

#L-1027

nsa

02/09/87

First Supplement to Memorandum 87-1

Subject: Study L-1027 - Estate and Trust Code (Accounts--comments of  
State Bar team)

Attached to this supplementary memorandum is a copy of a letter from State Bar Team 4 concerning the draft tentative recommendation relating to accounts. At the meeting we will orally review the issues raised in the letter in connection with the portions of the draft to which they relate.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

STANTON AND BALLSUN

KATHRYN A. BALLSUN  
PAUL L. STANTON  
LESLIE K. STUART

A LAW CORPORATION  
AVCO CENTER, SIXTH FLOOR  
10860 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024-4318  
(213) 474-5267  
TELEX/FAX (213) 474-1246

ELECTRONIC MAIL VIA  
ABA/NET I.D. # ABA2769  
PLEASE REFER TO  
FILE NO.

January 12, 1987

FEDERAL EXPRESS

James Quillinan, Esq.  
444 Castro Street, #900  
Mountain View, CA 94041

Re: LRC Memorandum 87-1, Accounts

Dear Jim:

On January 8, 1987, Team 4 (Richard Polse, Harley Spitler, William Hoisington, James Willett, Janet Wright and I) discussed LRC Memorandum 87-1, Accounts.

1. Introduction to Staff Draft, page 2.

Team 4 agrees that a jury trial should be eliminated on issues of fact in the contest.

2. Section 10900.

2.1 Team 4 believes that the language of this section is archaic.

2.2 Team 4 suggests that the section be written as follows:

The personal representative has a duty to account as hereinafter provided in this part.

3. Section 10901.

3.1 Team 4 believes that Section 10901 should be rewritten and suggests the following:

Section 10901. An account shall be verified and shall show the following:

(a) A summary statement, together with supporting schedules, of:

(1) Property in all inventories.

- (2) Receipts, excluding principal items.
- (3) Gains on sales.
- (4) Other acquisitions of property.
- (5) Disbursements.
- (6) Losses on sales.
- (7) Other dispositions of property.
- (8) Property remaining.

- 3.2. The second sentence of subsection (b) should be relocated.
- 3.3 "Shall" should be substituted for "may" in the second sentence of subsection (b).
- 3.4 The first word of subsection (c) should be deleted and replaced with the word "any".
- 3.5 Team 4 agrees that subsection (a) should be located among the duties of the personal representative rather than among items to be included in the account.
- 3.6 Team 4 believes that the Commission should continue to develop uniform standards for fiduciary accounting.

4. Section 10902.

Team 4 suggests that the section be restated as follows:

Upon request by an interested person, the personal representative shall produce those documents supporting the account that have been specified in the request.

5. Section 10950.

- 5.1 Subsection (a) should be deleted.
- 5.2 Subsections (b) and (c) should set forth a time limit; Team 4 suggests two years after the entry of the order for final distribution.

5.3 Subsection (c) should be restated as follows:

If an interested person files a petition requesting the personal representative to file an account, and no accounting has been filed for a period of one year, the court shall order the personal representative within a specified time.

5.4 All of the sections should be subject to no waiver having been filed.

5.5 Court action should be predicated upon a showing of reasonable cause.

6. Section 10951.

The section should be subject to no waiver having been filed.

7. Section 10952.

7.1 The section should be subject to no waiver having been filed.

7.2 Team 4 suggests that the first section be restated as follows:

Upon petition of a successor personal representative, the court may order a personal representative who resigns, is removed from office or whose authority is otherwise terminated to file an account.

7.3 In the second sentence, the word "made" should be deleted and the word "filed" substituted therefor.

7.4 If the authority of a personal representative is terminated by court order, then the personal representative should not thereafter have to account.

8. Section 10953.

8.1 In subsection (b), the duty of the legal representative should be limited to the extent that the legal representative has information or records available for the purpose.

- 8.2 Team 4 is uncertain as to the meaning of the word "available" in subsection (c), line 8 and is concerned about the extent of the attorney's duty.
- 8.3 The fee should be based upon the level of compensation currently paid to practitioners in the area for similar services.
- 8.4 Team 4 is uncertain as to the meaning of the word "abscond" as it appears in subsection (c).

9. Section 10954.

- 9.1 In subsection (b) the words "has been filed" should be deleted and replaced with "is on file".
- 9.2 Team 4 believes that subsection (d) should be restated as follows:

An accounting should not be waived until all distributees are ascertained, represented by a guardian ad litem or otherwise adequately represented.

10. Chapter 3.

Team 4 believes that the title of Chapter 3 should be reexamined because the chapter deals with other than just procedural matters.

11. Section 11001.

- 11.1 Team 4 believes that (4) should not be deleted.
- 11.2 Team 4 believes that the notice provisions should be uniform and should be all in one place.
- 11.3 Subsection (b) should be restated as follows:

If the petition for approval of the account requests commissions or fees . . . .

12. Section 11002.

12.1 Subsection (b)(3) should provide that it is subject to the provisions of Section 10590.

12.2 The words "good faith" should be deleted from subsection (c).

12.3 Subsection (c) should be restated as follows:

If, upon hearing, the court rules against the exceptions and determines the exceptions were without reasonable cause, the court shall order that the fees and costs of the personal representative and attorney incurred to defend the account against the exceptions shall be charged against and paid for by the contestant.

12.4 Team 4 agrees with Mr. Marder that the common fund doctrine should be incorporated into the Probate Code.

12.5 Team 4 believes that subsection (a) should be clarified so that oral exceptions are permitted as well as a reasonable time to file written objections.

13. Section 11003.

13.1 Subsection 11003 should end after the word "oath".

13.2 In subsection (b), second sentence "referees" should be "referee(s)".

14. Section 11004.

14.1 Team 4 believes that the practitioners are confused by this section; clarification is required.

14.2 The consensus of Team 4 is that notwithstanding that the enforcement of the decedent's obligation was barred by the running of the claims period, that the claim should be allowed.

James Quillinan, Esq.  
Page 6  
January 12, 1987

If Team 4 may be of further assistance, please do not hesitate to contact us.

Thank you for your consideration.

Cordially,

*Kathryn A. Ballsun*

KATHRYN A. BALLSUN,  
A Member of  
STANTON and BALLSUN  
A Law Corporation

KAB/kf

c: Richard Polse, Esq.  
Harley Spitler, Esq.  
Janet Wright, Esq.  
Clare Springs, Esq.  
William Hoisington, Esq.  
Lloyd Homer, Esq.  
Chuck Collier, Esq.  
James Willett, Esq.  
Irv Goldring, Esq.  
Jim Devine, Esq.  
Jim Opel, Esq.  
Keith Bilter, Esq.