

03/02/87

Second Supplement to Memorandum 87-1

Subject: Study L-1027 - Accounts (Comments on Draft--Los Angeles County
Bar Association)

Attached to this supplementary memorandum is a letter from the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association commenting on the draft of the accounts provisions. We will discuss the comments at the Commission meeting in connection with the provisions to which they relate.

Respectfully submitted,

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February 9, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: California Law Revision Commission -
Memorandum 87-1

Gentlemen:

On behalf of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, I submit the following comments on one of the memoranda listed on the agenda for the meeting scheduled for February 19-20, 1987.

Memorandum 87-1 deals with amendments to the Estate and Trust Code pertaining to accounts rendered in probate proceedings. Section 10901 prescribes the contents of an accounting. Subsection (a)(2) requires the account to show "the amount of receipts, excluding capital items". We surmise that the purpose of this is to show only income receipts; however, some items are both. For example, dividends and interest accrued at death are reported on the inventory and appraisal yet they are also items of income. How are they to be reported under Section 10901(a)(2)?

Section 10902 requires the personal representative to submit documents supporting his account for inspection upon order of the court or upon request by an interested party. We are concerned that a simple request by an interested party is enough to require the personal representative to submit the documents for his administration of the estate for audit by the interested party. We believe it would be preferable to require the personal representative to submit documents supporting his account for inspection and audit upon order of the court on its own motion or pursuant to a petition filed by an interested person.

Section 10952 requires a personal representative who resigns or is removed from office or whose authority

is otherwise terminated to file an account "when ordered by the court upon petition of a successor personal representative." Why limit the requirement of an account, particularly when it is that of a resigning personal representative or one who has been removed or whose authority has terminated, to situations when it is ordered by the court upon petition of a successor personal representative? It is precisely this type of situation when an account should be required. After all, when an estate is closed the personal representative is required under proposed Section 10951 to file a final account.

Section 10953 requires the "legal representative" of a deceased personal representative or an incompetent personal representative to file an account of the administration of the personal representative and to settle the account of the personal representative "as in other cases". Presumably this would require the legal representative to file a verified account. In Section 10953(c) when the personal representative dies, becomes incompetent or absconds and no legal representative was appointed, the court may compel the attorney of the absconding, deceased or incompetent personal representative to file an accounting. The account of the attorney, however, need not be verified and a fee shall be allowed to the attorney for extraordinary services. The legal representative may have no more information available to him than the attorney would have, yet it appears that the legal representative would be required to file a verified accounting and there is no assurance that he would be compensated out of the estate. We see no reason for the dichotomy of treatment.

Section 11002 deals with exceptions to accounts. Subsection (b) gives a representative list of matters that may be raised in a contest of an account. Subsection (b)(3) permits contest of "actions taken by the personal representative not previously authorized or approved by the court". The representative acting under the Independent Administration of Estates Act pursuant to an advice of proposed action may take certain actions which consenting beneficiaries or beneficiaries who have received the proper advice of proposed action may not later contest. This provision needs to be coordinated with those provisions of the Independent Administration of Estates Act.

Section 1104 states when the court may approve

payment of debts for which no creditor's claim was filed. It appears to continue former Section 929 of the Probate Code. However, there is no requirement that the payment occur prior to the expiration of the claim's filing period. Therefore, it appears possible that an executor could pay a debt for which no claim has been filed that would otherwise be barred by the expiration of the claim's filing period.

Section 11005 deals with the conclusiveness of a court order. It continues the substance of Section 931 of the Probate Code that the settlement of an account is conclusive against all interested persons; provided, however, a person under a legal disability has the right anytime up until entry of the order of final distribution of the estate to reopen a prior account. We see no reason to give a person under a legal disability the limited right to reopen an accounting that has been settled by the court and that would be otherwise final, but for the disability of the beneficiary.

We agree with Mr. Marder's statement that there is no reciprocity with respect to recovering attorneys fees from the personal representative in a successful surcharge action, although Section 11002(c) permits a personal representative to recover attorneys fees from an unsuccessful contestant. We believe it would be appropriate to permit, as part of the surcharge against a personal representative, the recovery of a successful contestant's attorneys fees and costs.

Sincerely,

Executive Committee
Probate & Trust Law
Section

By: 
Richard Lee Stack