractice (a letter I referred to Assemblyman McAlister) and also:

While I am on the subject of traps for the unwary I would also appreciate your consideration of CCP 2033. I can see no useful purpose in permitting the party requesting information to set a 20 day limitation on the time to respond to Requests for Admissions whereas, with respect to interrogatories, the limitation is fixed at 30 days.

This matter is one that could be included in the discovery study, a study that the staff has suggested be commenced by obtaining an expert consultant.

Dismissal Sections of Code of Civil Procedure

Judge Philip M. Saeta (Exhibit II--yellow) suggests a study of the dismissal sections of the Code of Civil Procedure. This might be a worthwhile study. I wrote to Jon Smock on April 7, 1976, asking whether the Judicial Council might make such a study but never received a reply.

Fictitious Business Names

The fictitious business name statute was revised upon recommendation of the Commission. One suggestion has been made for revision of the statute. See Exhibit III (green) attached. We would have to request authority to study this topic since it has been dropped from our agenda.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

LETTER PUBLISHED IN 62 ALAJ 826 (1976) ON LIVING PROBATE

Where There's a WIN

ORWIGSBURG, PENNSYLVANIA

As a result of seeing the battle for Hughes's billions shaping up, I dusted off one of my old brainstorm and have decided to promote the idea for legislation.

The idea may be termed *living probate*, and I have no knowledge if it has ever been proposed or tried anywhere. It would give all persons of testamentary age the option of probating a will during the lifetime of the testator. A living probate notice would be required, with perhaps additional notice to intestate heirs. After the expiration of a fixed time period during which any challenge to mental competency would have to be commenced, the will, subject eventually to all present laws regarding construction and interpretation, would be conclusively presumed to be the last will of the testator and his testamentary mental capacity no longer subject to challenge. Should the option of lifetime probate be exercised, then to change the will, another will or codicil would be probated, during the life of the testator, but not thereafter, although the same living probate notice would be required with the same opportunity of challenge.

The purpose of this plan is to give the testator the opportunity to face any challenge to his mental competency regarding testamentary capacity with respect to a particular will. It also should eliminate the problems of duplicate or multiple wills and reduce the undue-influence will and the difficulties of proof regarding these issues. The option could hardly be exercised on impulse or thoughtlessly, but if so, with proper notice, the realistic challenges would come promptly and when the evidence is better available. We should see a reduction in the number of nuisance challenges, with a corresponding increase in the number of responsible challenges, since the quality of evidence, both given and available, would be enhanced.

WILLIAM R. MOSOLINO



EX-167

EXHIBIT 11

CHAMBERS OF
The Superior Court
LOS ANGELES, CALIFORNIA 90012
PHILIP M. SAETA, JUDGE

TELEPHONE
(213) 974-1234


March 26, 1976

John H. DeMouilly, Executive Secretary
California Law Revision Commission
Stanford University School of Law
Stanford, California 94305

Dear Mr. DeMouilly:

For some time now, I have thought that the dismissal sections of the Code of Civil Procedure need some working over. Sometimes cases on one section will be construed to be applied to other sections, and sometimes not. An example of a potential conflict is a comparison of CCP §583(e) with §581a (a) and (b). Sometimes there are exceptions to the application of the statute, and sometimes there are no exceptions, etc.

Has the Commission done anything, or, if not, could it be interested in redrafting all of these failure-to-prosecute dismissal sections?

Very truly yours,

Philip M. Saeta

PMS:cg



Case 76-74

EXHIBIT III
LOS ANGELES COUNTY CLERK
AND
CLERK OF THE SUPERIOR COURT

111 NORTH HILL STREET
MAILING ADDRESS: P. O. BOX 151
LOS ANGELES, CALIFORNIA 90053

(213) 974-5104

John J. Corcoran
Acting County Clerk

April 20, 1976

Alister McAlister
Assemblyman, Twenty-Fifth District
State Capitol
Sacramento, CA 95814

Dear Mr. McAlister:

In response to your letter of April 6, 1976, please be advised that this office mailed the Notices of Expiration of Fictitious Firm Name Statements as required by Section 17921 of the Business and Professions Code during the first three months of 1976. In Los Angeles County, this mailing was in excess of 77,000 notices.

Concerning the article in the Los Angeles Daily Journal referring to "confusion" that has resulted; this office has not experienced any undue hardships as a result of the refilings, except for the normal budgetary constraints which do not permit us to process the many thousands of refilings received without some delay. However, the instances where this office had to return checks because they were in improper amounts numbered less than 50 in the first 6,000 refilings processed and did not present any problem.

Concerning your request for suggestions to amendments to the act, this office would offer the following:

Section 17920 (a) of the Business and Professions Code provides that a statement expires at the end of five years from December 31 of the year in which it was filed in the office of the County Clerk. This office files approximately 35,000 new fictitious business name statements per year

Alister McAlister
April 20, 1976
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and we believe it would be more advantageous to us and assist the public if all these statements did not expire on the same date, but rather five years from the date on which they are filed in the office of the County Clerk. This would permit us to process this work more expeditiously.

If we can be of any further service, please feel free to call upon us.

Very truly yours,


John J. Corcoran
Acting County Clerk

JJC:RVG:fm