

#L-1027

ns32e
06/02/87

First Supplement to Memorandum 87-29

Subject: Study L-1027 - Accounts (Comments on staff draft)

Attached to this supplementary memorandum as Exhibit 1 is a copy of a letter from State Bar Team 4 containing further comments on the staff draft of the accounts tentative recommendation. We will review the new comments at the Commission meeting in connection with the specific matters they relate to.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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PLEASE REFER TO
FILE NO.

May 13, 1987

FAX

James Quillinan, Esq.
444 Castro Street, #900
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Re: Memorandum 87-29; Accounts (Study L-1027)

Dear Jim:

On May 11, 1987, Team 4 (Harley Spittler, Bill Hoisington, Janet Wright, Jim Willett and I) discussed Memorandum 87-29; Accounts (Study L-1027). Team 4's comments about the above-referenced Memorandum are as follows:

1. Section 10901. Contents of Account.

1.1 Team 4 agrees with the staff suggestion (page 5) to distinguish between receipts and other capital items by requiring the account to list "receipts, excluding property included in the inventory."

1.2 Although Team 4 believes that the Team 4 revision of Section 10901 (page 1) would make more sense to practitioners, Team 4 believes that the Commission should make the final decision.

1.3 If the Commission retains the "report of administration" in this section (page 6), then Team 4 believes that it would be useful to practitioners to set forth the specific items which must be included in the report.

2. 10902. Production of Supporting Documents.

2.1 Team 4 apologizes for the confusion created by its suggested revision of this section. Team 4 believed, and continues to believe that the court has the inherent power under certain circumstances to order the production of documents. If the Commission believes that the suggested revision is unclear, then the original language of the section should be retained. Further, Team 4 is unclear about the suggestion of the Legislative Committee of the Estate Planning, Probate and Trust Law Section of the Beverly Hills Bar Association ("Beverly Hills") that the ability of the personal representative to

request or petition for information altogether should be eliminated.

2.2 Team 4 believes that issues regarding the production of supporting documents should be resolved informally to the extent possible. If documents are not produced informally, then the interested person seeking documents should have to resort to the court.

2.3 In these situations where the personal representative is being harassed, the personal representative should seek a protective order.

3. Section 10950. Court Ordered Account.

3.1 With respect to the waiver in this section and sections 10951 and 10952, please see Team 4's comment to Section 10954.

3.2 Team 4 disagrees with Beverly Hills' suggestion that when a federal estate tax return is required, an account may not be required until more than 18 months after the issuance of letters. Team 4 thinks that the requirement should be uniform and suggests a period of one year.

4. Section 10952. Account After Authority Terminated.

Team 4 does not believe that accountings should be mandated in every situation. Under certain circumstances, an accounting may be unwarranted. One example is where one member of a small harmonious family succeeds another family member as a personal representative. Team 4 believes that the discretion of the court that is reflected in the existing statute should be retained. Team 4 further suggests that the ability to compel an accounting after the entry of an order of final discharge be limited to a fixed period (e.g., 2 years).

5. Section 10953. Account Where Personal Representative Dies or Becomes Incompetent.

5.1 In accordance with its position on Section 10952, Team 4 believes that the court should have discretion with respect to compelling an account.

5.2 Team 4 believes that neither the legal representative nor the attorney should be required to verify a report in these circumstances.

5.3 Team 4 thinks that both the successor legal representative and the attorney should be entitled to

extraordinary fees for filing an account under Section 10953. The basic statutory compensation is not intended to compensate an individual who must render an account, but may have not access to records, knowledge of events, etc.

5.4 As Team 4 stated in its January 12, 1987 letter, the duty of the legal representative should be limited to the extent that the legal representative or attorney has information or records available. Team 4 suggests that "available" should be defined to mean "reasonably convenient access to information or records."

5.5 Team 4 respectfully suggests that the word "abscond" has another or additional meaning, i.e. to go away secretly; the term does not require a theft. Team 4 suggests that the section be rewritten to include those situations where the personal representative is out of the jurisdiction or where his or her whereabouts cannot be determined.

6. Section 10954. Waiver of Account.

Team 4 suggests that Section 10954(a) be modified by adding the following clause at the beginning of (a): "Notwithstanding any other provisions of this part 8." This addition should alert practitioners that although another section may seem to require an account, that an account may be unnecessary because of the provisions of this section.

7. Section 11001. Notice of Hearing.

Team 4 suggests that if Section 11001(a) is retained, then the section should include persons who have submitted a request for special notice. The addition would benefit practitioners because all the rules would be set forth in one section.

8. Section 11002. Contest of Account.

8.1 Team 4 continues to believe that it is fair and reasonable to permit people to make oral objections. Oral objections may result in saving the court time because the court will be able to rule immediately on simple objections (e.g. those objections arising from a simple lack of understanding). In any event, the failure to reduce objections to writing should not preclude a person from having the opportunity to be heard.

James Quillinan, Esq.
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8.2 Team 4 suggests that subdivision (c) should be corrected on line 3 to read, "court shall order that commissions, fees and costs of the personal. . . .".

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

Hope all is well.

Cordially,

Kathryn A. Ballsun

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