

Memorandum 87-106

Subject: Study L - Probate Cleanup Bill (Creditor Claims Against Trusts)

When the Commission recommended enactment of the Trust Law in 1986, and again when the Commission recommended enactment of new creditor claims provisions in probate in 1987, the Commission considered the possibility of working on the problem of creditor claims against trust assets. The Commission considered this to be of some importance and urgency. However, because the State Bar Executive Committee was also actively involved in this matter and had made a commitment to Assembly Member Calderon to produce a statute for the 1988 session, the Commission decided to defer consideration of this matter.

The State Bar committee has now completed its work and will be sponsoring legislation at the 1988 session. The Bar committee understands that neither the Commission nor its staff has reviewed the Bar's work, and that if the Commission were to activate this study now it would take time for a staff analysis and Commission resolution of policy considerations, for redrafting, for circulating the redraft for comment, and for analyzing the comments and developing a final recommendation. However, the Bar committee believes it would be useful to obtain a letter from the Commission indicating that although the Commission has not reviewed the Bar bill and does not take a position on the Bar bill, the Commission believes the matter of creditor claims against trust assets is a significant problem that needs to be addressed. See the letter from Theodore J. Cranston, attached as Exhibit 1.

While this is not the type of thing the Commission usually does, the staff believes a letter such as this could be drawn in a way that would be a strictly factual statement and would not imply the Commission is taking a position on the Bar bill. Such a letter could take the following form.

Hon. Charles M. Calderon

Re: AB **** (Trust Law)

Dear Assembly Member Calderon:

The Law Revision Commission understands that your Assembly Bill No. **** embodies the draft developed by the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section to deal with the problem of creditor claims against trust assets. This letter is in response to a request of the Executive Committee that the Commission indicate to you the history of its involvement with this matter.

The current California Trust Law was enacted on Commission recommendation in 1986. At that time the Commission considered the possibility of recommending procedures to deal with creditor claims against trust assets, but ultimately found that there was not sufficient time then to complete its work on that aspect of the study. The Commission felt that filling this gap was a high priority, and in fact the Commission's recommendation to the Legislature states expressly that the Commission would be considering this matter in the future to determine what, if any, recommendation to make to the Legislature. See *Recommendation Proposing The Trust Law*, 18 Cal. L. Revision Comm'n Reports 501, 596 (1985).

In 1987 the Commission was advised that you had asked the State Bar Section to draft legislation for you addressing this problem. In order to avoid duplication of effort, the Commission decided not to work on this matter, with the understanding that the State Bar would pursue its work to completion. Neither the Commission nor its staff, however, has reviewed the State Bar's work, and the Commission takes no position with respect to that work or to AB ****.

With this background, the Commission does wish you to know it believes that the problem of creditor claims against trust assets, which is the subject of your AB ****, is of great importance in the probate field, and needs to be addressed.

Sincerely,

Ann E. Stodden
Chairperson

cc: Hon. Elihu M. Harris
Hon. Bill Lockyer

The staff believes that such a letter would not be inappropriate.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

ESTATE PLANNING, TRUST AND PROBATE LAW SECTION THE STATE BAR OF CALIFORNIA



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December 11, 1987

Mr. Nat Sterling California Law Revision Commission 4000 Middlefield Road Suite D-2 Palo Alto, California 94303-4739

CA LAW REV. COMMISSION

DEC 14 1987

Re: Trust Creditors' Claim Statute

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Dear Nat:

Following up our telephone conversation last week, the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar would welcome a letter to Assemblyman Calderon and other appropriate members of the legislature from the Law Revision Commission regarding the above-referenced statute. I understand that such a letter would take no position concerning our specific proposal, but would indicate the clear need for legislation in this area.

We have concluded not to ask the Commission to study our statute at this time. We have promised a statute to Assemblyman Calderon, and a delay before the Commission for a year or so (as you suggested might occur) would be counter-productive in our opinion.

Thank you for your interest and guidance. Please let me know whether the Commission decides to send the suggested letter.

Best regards,

Theodore J. Cranston

TJC:vbc

cc: Ann Stodden, Commissioner, Law Review Commission D. Keith Bilter, Chairman, Executive Committee