

#L-1010

3/27/85

Fourth Supplement to Memorandum 85-12

Subject: Study L-1010 - Probate Code (Personal Representative--Comments
of Los Angeles County Bar Association)

Attached to this memorandum are comments of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association relating to appointment, letters, oath and bond, and termination of authority of the personal representative. We will comment orally on the points made as we proceed through the draft statute on a section by section basis at the Commission meeting.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

**Los Angeles County
Bar Association**

Probate and Trust Law Section

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March 11, 1985

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Re: March Meeting

Dear Commissioners:

The Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association submits the following comments on various studies which are scheduled for discussion at your meeting, March 21-22, 1985.

Section 7267:

Presently, Probate Code §384 permits a minor or incompetent person who is not a party to a probate proceeding to contest a probate of a Will at anytime up to four months after the disability is removed. We support the staff recommendation that this provision not be included in the revised Probate Code.

Section 7283:

This proposed section calls for the Court to award costs and reasonable attorneys' fees to the petitioner and paid by respondent if a Will is revoked by reason of a Will contest. If the probate is not revoked, then the responding party is

entitled to costs and reasonable attorneys' fees paid by petitioner. The award of costs continues present law, however, the mandatory award of reasonable fees to the prevailing party adds a new element. We question whether this is appropriate. Why is the award of fees to a prevailing party limited to Will contests? Secondly, statistics reflect that the contesting party has a tremendously difficult task to establish that a Will is invalid. To put the additional burden of an award of fees against a contestant would have a significant chilling effect.

Study L-1010 - Probate Code (Executors and Administrators; Appointment; Letters; Termination of Authority; Oath and Bonds - Staff Draft

Section 7311:

This proposed section sets out the circumstances under which a Court could find a person not qualified for appointment as personal representative and includes the instance where a person is adjudged by the Court to be "incompetent to execute the duties of the office." We agree with the staff that the present §401 standards are quite imprecise. However, the quoted language also falls short in terms of clarity. Possibly, language that a person is adjudged to be "incapable of properly executing the duties of the office or is otherwise not qualified for appointment as personal representative" is preferable. The same comment applies to §7382(b).

Section 7341:

This proposed section lists the priority for appointment as administrator of an estate. The section continues the priorities set in §422 with the addition of grandparents and children of a predeceased spouse after brothers and sisters. The proposed statute, however, drops a parent from fourth position after grandchildren. Is it possible that this deletion was accidental?

Section 7366:

This proposed section continues the substance of the present §541.5 stating the limit a personal representative shall be allowed as a cost of administration for bond premiums. We reiterate our comment found in our letter of December 27, 1984 that premiums for surety bond are set by the marketplace and are materially below the limits of this code section. Is the regulation of insurance rates within the purview of the Probate Code?

Section 7380:

The proposed section covers the procedure for removal of a personal representative and continues the substance of §§521, 522 and 523. Subsection (c) of §7380 continues the language found in Probate Code §523 wherein the Court may compel a personal representative to answer questions "touching the administration." We suggest the staff reexamine the language and make it more precise. Perhaps a phrase such as "with respect to" or "concerning" could be used. The provision also seems to stop short of completion. Adding "of the estate" after "the administration" might make it more complete.

Section 7386:

Proposed §7360(c) provides that failure to give "the required bond" is cause for removal. Section 7386 states that a personal representative may be removed if he fails to give "a sufficient bond". Is there any reason for the difference? Should the removal provision appear in both §7360 and §7386?

Section 7391:

This section, which continues the substance of Probate Code §511, authorizes the issuance of letters to the remaining personal representatives "upon the filing of a verified petition". Is there any particular reason why this provision mentions "a verified petition"? Other sections merely refer to "a petition"? Aren't all petitions filed in probate Court to be verified?

Section 7430:

We agree with the staff's position that the Court should have the power to appoint a special administrator whenever it is "necessary for the preservation of the estate". The list of grounds in Probate Code §460 is quite limited. It would be preferable to have the statute clearly give the Court the power to make appointment wherever it would be in the best interests of the estate.

Section 7435:

We believe the Court should be empowered to grant general powers to a special administrator where it appears that the special administrator will serve in that capacity for some time and where the Court deems such powers to be in the best interests of the estate and its beneficiaries.

We also believe that the Court should be able to authorize a special administrator to act with powers granted under the Independent Administration of Estates Act in all appropriate cases.

Section 7436:

Where the special administrator and the general personal representative later appointed are the same, perhaps the formality required of turning over assets and lists of creditors' claims presented should not be required.

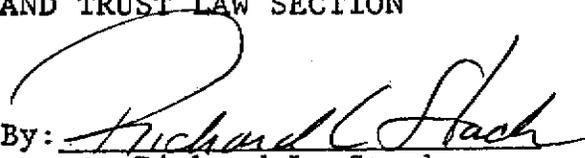
Section 7437:

Consideration should be given to permitting the special administrator and his attorney to petition for a portion of statutory fees and commissions. To safeguard the estate from overpayment of fees, the granting of a partial payment could be subject to reasonable limitations placed by the Court.

We trust that these comments will be useful in your work. If you require clarification on any points, please contact Richard L. Stack, Darling, Hall & Rae, 606 South Olive Street, Suite 1900, Los Angeles, California 90014; telephone (213) 627-8104.

Sincerely,

EXECUTIVE COMMITTEE, PROBATE
AND TRUST LAW SECTION

By: 
Richard L. Stack

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