

#L-2009

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03/04/88

Fifth Supplement to Memorandum 88-8

Subject: Study L-2009 - AB 2841 (1988 Probate Legislation--Los Angeles
County Bar Association Comments)

Attached is a letter from the chairman of the Los Angeles County Bar Association Probate and Trust Law Section Legislative Monitoring Committee, commenting on AB 2841. We will discuss the points made in the letter orally at the meeting.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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March 1, 1988

Deborah DeBow
Assembly Judiciary Committee
State Capitol Room 6005
P.O. Box 94284
Sacramento, California 94249-0001

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Re: AB 2841

Dear Deborah:

I am writing you in my capacity as chairman of the Los Angeles County Bar Association Probate and Trust Law Section Legislative Monitoring Committee. This letter follows up on our brief telephone conversation on March 1, 1988 regarding the above-referenced bill before the Assembly Judiciary Committee. The following are comments to the bill.

The Bill repeals Section 2523 of the Probate Code. That section permits the conservator to file a lis pendens on real property giving notice of the pendency of a petition under Probate Code Section 2520. We see no reason for the repeal and believe that the repeal prejudices the rights of a conservator to protect the interest of a conservatee in real property which is the subject of a petition under Probate Code Section 2520.

Under Section 7280, the United States Government becomes an interested party where compensation, pension, insurance or other allowances are made by a department or bureau of the United States Government to a decedent's estate. This would make the United States Government an interested party in virtually any probate estate of a deceased government employee or in which a government life insurance policy is paid to a decedent's estate. We see no reason to treat the United States Government differently from any other employer or life insurance company.

Article 2 commencing with Section 8110 discusses service of notice of hearing of a petition to administer a decedent's estate. Section 8112 talks about notice of administration to be given to creditors under Probate Code Section 9050. We believe that this provision is misplaced by including in it Article 2. It gives the impression that notice of hearing must be sent to

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known creditors. Since this is obviously not the case, we believe that unintended confusion can be eliminated if Section 8112 was removed or transfer to Section 9050 of the Probate Code.

Under Section 8113 notice must be given to the consul of a foreign country in certain circumstances. Under section 8113 (b) notice is required only if the particular foreign government has consul representation in the United States and only if the United States has treaty rights with that country. To what treaty rights does section 8113 (b) refer? We believe that it places an unnecessary burden on the personal representative or its counsel to determine if "treaty rights" exist with that country. Why not simply require notice if consul representation exists in the United States. If there are no treaty rights, the notice has no effect; and if there are treaty rights, the foreign consul can be expected to take appropriate action.

Section 8502 lists grounds for removal of a personal representative. Section 8502 (e) lists any cause provided by statute. To what statute does 8503 (e) refer? Indeed, does not 8502 (e) end up referring to itself?

Section 8544 (b) authorizes the special administrator to take certain actions with approval of the court. Subsection (b) (2) authorizes the personal representative to pay interest on all or any part of an obligation secured by mortgage, lien, or deed of trust on property in the estate where there is a danger that the security may be foreclosed. However, there is no authorization to pay principal, as well as interest. Failure to pay principal on a secured obligation will also cause it to go into default and risk foreclosure.

Section 8547 deals with payment of special administrator's commissions and attorneys fees for the special administrator. Subsection (b) delays payment of special administrator's commissions until the close of the administration of the estate unless the general personal representative joins in the petition for the allowance of the special administrator's commissions. The reason for doing this is that the statutory fee is divided between the special administrator and the personal representative. Unlike the attorney for the special administrator, who is permitted in subsection (d) to receive compensation for extraordinary services at the conclusion of the final accounting of the special administrator, the special administrator may not receive commissions for extraordinary services under subsection (b) prior to the close of the estate. We see no reason to delay the award of extraordinary commissions for the

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special administrator, which need not be shared with the permanent personal administrator.

Section 11000 (b) states requirements for giving notice of settlement of accounts. Under subsection (b) (4) if the estate is not solvent notice must be given to each creditor that has filed a claim that is allowed or approved but is unpaid. In some cases a claim may be allowed in part and disallowed in part and a clarification of subsection (b) (4) might require notice to a creditor whose claim is "unpaid in whole or in part."

Section 17208 allowing the court to appoint a guardian ad litem is repealed by the Bill. When I mentioned this to you, you said that it was being moved to another part of the code. We of course would want to make certain that that is the case and not have this important power inadvertently eliminated from the Probate Code.

Very truly yours,


L. Andrew Gifford

LAG:ale
cc: John DeMouilly