

Third Supplement to Memorandum 86-201

Subject: Study L-1010 - Opening Estate Administration (More Comments
on Tentative Recommendation)

Attached to this memorandum as Exhibit 1 is a letter from the California Newspaper Service Bureau (CNSB) concerning the type size of the published notice of probate. Section 8124 (type size) requires that the notice be in "readable type." The section goes on to state that a caption in 8-point type (or larger) and text in 7-point type (or larger) is "deemed readable." The Comment notes that the section does not preclude a smaller type size, so long as the notice remains readable.

CNSB believes this creates an ambiguity that will generate more confusion than it resolves. "Fifty-four years of accumulated experience in newspaper advertising has taught us that specific instructions concerning typesetting lead to satisfactory results. Ambiguous instructions do not." CNSB would delete the language in the Comment indicating that a smaller size may be permissible.

The problem confronting the Commission is that the 8-point/7-point formula of existing law generates large-size probate notices, substantially larger than other legal notices, that consume substantial column space at the expense of the estate. See example in Exhibit 2. The Commission's solution to this problem is to not require a fixed type face; this will enable publishers to do what is convenient and will also encourage competitive practices by publishers in reducing printing costs. To this end, the Commission's only requirement is that the type size be "readable"; the 8-point/7-point formulation has been retained simply as a safe harbor for readability.

The staff agrees with CNSB that "readability" is an ambiguous standard. However, a better solution might be not to eliminate the Comment reference to smaller notices, but simply to eliminate the "readability" requirement. Other legal notices do not have type size specifications, and we are not aware of problems with them. Absent a type size requirement, publishers could simply use any size type they choose.

It is worth noting in this connection that the Commission is recommending increasing the length of the probate notice by adding a paragraph relating to independent administration. With the added publication cost this will cause, it may be worthwhile looking to see whether there is a simple way to offset the cost.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

California Newspaper Service Bureau, Inc.

Established 1934

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RE: CLRC Study #L-1010, Memorandum 86-201 dtd. 1/20/87

Dear Commissioners:

This is to express our concern regarding your "Comment" on Section 8124 pertaining to the typesize of published Notice of Hearing in Probate.

Section 8124 Provides:

"Whether published or posted, the notice of hearing shall be in readable type. For the purpose of this section, if the caption is in 8-point type or larger and the text of the notice is 7-point type or larger, the notice is deemed readable."

Your Comment advises:

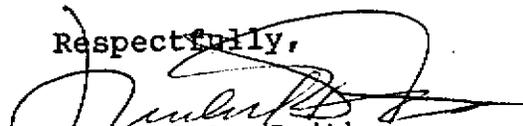
"Section 8124 supersedes the introductory portion of subdivision (b) of former Probate Code Section 333. Nothing in Section 8124 precludes a smaller type size than referred to in the section, so long as the notice remains readable. See also Code Civ. Proc. Section 1019 (type size variations)." (emphasis added)

Section 8124 defines readability in terms of type size. The second sentence of your comment, however, implicitly ascribes readability to some other, undefined parameter. This creates an ambiguity which will generate more confusion than it resolves.

Fifty-four years of accumulated experience in newspaper advertising has taught us that specific instructions concerning typesetting lead to satisfactory results. Ambiguous instructions do not.

We apologize for having overlooked the problem created by the language of your comment. In view of the time which has passed, the decision to go on record concerning it has been the subject of some debate among members of our staff. However, there is no difference of opinion concerning your comment's potential for confusion and possible embarrassment to your commission. For that reason we recommend that the second sentence of your comment be deleted. Section 8124 should be permitted to speak for itself on the subject of readability.

Respectfully,



Michael D. Smith
General Manager

"The only Legal Advertising which is justifiable from the standpoint of true economy and the public interest, is that which reaches those who are affected by it."

