

First Supplement to Memorandum 85-20

Subject: Study L-640 - Trusts (Judicial Proceedings Concerning Trusts)

We have just received some comments from the California Bankers Association concerning matters covered in Memorandum 85-20. A copy of these comments is attached hereto as Exhibit 1. The CBA comments were written with respect to an earlier version of this material that appeared in Memorandum 84-29. The current section numbers are noted in the margin of the CBA letter.

§ 1130. Petitioners; grounds for petition [See Exhibit 2, Memorandum 85-20]

The CBA argues that this section should be mandatory. The staff assumes that this suggestion is made to further the effort of the CBA to make proceedings in the probate court exclusive. However, there is no need to tamper with the language of draft Section 1130 to accomplish this purpose. Draft Section 1100 makes abundantly clear that the superior court sitting in probate has exclusive jurisdiction over the internal matters of a trust.

The CBA also states that the "provision in this section regarding the beneficiary filing a petition to compel the trustee to redress a breach of trust is not appropriate in this section." No reason for this statement is given. If the beneficiary is not permitted to pursue remedies for breach of trust through the exclusive procedure available under the draft, then what is the beneficiary to do?

§ 1131. Commencement of proceedings

The CBA suggests that a proceeding should be commenced either by filing a petition or a complaint. This suggestion was considered at the November 1984 meeting and rejected.

§ 1135. Appeal

This suggestion has been implemented in draft Section 1135(k).

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

CBA Comments, January 10, 1985

Section 4630. Grounds for Filing Petition or Complaint.

1. The language of this section should be mandatory as follows:

4630. "A trustee or beneficiary must file a petition or complaint in the court under this article to determine the existence of a trust, or concerning the internal affairs of the trust."

2. The provision in this section regarding the beneficiary filing a petition to compel the trustee to redress a breach of trust is not appropriate in this section.

Section 4631. Commencement of Proceeding.

1. A proceeding under this article is commenced by filing a verified petition or a complaint stating facts showing that the petition or complaint is authorized under this section.

2. This suggested change allows the filing of a complaint as well as a petition and eliminates the right of any "other interested person," such as a creditor, to file.

Section 4635. Appeal.

A new subsection (m) should be added as follows:

"(m) Compelling a trustee to redress a breach of trust."

This addition will balance the addition to §4630.