

Second Supplement to Memorandum 87-86

Subject: Study L-1029 - Distribution and Discharge (Further Comments of State Bar Study Team 1)

Attached to this memorandum is a follow-up letter from State Bar Study Team 1. The team agrees with the staff's reaction to its earlier letter (First Supplement to Memorandum 87-86), except as noted below.

§ 11702. Responsive pleading

The team reiterates its position that language should be deleted from the draft that relates to failure to respond not affecting a person's interest and entry of default being unnecessary.

§ 11850. When deposit with county treasurer authorized

The team suggests that if a minor does not have a guardian, the minor's share should not be distributed to the county treasurer but should go under Probate Code Section 3413, which provides four alternate methods of distribution:

- (1) Deposit in court-controlled account.
- (2) Transfer to a custodian under Uniform Transfers to Minors Act.
- (3) Hold subject to court conditions if less than \$20,000.
- (4) Distributed to a parent if less than \$5,000.

§ 11954. Referees

The team would refer to "civil actions for partition" only if necessary to distinguish them from probate actions for partition. In this case there is no possibility of confusion, since it is the probate partition action itself that is incorporating the civil action.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

6/213/007072-0093/11

R E P O R T

TO: JAMES V. QUILLINAN
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THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT, STUDY TEAM NO. 1

DATE: NOVEMBER 13, 1987

SUBJECT: FIRST SUPPLEMENT TO LRC MEMORANDUM 87-86
(Distribution and Discharge); New Probate
Code §§ 11600-12253

Study Team No. 1 held a telephone conference on November 12, 1987. Charles A. Collier, Richard S. Kinyon and Lynn P. Hart and William V. Schmidt participated. The other two members, Sterling L. Ross, Jr. and Michael V. Vollmer did not participate.

We have the following comments:

Section 11640: The revision recommended by the staff is satisfactory.

Section 11702: We continued to feel rather strongly that the words "and no entry of default is necessary" at the end of the first sentence of subsection (b)(1) is not necessary and should be deleted. As stated earlier the presence of those words, in our opinion, adds nothing, but suggests that the entry of a default might sometimes be appropriate in probate proceedings. We are happy that the staff has no problem in deleting this provision. We recommend that it be deleted.

We are still somewhat concerned with the words "but the person's interest in the proceeding or the estate is not otherwise affected" as they appear at the end of subsection (b)(2). We continue to believe that these quoted words are better deleted. We also feel that if they were to remain they should be clarified.

It is not clear to us exactly what is intended by these words. Charles Collier of our team felt that the concept in (b)(2) and (3) should perhaps be combined. It seems to us that the concept which is intended to be set forth in (b)(2) is that a person who fails to file a written statement may not further participate in the proceeding for determination of entitlement to distribution. It seems clear to us that the order adjudging such determination may well establish that such a person has an interest in the estate even though the person may not further participate in the proceeding which results in such order. To have an interest in a proceeding in which you may not participate seems to be another thing. It raises the question whether a person can have an interest in a proceeding in which he may not further participate. Perhaps the words "the proceeding or" could be deleted to achieve greater clarity.

Section 11801: The recommended change by the staff is satisfactory.

Section 11850: Existing Probate Code § 3413 provides four different alternatives where a minor has no guardian of the estate and there is money belonging to the minor. We believe if the concept of this section is preferable to depositing the money with the county treasurer where a minor has no guardian.

Section 11852: The staff says it has no problems adding the comment "Money deposited with the County Treasurer shall not bear interest." We feel that it would be helpful to add this comment.

Section 11953: We agree with the commission that it would be preferable to rely on a general reference to the court taking evidence so that this concept will be applied consistently throughout the statute.

Section 11954: Charles Collier of our team felt that the probate code may have some type of partition procedure. If so, then we felt that the word "civil" preceding the "partition" would be helpful to distinguish that type of partition from one which might take place under the probate code. If there is or will be no type of "probate partition," then the removal of the word "civil" is satisfactory to us.

We have no further comments.

Respectfully submitted,

STUDY TEAM NO. 1

By:


WILLIAM V. SCHMIDT,
Captain