

First Supplement to Memorandum 85-19

Subject: Study L-640 - Trusts (Jurisdiction and Venue)

We have just received comments from the California Bankers Association on material concerning jurisdiction and venue. A copy of the CBA comments is attached hereto as Exhibit 1. These comments were prepared on the basis of an earlier memorandum (84-29). We have added references to the current draft sections in the margins of the CBA letter. The staff has the following response to the CBA comments:

§ 1102. Principal place of administration

CBA suggests that the definition of "principal place of administration of the trust" be revised in recognition of the trend toward centralization of records. The definition in draft Section 1102(a) depends upon the location of the "day-to-day records" of the trust, while the CBA suggests that "day-to-day activities" would be a better standard. The staff has no objection to the CBA suggestion. We would prefer the language of their second alternative, however, which would locate the principal place of administration at the place of primary contact between the person administering the trust and the persons interested in the trust. The CBA phrased its suggestion in terms of the "customer," but that does not seem an appropriate word in the trust context.

§ 1100. Subject matter jurisdiction

The CBA would locate all matters involving trusts, including questions of the existence of a trust and the determination of claims of creditors, in the superior court sitting in probate. This is not desirable. The draft statute makes clear that internal matters are exclusively in the jurisdiction of the superior court sitting in probate and, in draft Section 1101, makes clear that the court has the full powers of the superior sitting in exercise of its general jurisdiction. This seems to be the fullest extent to which trust matters can be located in the probate court without imposing an unfair burden on nonparties to the trust and without disrupting the judicial system. We see no convincing policy reason for depriving other courts of their power to determine whether a trust exists in a civil case where that question arises. Nor does the CBA suggest any reason why creditors of trusts should be deprived

of the normal right to bring an action in municipal court or superior court to enforce a claim for money against a trust and/or trustee. Would probate courts then be issuing writs of attachment, possession, sale, and execution, and determining exemptions?

As for the question of jury trials, the comprehensive statute, to be considered at the March 1985 meeting, will contain a section restricting the right to a jury trial within its constitutional bounds. This will implement a decision made at the November 1984 meeting.

§ 1105. Venue

The Commission has decided on a single venue for inter vivos trusts and a dual venue for testamentary trusts. The CBA suggests that a single venue for testamentary trusts in the county of principal place of administration. However, the Commission has already considered this suggestion and rejected it.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

CBA Comments, January 10, 1985

Memorandum 84-29: Judicial Administration of Trusts

The Commissioners requested the California Bankers Association to draft a position regarding the proposed provisions governing judicial administration of trusts. The following should be responsive to that request.

Section 4600. Principle Place of Administration of Trusts.

1. The section as proposed is unacceptable, as a trust may be "administered" from the standpoint of day-to-day activities of the trust in one location, and the records kept in another location.
2. Banks may be centralizing records and "back office" activities in one location, however the client contact may be in a different location, having no relation to the place where records are located.
3. The definition should be changed, and the following is an example of possible language:

"4600. (a) If a Trust has a single Trustee, the principle place of administration of the trust is the trustee's usual place of business where the day-to-day activity of the Trust is carried on by the Trustee or its representative who is primarily responsible for the administration of the Trust."

4. Another alternative is to emphasize the "point of primary customer contact with his or her Trust Administrator."

Section 4601. Jurisdiction.

1. The exclusive jurisdiction under this section should be in the Superior Court sitting in probate.
2. This will eliminate the concurrent jurisdiction of the court.
3. Suggested change to §4601 follows:

"4601. (a) The Superior Court sitting in Probate shall have exclusive equitable jurisdiction over:

- (1) Proceedings concerning the internal affairs of trusts as provided in this chapter.
- (2) Actions and Proceedings to determine the existence of Trusts.

See:
Memo
85-19
§1102

§1100

(b) In addition, the Superior Court sitting in Probate shall have exclusive jurisdiction over:

(1) Actions and Proceedings by or against Creditors or Debtors of Trusts.

(2) Other Actions and Proceedings involving Trustees and third persons.

(c) There is no right to a jury trial in equitable proceedings described in sub-section (a) above".

Comments by the Commission should be added, confirming that there is no right to a jury trial in probate matters.

§ 1105 Section 4602. Venue.

1. The single venue rule for inter vivos trusts is acceptable, in the county where the Trust is actually administered.
2. Assuming a definition as described under section 4600, there will be no possibility of confusion as to which venue is proper.
3. A single venue for testamentary trusts in the county of the principle place of administration might also be considered.