

#L-1027

3/27/85

Revised Second Supplement to Memorandum 85-36

Subject: Study L-1027 - Probate Code (Accountings--comments of State
Bar Association)

Attached to this memorandum are comments of the Executive Committee of the Estate Planning, Trust and Probate Law Section of the California State Bar relating to accountings. 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

ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
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March 12, 1985

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Re: Memos 85-31, 85-34, 85-35, 85-36

Dear John:

The Executive Committee of the Estate Planning, Trust and Probate Law Section of the California State Bar, has considered the following memoranda. Our comments are set forth as follows:

5. Memorandum 85-36 - Accountings.

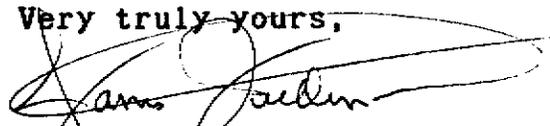
A. Section 8502. The Executive Committee reviewed extensively Sections 8501 & 8502. After first rejecting 8502, if Section F2 was removed, the Executive Committee reconsidered the situation and realized the difference between 8501 and 8502 is that 8501 calls for a chronological accounting and the new proposed Section 8502 allows for a categorical accounting. With this understanding the Executive Committee approves the new concept contained a new Section 8502.

B. Section 8522. The Executive Committee approves the removal of the right to a jury trial in the area of contest of account.

C. Section 8524 - Settlement of Claim on Property Made or Allowed. The Executive Committee suggests that the following language be inserted after the word "due" in Subsection (a) "without regard to when the payment was made". The reason for this is that Courts have routinely construed the meaning of the phrase "the debt was justly due", to mean that the personal

representative actually paid the amount for which no claim was filed during the 4-month claim period. This is frequently not the case. As a result, the personal representative is surcharged with the payment and the Internal Revenue Service will not allow the payment as a deduction against the Federal Estate taxes. In order to conform this Section to frequent practice and to make such payments deductible, it is suggested that the language described above be added.

Very truly yours,



James V. Quillinan
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JVQ/agc

cc: Ken Klug
Chuck Collier
Ted Cranston