

#L-1027

ns29b
10/28/87

Memorandum 87-92

Subject: Study L-1027 - Accounts (Approval of Recommendation for
Printing)

Attached to this memorandum is a draft of the recommendation relating to accounts, with revisions made at the October meeting in Sacramento shown in ~~strikeout~~ and underscore to the extent practical. We hope all interested persons will review the draft carefully once more, since we would like to approve the recommendation now for printing and submission to the Legislature.

Respectfully submitted,

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Staff Draft
Recommendation
relating to

ACCOUNTS

The provisions of existing law governing accounts¹ are generally restated in the proposed law without substantive change. There are a few specific changes worthy of note:

Contents of account. The existing probate account includes a number of items that are of limited value and fails to require some information that would make the account a more descriptive and useful document. The proposed law revises the account contents somewhat to make the probate account more analogous to a standard type of balance sheet.²

The account will include a summary statement of the significant aspects of the administration.³ The summary will be supported by schedules that break down each summary item into its component parts. For instance, the summary item of receipts might be broken down into the totals of interest income, dividend income, royalties received, and miscellaneous receipts. The exact breakdown will vary, depending on the nature of the estate. It will be unnecessary to show in the summary more than the total amount of each component part making up the total.⁴

1. Prob. Code §§ 920-933.

2. The concepts are derived from Craig, California Probate Accounting Procedures, 39 S. Cal. L. Rev. 316 (1966).

3. The summary includes, in addition to a report of administration, a statement of property in the estate, receipts, gains and losses on sales, and other acquisitions and dispositions of property.

4. For illustrative material, see American College of Probate Counsel, National Fiduciary Accounting Standards (1980).

This scheme encourages the use of sound bookkeeping practices. It will also save the time and expense of a narrative report of the details of each transaction. In case greater detail is required by a beneficiary or other interested person, the court is authorized by the proposed law to require the personal representative to submit documents supporting the account for inspection and audit.

When interim account required. Interim accounts in estate administration are not required as a matter of course but only on petition of an interested person or on the court's own motion.⁵ Where there is a turnover or change in administration, either because the personal representative dies or becomes incompetent, or because the personal representative resigns or absconds or the authority is otherwise terminated, an account should be required automatically without an interested person having to petition for one. The proposed law requires this in the interest of procedural efficiency. The automatic account requirement is subject to waiver by the interested parties.

Waiver of account. Existing law permits a waiver of an account by distributees of the estate.⁶ This provision could effectively enable beneficiaries to hide details of the administration from interested creditors who would otherwise be entitled to an account.⁷ The proposed law remedies this defect by making clear that persons ~~entitled to payment from the estate must be joined in any waiver of accounts, unless their interests will be satisfied under the account~~ creditors may petition the court to require an account notwithstanding waiver by the beneficiaries.

Contest of account. In a contest of an account an interested person may except to settlement of an allowed claim. Existing law

5. Prob. Code §§ 920, 921, 923, 932. A final account is required as a matter of course. Prob. Code § 921.

6. Prob. Code § 933.

7. Prob. Code §§ 921, 922 (account on petition of person interested in estate).

permits a jury trial on issues of fact in the contest.⁸ The proposed law eliminates the jury trial provision. A jury trial on such a matter is an unnecessary imposition on the parties, the courts, and the persons required to serve as jurors, as well as an unwarranted expense. Accounts in other areas are considered to be matters appropriate for court review rather than review by a lay jury.⁹

The proposed law also makes clear that in addition to other appropriate proceedings, an interested person may obtain court review of actions by the personal representative through a contest of an account, in the interest of procedural efficiency.

Where a person contests an account without reasonable cause and good faith, the contestant may be held liable for litigation expenses incurred by the personal representative in defending the account.¹⁰ An equally or more significant problem may occur, however, where the personal representative acts unreasonably and in bad faith in resisting a contest of an account improperly prepared or presented, causing interested persons unwarranted trouble and expense. To address this matter, the proposed law provides a reciprocal rule that the personal representative is liable for litigation expenses of the contestant where the personal representative unreasonably and in bad faith resists a contest of an account.

8. Prob. Code § 928.

9. See, e.g., Prob. Code §§ 1452 (no jury trial of guardianship or conservatorship account), 17006 (no jury trial of trust account).

10. Prob. Code § 927.

OUTLINE OF STATUTE

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COMMENTS TO REPEALED SECTIONS

PART 8. ACCOUNTS

CHAPTER 1. GENERAL PROVISIONS

§ 10900. Contents of account

10900. An account shall include all of the following:

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

- (1) Property in all inventories.
- (2) Receipts, excluding property listed in an inventory.
- (3) Gains on sales.
- (4) Other acquisitions of property.
- (5) Disbursements.
- (6) Losses on sales.
- (7) Other dispositions of property.
- (8) Property remaining.

(b) A report of administration that states all of the following:

(1) Liabilities of the estate. The statement of liabilities shall include the following information concerning creditor claims:

(A) Whether notice to creditors was given under Section 9050.

(B) Creditor claims filed, including the date of filing the claim, the name of the claimant, and the action taken on the claim.

(C) Creditor claims not paid or adequately provided for, whether the claim is due and the date due, the date any notice of rejection was given, whether the creditor has brought an action on the claim, and any property that is security for the claim by mortgage, deed of trust, or other lien.

(2) All other matters necessary to show the condition of the estate. ~~The report shall include, but is not limited to, a statement whether notice to creditors was given under Section 9050 [AB 708] and a statement of creditor claims, including the name of each claimant, the nature and due date of the claim, and the action taken on the claim.~~

Comment. Section 10900 supersedes former Section 920.3 and the first sentence of former Section 921.

Subdivision (a) is based on concepts developed in Note, California Probate Accounting Procedures, 39 S. Cal. L. Rev. 316 (1966). In the account, each schedule should contain a breakdown of the summary item into its component parts. For instance, the summary item of receipts

might be broken down into the totals of interest income, dividend income, royalties received, and miscellaneous receipts. The exact breakdown would vary, depending on the nature of the estate. It would be unnecessary to show in the summary more than the total amount of each component part making up the total. For illustrative material, see American College of Probate Counsel, National Fiduciary Accounting Standards (1980).

The report of administration (subdivision (b)) should include, among other relevant matters, that cash was invested in interest-bearing accounts or other proper investments (Section 9652). In the case of a final account, the report of administration must include the amount of fees and commissions paid or payable to the personal representative and to the attorney and must set forth the basis for determining the amount. See Section 10954(c) (waiver of account).

An account must include the information required by this section. This section does not, however, preclude an account from including any other relevant information, such as a separate statement of account as to specific gifts, allocation of principal and income, taxable income and distributable net income, and current values of property in the estate.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Verification required § 1284

§ 10901. Production of supporting documents

10901. On court order, or on request by an interested person filed with the clerk and a copy served on the personal representative, the personal representative shall produce for inspection and audit by the court or interested person the documents specified in the order or request that support an account.

Comment. Section 10901 supersedes former Section 925, extending the voucher procedure to supporting documents generally.

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

CHAPTER 2. WHEN ACCOUNT REQUIRED

§ 10950. Court-ordered account

10950. (a) On its own motion or on petition of an interested person, the court may order an account at any time.

(b) The court shall order an account on petition of an interested person made more than one year after the last account was filed or, if no previous account has been filed, made more than one year after issuance of letters to the personal representative.

(c) The court order shall specify the time within which the personal representative must file an account.

Comment. Section 10950 supersedes portions of the first sentences of former Sections 921 and 922. The section is subject to Section 10954 (waiver of account).

CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Defined terms

Interested person § 48

Letters § 52

Personal representative § 58

§ 10951. Final account

10951. The personal representative shall file a final account and petition for an order for final distribution of the estate when the estate is in a condition to be closed.

Comment. Section 10951 supersedes the second sentence of former Section 922 and is consistent with Section 11640 (petition and order for final distribution). The section is subject to Section 10954 (waiver of account). It should be noted that a supplemental account may be required under Section 11642 (after-acquired or after-discovered property).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10952. Account after authority terminated

10952. A personal representative who resigns, is removed from office, or whose authority is otherwise terminated, shall unless the court extends the time, file an account not later than 60 days after

termination of authority. If the personal representative fails to so file the account, the court may compel the account pursuant to Chapter 4 (commencing with Section 11050).

Comment. Section 10952 supersedes former Section 923. The section is subject to Section 10954 (waiver of account). For an account where the personal representative dies or becomes incompetent, see Section 10953.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10953. Account where personal representative dies or becomes incompetent

10953. (a) As used in this section, "legal representative" means the personal representative of a deceased personal representative or the conservator of the estate of an incompetent personal representative.

(b) If a personal representative dies or becomes incompetent and a legal representative is appointed for the deceased or incompetent personal representative, the legal representative shall not later than 60 days after appointment file an account of the administration of the deceased or incompetent personal representative.

(c) If a personal representative dies or becomes incompetent and no legal representative is appointed for the deceased or incompetent personal representative, or if the personal representative absconds, the court may compel the attorney for the absconding, deceased, or incompetent personal representative or attorney of record in the estate proceeding to file an account of the administration of the absconding, deceased, or incompetent personal representative.

(d) The legal representative or attorney shall exercise reasonable diligence in preparing an account under this section. The court shall settle the account as in other cases. The court shall allow a fee to the legal representative or the attorney for preparing the account; the fee shall be a charge against the estate that was being administered by the deceased, incompetent, or absconding personal representative.

Comment. Section 10953 restates former Section 932 with changes for internal consistency. The court referred to in this section is the court in which the estate of the original decedent is being administered.

CROSS-REFERENCES

Definitions

Personal representative § 58

Verification required § 1284

§ 10954. Waiver of account

10954. (a) Notwithstanding any other provision of this part, the personal representative is not required to file an account if any of the following conditions is satisfied as to each person entitled to ~~payment-or~~ distribution from the estate:

(1) The person has executed and filed a written waiver of account or a written acknowledgment that the person's interest has been satisfied.

(2) Adequate provision has been made for satisfaction in full of the person's interest. This paragraph does not apply to a residuary devisee or a devisee whose interest in the estate is subject to abatement, payment of expenses, or accrual of interest or income.

(b) A waiver or acknowledgment under subdivision (a) shall be executed by the following persons:

(1) If the person entitled to ~~payment-or~~ distribution is an adult and competent, by ~~the person entitled to payment-or distribution~~ that person.

(2) If the person entitled to ~~payment-or~~ distribution is a minor, by a person authorized to receive money or property belonging to the minor. If the waiver is executed by a guardian of the estate of the minor, the waiver may be executed without the need to obtain approval of the court in which the guardianship proceeding is pending.

(3) If the person entitled to ~~payment-or~~ distribution is a conservatee, by the conservator of the estate of the conservatee. The waiver may be executed without the need to obtain approval of the court in which the conservatorship proceeding is pending.

(4) If the person entitled to ~~payment-or~~ distribution is a trust, by the trustee, but only if the named trustee's written acceptance of the trust is filed with the court.

(5) If the person entitled to payment--~~or~~ distribution is an estate, by the personal representative of the estate.

(6) If the person entitled to payment--~~or~~ distribution is incapacitated, unborn, unascertained, or is a person whose identity or address is unknown, or is a designated class of persons who are not ascertained or are not in being, and there is a guardian ad litem appointed to represent the person entitled to payment--~~or~~ distribution, by the guardian ad litem.

(c) Notwithstanding subdivision (a),~~the~~:

(1) The personal representative shall file a final report of administration at the time the final account would otherwise have been required. The final report shall include the amount of fees and commissions paid or payable to the personal representative and to the attorney and shall set forth the basis for determining the amount.

(2) A creditor whose interest has not been satisfied may petition under Section 10950 for an account.

Comment. Section 10954 restates former Section 933, with the elimination of beneficiaries whose interest will be satisfied in full from those whose waiver is required. The section also makes clear that an unpaid creditor may seek to require an account notwithstanding a waiver by beneficiaries. The reference to a trustee's consent to act in subdivision (b)(4) has been replaced by a reference to the trustee's written acceptance of the trust. See Section 15600 (acceptance of trust by trustee). Subdivision (b)(6) is substituted for the former provision precluding waiver if a person entitled to distribution is unascertained.

CROSS-REFERENCES

Definitions

Person § 56
Personal representative § 58
Trust § 82
Trustee § 84

CHAPTER 3. SETTLEMENT OF ACCOUNT

§ 11000. Notice of hearing

11000. (a) The personal representative shall give notice of the hearing as provided in Section 1220.

(b) In addition to the notice required by subdivision (a), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the account.

(2) Each known devisee whose interest in the estate is affected by the account.

(3) The State of California, if any portion of the estate is to escheat to it and its interest is affected by the account.

(4) If the estate is insolvent, each creditor who has filed a claim that is allowed or approved but is unpaid.

(c) If the petition for approval of the account requests fees, the notice of hearing shall so state.

(d) If the account is a final account and is filed together with a petition for an order for final distribution of the estate, the notice of hearing shall so state.

Comment. Subdivisions (a) and (b) of Section 11000 restate the third sentence of former Section 926 without substantive change. Subdivisions (b)(4) and (c) ~~is~~ are new. Subdivision (d) restates the first portion of the second sentence of former Section 926(a) without substantive change. Notice must also be given to persons who have requested special notice. See Sections 1220(e), 1250, 1252.

CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Devisee § 34

Heirs § 44

Person § 56

Personal representative § 58

§ 11001. Contest of account

11001. (a) All matters may be contested for cause shown, including but not limited to:

(1) The validity of an allowed or approved claim not reported in a previous account and not established by judgment.

(2) The value of property for purposes of distribution.

(3) Actions taken by the personal representative not previously authorized or approved by the court, subject to Section 10590 (Independent Administration of Estates Act).

(b) If, upon the hearing, the court determines that the contest was made without reasonable cause and good faith, the court may award against the contestant the fees, commissions, and costs of the

personal representative and attorney and other expenses and costs of litigation incurred to defend the account. The amount awarded ~~that remains unsatisfied~~ is a charge against any interest of the contestant in the estate and the contestant is personally liable for any amount that remains unsatisfied.

(c) If, upon the hearing, the court determines that the personal representative opposes the contest without reasonable cause and in bad faith, the court may award the contestant the costs of the contest and other expenses and costs of litigation incurred to contest the account. The amount awarded is a charge against the fees and commission or other interest of the personal representative in the estate and the personal representative is liable personally and on the bond, if any, for any amount that remains unsatisfied.

Comment. Section 11001 restates the first, second, and fourth sentences of former Section 927, with the addition of a provision making clear the right of an interested person to obtain court review of actions by the personal representative through a contest of an account. See also Section 1043 (response or objection).

Subdivision (a)(2) permits a contest of the value of property for purposes of distribution only, and not of the inventory and appraisal; a separate procedure is provided for a direct contest of appraisal values. See Section 8804 (objection to appraisal).

Subdivision (c) is new. Litigation costs under subdivision (b) and (c) include the costs of a referee appointed under Section 11002.

GROSS-REFERENCES

Definitions

Personal representative § 58

§ 11002. Hearing on account

11002. (a) At the hearing, ~~the personal representative may be examined on oath~~ the court may cite the personal representative to appear before the court for examination.

(b) The court may appoint one or more referees to examine the account and make a report on the account, subject to confirmation by the court. The court may allow a reasonable compensation to the referee to be paid out of the estate.

(c) The court may make such orders as the court deems necessary to effectuate the provisions of this section.

Comment. Section 11002 restates the third and fifth sentences of former Section 927 ~~without substantive change, replacing the provision for examination under oath with a provision for a citation.~~ The provision of former Section 928 for jury trial of a contest of an allowed claim is not continued. See Section 7200 (trial by jury). The provision for payment of referee compensation out of the estate is subject to Section 11001 (award of litigation expenses in contest of account).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 11003. Settlement of claim not paid in full

11003. If in an account it appears that the personal representative has settled and paid a claim for less than its full amount, the personal representative shall have credit in the account only for the amount actually paid.

Comment. Section 11003 restates the last portion of the first sentence of former Section 583 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 11004. Settlement of claim not properly filed

11004. If in an account it appears that a debt has been paid within the time prescribed in Section 9154 but without a claim having been filed and established in the manner prescribed by statute, the court in settling the account shall allow the amount paid if all of the following are proven:

(a) The debt was justly due.

(b) The debt was paid in good faith.

(c) The amount paid was the ~~true amount of the indebtedness over and above all payments and set offs~~ amount reasonably necessary to satisfy the indebtedness.

(d) The estate is solvent.

Comment. Section 11004 restates former Section 929 ~~without substantive change~~, substituting the "amount reasonably necessary to satisfy the indebtedness" for the "true amount of the indebtedness" in subdivision (c). The addition of the limitation that the debt shall have been paid within the time prescribed in Section 9154 (claim

filing period plus 30 days) codifies the effect of existing case law. Cf. Estate of Erwin, 117 Cal.App.2d 203, 255 P.2d 97 (1953) (claim not made within claim filing period).

§ 11005. Effect of order settling account

11005. (a) Except as provided in subdivision (b), the order settling an account is conclusive against all interested persons.

(b) A person under legal disability has the right, at any time before entry of an order for final distribution of the estate, to move for cause to reopen and examine the account or to proceed by action against the personal representative or the sureties on the bond. In the action the order settling the account is prima facie evidence of the correctness of the account.

Comment. Section 11005 restates former Section 931, making clear that the exception in subdivision (b) applies only until entry of the order and not until physical distribution. As to the effect of fraud on the conclusiveness of the order, cf. Lazzarone v. Bank of America, 181 Cal. App. 3d 581, 226 Cal. Rptr. 855 (1986) (trust account), and Bank of America v. Superior Court, 181 Cal. App. 3d 705, 226 Cal. Rptr. 685 (1986) (guardianship account).

CROSS-REFERENCES

Definitions

Interested person § 48

CHAPTER 4. COMPELLING ACCOUNT

§ 11050. Sanction for failure to account

11050. Subject to the provisions of this chapter, if the personal representative does not file a required account, the court shall compel the account by punishment for contempt.

Comment. Section 11050 restates the third sentence of former Section 922 without substantive change. This chapter may also be used to compel an account by a personal representative whose authority is terminated. Section 10952.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 11051. Citation

11051. (a) A citation shall be issued, served, and returned, requiring a personal representative who does not file a required account to appear and show cause why the personal representative should not be punished for contempt.

(b) If the personal representative purposefully evades personal service of the citation, the personal representative shall be removed from office.

Comment. Subdivision (a) of Section 11051 restates the last sentence of former Section 922 without substantive change. Subdivision (b) restates a portion of former Section 924 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 11052. Punishment for contempt

11052. If the personal representative does not appear and file a required account, after having been duly cited, the personal representative may be punished for contempt or removed from office, or both, in the discretion of the court.

Comment. Section 11052 restates the last sentence of former Section 921 and restates a portion of former Section 924 without substantive change. See also Section 8505 (removal from office for contempt).

CROSS-REFERENCES

Definitions

Personal representative § 58

COMMENTS TO REPEALED SECTIONS

ARTICLE 3. RENDERING OF EXHIBITS AND ACCOUNTS

Probate Code § 920 (repealed)

Comment. Former Section 920 is a general provision that is omitted as unnecessary; the duty to account, the contents of accounts, and the settlement of accounts are governed by specific statutory provisions.

Probate Code § 920.3 (repealed)

Comment. Former Section 920.3 is superseded by Section 10900 (contents of account). See the Comment to Section 10900.

Probate Code § 921 (repealed)

Comment. The first sentence of former Section 921 is restated in Sections 10950 (court ordered account) and 10900 (contents of account), and in Code of Civil Procedure Section 166 (actions in chambers). The last sentence is restated in Section 11052 (punishment for contempt) without substantive change.

Probate Code § 922 (repealed)

Comment. The first sentence of former Section 922 is restated in Sections 10950 (court ordered account) and 10900 (contents of account). The second sentence is superseded by Section 10951 (final account). The third sentence is restated in Section 11050 (sanction for failure to account) without substantive change. The last sentence is restated in Section 11051(a) (citation) without substantive change.

Probate Code § 923 (repealed)

Comment. Former Section 923 is superseded by Section 10952 (account after authority terminated).

Probate Code § 924 (repealed)

Comment. Former Section 924 is restated in Sections 11051(b) (citation) and 11052 (punishment for contempt) without substantive change.

Probate Code § 925 (repealed)

Comment. Former Section 925 is superseded by Section 10901 (production of supporting documents), which extends the voucher procedure to supporting documents generally.

Probate Code § 926 (repealed)

Comment. The first sentence of subdivision (a) of former Section 926 is restated in Section 1285 (clerk to set matter for hearing). The second sentence is restated in Sections 11000(c) (notice of hearing), 11641 (distribution under). Subdivisions (b) and (c) are restated in Section 11000 (notice of hearing) without substantive change.

Probate Code § 927 (repealed)

Comment. The first and second sentences of former Section 927 are restated in Sections 11000 (contest of account) and 1043 (response or objection) without substantive change. The third and fifth sentences are restated in Section 11002(a) (hearing on account) without substantive change. The fourth sentence is restated in Section 11001 (contest of account) without substantive change. The last sentence is not continued because it is no longer necessary.

Probate Code § 928 (repealed)

Comment. Section 928 is not continued. See Section 7200 (trial by jury).

Probate Code § 929 (repealed)

Comment. Former Section 929 is restated in Section 11004 (settlement of claim not properly filed) without substantive change.

Probate Code § 930 (repealed)

Comment. Former Section 930 is not continued. The voucher procedure was generally not used.

Probate Code § 931 (repealed)

Comment. Former Section 931 is restated in Section 11005 (effect of order settling account) without substantive change.

Probate Code § 932 (repealed)

Comment. Former Section 932 is restated in Section 10953 (account where personal representative dies or becomes incompetent) with changes for internal consistency.

Probate Code § 933 (repealed)

Comment. Former Section 933 is restated in Section 10954 (waiver of account) without substantive change.